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**HOUSE BILL 399**

**43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997**

**INTRODUCED BY**

**W. C. "DUB" WILLIAMS**

**AN ACT**

**RELATING TO GAMBLING; ENACTING THE INDIAN GAMING COMPACT;  
ENACTING A REVENUE-SHARING AGREEMENT TO PROVIDE FOR REVENUE  
SHARING BETWEEN THE STATE AND AN INDIAN NATION, TRIBE OR PUEBLO  
CONDUCTING GAMING PURSUANT TO THE COMPACT; ENACTING THE VIDEO  
GAMBLING ACT TO PERMIT CERTAIN NONTRIBAL GAMBLING; PROVIDING  
PENALTIES; CREATING A FUND; IMPOSING A GAMBLING TAX; AMENDING  
AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION;  
DECLARING AN EMERGENCY.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. [NEW MATERIAL] INDIAN GAMING COMPACT ENTERED  
INTO.--The Indian Gaming Compact is enacted into law and entered  
into with all Indian nations, tribes and pueblos in the state  
legally joining in it by enactment of a resolution pursuant to  
the requirements of applicable tribal and federal law. The**

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1 compact is enacted and entered into in the form substantially as  
2 follows:

3 "INDIAN GAMING COMPACT

4 INTRODUCTION

5 The State is a sovereign State of the United States of  
6 America, having been admitted to the Union pursuant to the Act  
7 of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and is  
8 authorized by its constitution to enter into contracts and  
9 agreements, including this Compact, with the Tribe;

10 The Tribe is a sovereign federally recognized Indian tribe  
11 and its governing body has authorized the officials of the Tribe  
12 to enter into contracts and agreements of every description,  
13 including this Compact, with the State;

14 The Congress of the United States has enacted the Indian  
15 Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701-2721  
16 (hereinafter "IGRA"), which permits Indian tribes to conduct  
17 Class III Gaming on Indian Lands pursuant to a tribal-state  
18 compact entered into for that purpose;

19 The Tribe owns or controls Indian Lands and by Ordinance  
20 has adopted rules and regulations governing Class III games  
21 played and related activities at any Gaming Facility;

22 The State and the Tribe, in recognition of the sovereign  
23 rights of each party and in a spirit of cooperation to promote  
24 the best interests of the citizens of the State and the members  
25 of the Tribe, have engaged in good faith negotiations

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1 recognizing and respecting the interests of each party and have  
2 agreed to this Compact.

3 NOW, THEREFORE, the State and the Tribe agree as follows:

4 TERMS AND CONDITIONS

5 SECTION 1. Purpose and Objectives.

6 The purpose and objectives of the State and the Tribe in  
7 making this Compact are as follows:

8 A. To evidence the good will and cooperative spirit  
9 between the State and the Tribe;

10 B. To continue the development of an effective government-  
11 to-government relationship between the State and the Tribe;

12 C. To provide for the regulation of Class III Gaming on  
13 Indian Lands as required by the IGRA;

14 D. To fulfill the purpose and intent of the IGRA by  
15 providing for tribal gaming as a means of generating tribal  
16 revenues, thereby promoting tribal economic development, tribal  
17 self-sufficiency, and strong tribal government;

18 E. To provide revenues to fund tribal government  
19 operations or programs, to provide for the general welfare of  
20 the tribal members and for other purposes allowed under the  
21 IGRA;

22 F. To provide for the effective regulation of Class III  
23 Gaming in which the Tribe shall have the sole proprietary  
24 interest and be the primary beneficiary; and

25 G. To address the State's interest in the establishment,

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1 by the Tribe, of rules and procedures for ensuring that Class  
2 III Gaming is conducted fairly and honestly by the owners,  
3 operators, employees and patrons of any Class III Gaming  
4 enterprise on Indian Lands.

5 SECTION 2. Definitions.

6 For purposes of this Compact, the following definitions  
7 pertain:

8 A. "Class III Gaming" means all forms of gaming as defined  
9 in 25 U.S.C. § 2703(8), and 25 C.F.R. § 502.4.

10 B. "Indian Lands" means:

11 1. all lands within the exterior boundaries of the  
12 Tribe's reservation and its confirmed grants from prior  
13 sovereigns; or

14 2. any other lands title to which is either held in  
15 trust by the United States for the exclusive benefit of the  
16 Tribe or a member thereof or is held by the Tribe or a member  
17 thereof subject to restrictions against alienation imposed by  
18 the United States, and over which the Tribe exercises  
19 jurisdiction and governmental authority.

20 C. "Tribal Gaming Agency" means the tribal governmental  
21 agency which will be identified to the State Gaming  
22 Representative as the agency responsible for actions of the  
23 Tribe set out in the Compact. It will be the single contact  
24 with the State and may be relied upon as such by the State.

25 D. "State Gaming Representative" means that person

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1 designated by the Governor of the State, who will be responsible  
2 for actions of the State set out in the Compact. The  
3 representative will be the single contact with the Tribe and may  
4 be relied upon as such by the Tribe. If the State Legislature  
5 enacts legislation to establish an agency of the State, such  
6 agency may assume the duties of the State Gaming Representative.

7 E. "Compact" means this compact between the State and the  
8 Tribe.

9 F. "Gaming Facility" means the buildings or structures in  
10 which Class III Gaming is conducted on Indian Lands.

11 G. "Management Contract" means a contract within the  
12 meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

13 H. "Management Contractor" means any person or entity that  
14 has entered into a Management Contract with the Tribe.

15 I. "Ordinance" means the gaming ordinance and any  
16 amendments thereto adopted by the Tribal Council of the Tribe.

17 J. "Tribe" means any Indian Tribe or Pueblo located  
18 within the State of New Mexico entering into this Compact as  
19 provided for herein.

20 K. "State" means the State of New Mexico.

21 SECTION 3. Authorized Class III Gaming.

22 The Tribe may conduct, only on Indian Lands, subject to all  
23 of the terms and conditions of this Compact, any or all forms of  
24 casino-style gaming, including but not limited to slot machines  
25 and other forms of electronic gaming devices; all forms of

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1 poker, blackjack and other casino-style card games, both banked  
2 and unbanked; roulette; craps; keno; wheel of fortune; pai gow;  
3 and other games played in casino settings, and any form of a  
4 lottery.

5 Subject to the foregoing, the Tribe shall establish, in its  
6 discretion, by tribal law, such limitations as it deems  
7 appropriate on the number and type of Class III Gaming  
8 conducted, the location of Class III Gaming on Indian Lands, the  
9 hours and days of operation, and betting and pot limits,  
10 applicable to such gaming.

11 SECTION 4. Regulation of Class III Gaming.

12 A. Tribal Gaming Agency. The Tribal Gaming Agency will  
13 assure that the Tribe will:

- 14 1. operate all Class III Gaming pursuant to this  
15 Compact, tribal law, the IGRA and other  
16 applicable Federal law;
- 17 2. provide for the physical safety of patrons in  
18 any Gaming Facility;
- 19 3. provide for the physical safety of personnel  
20 employed by the gaming enterprise;
- 21 4. provide for the physical safeguarding of assets  
22 transported to and from the Gaming Facility and  
23 cashier's cage department;
- 24 5. provide for the protection of the property of the  
25 patrons and the gaming enterprise from illegal

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activity;

6. participate in licensing of primary management officials and key employees of a Class III Gaming enterprise;
7. detain persons who may be involved in illegal acts for the purpose of notifying law enforcement authorities; and
8. record and investigate any and all unusual occurrences related to Class III Gaming within the Gaming Facility.

B. Regulations. Without affecting the generality of the foregoing, the Tribe shall adopt laws:

1. prohibiting participation in any Class III Gaming by any person under the age of twenty-one (21);
2. prohibiting the employment of any person as a key employee or primary management official in a position that is directly involved in Class III Gaming activities who is under the age of twenty-one (21) or who has not been licensed in accordance with Section 5, herein;
3. prohibiting the play of any Class III Gaming for at least four (4) consecutive hours daily, Mondays through Thursdays (except federal holidays);
4. prohibiting a gaming enterprise from cashing any paycheck or any type of government assistance

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- check, including Social Security, AFDC, pension and other such checks, for any patron;
5. requiring that, if feasible, automatic teller machines on Gaming Facility premises be programmed so that the machines will not accept cards issued by the State to AFDC recipients for access to AFDC benefits, and so that such machines limit the amount that a person may withdraw on a single day;
  6. providing that each electronic or electromechanical gaming device in use at the Gaming Facility must pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than seventy-five percent (75%);
  7. providing that within eighteen (18) months from the date on which this Compact takes effect, all gaming machines on the premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual basis the activity of each gaming machine in use at the Gaming Facility, and that such data shall be electronically accessible to the State Gaming Representative upon entry of appropriate security codes;

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- 8. prohibiting any gaming enterprise from offering free food or free alcoholic beverages to patrons;
- 9. requiring the gaming enterprise to spend an amount that is no less than one-quarter of one percent (.25%) of its net win as that term is defined herein annually to fund or support programs for the treatment and assistance of compulsive gamblers; and
- 10. governing any Management Contract regarding its Class III Gaming activity such that it conforms to the requirements of tribal law and the IGRA and the regulations issued thereunder.

The Tribal Gaming Agency will provide true copies of all tribal laws and regulations affecting Class III Gaming conducted under the provisions of this Compact to the State Gaming Representative within thirty (30) days after the effective date of this Compact, and will provide true copies of any amendments thereto or additional laws or regulations affecting gaming within thirty (30) days after their enactment (or approval, if any).

C. Audit and Financial Statements. The Tribal Gaming Agency shall require all books and records relating to Class III Gaming to be maintained in accordance with generally accepted accounting principles. All such books and records shall be retained for a period of at least six (6) years from the date of

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1 creation. Not less than annually, the Tribal Gaming Agency  
2 shall require an audit and a certified financial statement  
3 covering all financial activities of the gaming enterprise by an  
4 independent certified public accountant licensed by the State.  
5 The financial statement shall be prepared in accordance with  
6 generally accepted accounting principles and shall be submitted  
7 to the Tribal Gaming Agency within one hundred twenty (120) days  
8 of the close of the Tribe's fiscal year. The Tribe will  
9 maintain the following records for not less than six (6) years:

- 10 1. revenues, expenses, assets, liabilities and  
11 equity for each Gaming Facility;
- 12 2. daily cash transactions for each Class III  
13 Gaming activity at each Gaming Facility,  
14 including but not limited to transactions  
15 relating to each gaming table bank, game drop  
16 box and gaming room bank;
- 17 3. all markers, IOU's, returned checks, hold check  
18 or other similar credit instruments;
- 19 4. individual and statistical game records (except  
20 card games) to reflect statistical drop and  
21 statistical win; for electronic, computer, or  
22 other technologically assisted games, analytic  
23 reports which show the total amount of cash  
24 wagered and the total amount of prizes won;
- 25 5. contracts, correspondence and other transaction

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- 1 documents relating to all vendors and contractors;
- 2 6. records of all tribal gaming enforcement
- 3 activities;
- 4 7. audits prepared by or on behalf of the Tribe; and
- 5 8. personnel information on all Class III Gaming
- 6 employees or agents, including rotation sheets,
- 7 hours worked, employee profiles and background
- 8 checks.

9 D. Violations. The agents of the Tribal Gaming Agency shall  
10 have unrestricted access to the Gaming Facility during all hours  
11 of Class III Gaming activity, and shall have immediate and  
12 unrestricted access to any and all areas of the Gaming Facility  
13 for the purpose of ensuring compliance with the provisions of this  
14 Compact and the Ordinance. The agents shall report immediately to  
15 the Tribal Gaming Agency any suspected violation of this Compact,  
16 the Ordinance, or regulations of the Tribal Gaming Agency by the  
17 gaming enterprise, Management Contractor, or any person, whether  
18 or not associated with Class III Gaming.

19 E. State Gaming Representative.

- 20 1. Upon written request by the State to the Tribe,
- 21 the Tribe will provide information on primary
- 22 management officials, key employees and suppliers,
- 23 sufficient to allow the State to conduct its own
- 24 background investigations, as it may deem
- 25 necessary, so that it may make an independent

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determination as to the suitability of such individuals, consistent with the standards set forth in Section 5, hereinafter. The Tribe shall consider any information or recommendations provided to it by the State as to any such person or entity, but the Tribe shall have the final say with respect to the hiring or licensing of any such person or entity.

2. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements, the State Gaming Representative authorized in writing by the Governor of the State or by legislation duly enacted by the State Legislature shall have the right to inspect a Gaming Facility, Class III Gaming activity, and all records relating to Class III Gaming (including those set forth in Section 5, hereinafter) of the Tribe, subject to the following conditions:
  - (a) with respect to public areas of a Gaming Facility, at any time without prior notice during normal business hours;
  - (b) with respect to private areas of a Gaming Facility not accessible to the public, at any time during normal business hours, immediately

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after notifying the gaming enterprise management of his or her presence on the premises and presenting proper identification, and requesting access to such non-public areas of the Gaming Facility;

(c) with respect to inspection and copying of all management records relating to Class III Gaming, with forty-eight (48) hours prior written notice, not including weekends. The reasonable costs of copying will be borne by the State; and

(d) whenever the State Gaming Representative, or his designee, enters the premises of the Gaming Facility for any such inspection, such Representative, or designee, shall identify himself to security or supervisory personnel of the Gaming Facility.

3. The financial information, proprietary ideas, plans, methods, data, development inventions or other proprietary information regarding the gaming enterprise of the Tribe, Class III Gaming conducted by the Tribe, or the operation thereof, which is provided to the State by the Tribe shall not be deemed public records as a matter of state law, and shall not be disclosed to any member of the public,

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without the prior written approval of a duly authorized representative of the Tribe. These prohibitions shall not be construed to prohibit:

- (a) the furnishing of any information to a law enforcement or regulatory agency of the Federal Government;
- (b) the State from making known the names of persons, firms, or corporations conducting Class III Gaming pursuant to the terms of this Compact, locations at which such activities are conducted, or the dates on which such activities are conducted;
- (c) publishing the terms of this Compact;
- (d) disclosing information as necessary to audit, investigate, prosecute or arbitrate violations of this Compact or other applicable laws or to defend suits against the State; and
- (e) complying with subpoenas or court orders issued by courts of competent jurisdiction.

4. To the fullest extent allowed by State law, the Tribe shall have the right to inspect State records concerning all Class III Gaming conducted by the Tribe; the Tribe shall have the right to copy such State records, with the Tribe bearing the reasonable cost of copying.

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5. For every year or part thereof in which the Tribe is actually engaged in Class III Gaming hereunder, the Tribe shall reimburse the State for the actual costs the State incurs in carrying out any functions authorized by the terms of this Compact, in an amount not to exceed twenty-five thousand dollars (\$25,000) per year. All calculations of amounts due shall be based upon a fiscal year beginning October 1, and ending September 30, unless the parties select a different fiscal year. Payments due the State shall be made no later than sixty (60) days after the beginning of each fiscal year. Payments due the State during any partial fiscal year this Compact is in effect shall be adjusted to reflect only that portion of the fiscal year. Within sixty (60) days after each fiscal year in which this Compact is in effect, the State shall submit to the Tribe an accounting of actual costs incurred in carrying out any functions authorized by the terms of this Compact. Any amount of said twenty-five thousand dollars (\$25,000) not expended by the State on said actual costs shall be returned to the Tribe by the State within sixty (60) days after the fiscal year or treated as a prepayment of the Tribe's obligation

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1 during the subsequent fiscal year.

2 6. In the event the State believes that the Tribe is  
3 not administering and enforcing the regulatory  
4 requirements set forth herein, it may invoke the  
5 procedures set forth in Section 7 of this Compact.

6 F. The Tribe shall comply with all applicable provisions  
7 of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31  
8 U.S.C. §§ 5311-5314, and all reporting requirements of the  
9 Internal Revenue Service.

10 SECTION 5. Licensing Requirements.

11 A. License Required. The Gaming Facility operator, (but  
12 not including the Tribe) including its principals, primary  
13 management officials, and key employees, the Management  
14 Contractor and its principals, primary management officials, and  
15 key employees (if the Tribe hires a Management Contractor); any  
16 person, corporation, or other entity that has supplied or  
17 proposes to supply any gaming device to the Tribe or the  
18 Management Contractor; and any person, corporation or other  
19 entity providing gaming services within or without a Gaming  
20 Facility, shall apply for and receive a license from the Tribal  
21 Gaming Agency before participating in any way in the operation  
22 or conduct of any Class III Gaming on Indian Lands.

23 B. License Application. Each applicant for a license  
24 shall file with the Tribal Gaming Agency a written application  
25 in the form prescribed by the Tribal Gaming Agency, along with

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1 the applicant's fingerprint card, current photograph and the fee  
2 required by the Tribal Gaming Agency.

3 1. The following Notice ("Privacy Act Notice") shall  
4 be placed on the application form for a principal,  
5 key employee or a primary management official  
6 before that form is filled out by an applicant:

7 "In compliance with the Privacy Act of  
8 1974, the following information is  
9 provided: Solicitation of the  
10 information on this form is authorized by  
11 25 U.S.C. §§ 2701-2721. The purpose of  
12 the requested information is to determine  
13 the eligibility of individuals to be  
14 employed in a gaming enterprise. The  
15 information will be used by members and  
16 staff of the Tribal Gaming Agency and the  
17 National Indian Gaming Commission who  
18 have need for the information in the  
19 performance of their official duties.  
20 The information may be disclosed to  
21 appropriate federal, tribal, state, local  
22 or foreign law enforcement and regulatory  
23 agencies when relevant to civil, criminal  
24 or regulatory investigations or  
25 prosecutions or when, pursuant to a

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requirement by a Tribe, or the National Indian Gaming Commission, the information is relevant to the hiring or firing of an employee, the issuance or revocation of a gaming license or investigations of activities while associated with a Tribe or a gaming enterprise. Failure to consent to the disclosures indicated in this Notice will result in a Tribe being unable to hire you in a primary management official or key employee position with a tribal gaming enterprise. The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply an SSN may result in errors in processing your application. "

2. Existing principals, key employees and primary management officials shall be notified, in writing, that they shall either:
  - (a) complete a new application form that contains a Privacy Act Notice; or
  - (b) sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that Notice.
3. The following Notice ("False Statement Notice")

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shall be placed on the application form for a principal, key employee or a primary management official before that form is filled out by an applicant:

"A false statement on any part of your application may be grounds for not hiring you or for firing you after you begin work. Also, you may be punished by fine or imprisonment. See 18 U. S. C. § 1001. "

- 4. The Tribal Gaming Agency shall notify, in writing, existing principals, key employees and primary management officials that they shall either:
  - (a) complete a new application form that contains a False Statement Notice; or
  - (b) sign a statement that contains the False Statement Notice.
- 5. The Tribal Gaming Agency shall request from each applicant, and from each principal, primary management official and key employee of each applicant, all of the following information:
  - (a) full name, other names used (oral or written), Social Security Number(s), birth date, place of birth, citizenship, gender and all languages spoken or written;
  - (b) currently, and for the previous ten (10)

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years, business and employment positions held, ownership interests in those businesses, business and residence addresses and driver's license numbers; provided, that any applicant who is a principal, primary management official, key employee, Management Contractor, manufacturer or supplier of gaming devices, and/or a person providing gaming services, must provide such information currently, and from the age of eighteen (18);

- (c) the names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed in Paragraph B. 5. (b) of this section;
- (d) current business and residence telephone numbers;
- (e) a description of any existing and previous business relationships with a Tribe, including ownership interests in those businesses, and a description of any potential or actual conflict of interests between such businesses and a Tribe;
- (f) a description of any existing and previous business relationships in the gaming industry,

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- including, but not limited to, ownership interests in those businesses;
- (g) the name and address of any licensing or regulatory agency with which the applicant has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- (h) for each felony for which there is an ongoing prosecution or a conviction, the charge, the date of the charge, the name and address of the court involved and the disposition, if any;
- (i) for each misdemeanor for which there is an ongoing prosecution or conviction (excluding minor traffic violations), the charge, the date of the charge, the name and address of the court involved, and the disposition, if any;
- (j) for each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is not otherwise listed pursuant to Paragraph B. 5. (h) or B. 5. (i) of this Section, the criminal charge, the date of the charge, the name and address of the court involved and the

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- disposition, if any;
- (k) the name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, as an applicant, principal, primary management official or key employee, and whether or not such license or permit was granted;
- (l) a current photograph;
- (m) fingerprints, which shall be taken by officers of the tribal police department. Pursuant to a Memorandum of Understanding between the Tribe and the National Indian Gaming Commission ("Commission"), tribal police officers shall forward the fingerprint cards directly to the Commission;
- (n) the fee required by the Tribal Gaming Agency; and
- (o) any other information the Tribal Gaming Agency deems relevant.

C. Background Investigations.

- 1. Upon receipt of a completed application and required fee for licensing, the Tribal Gaming Agency shall conduct or cause to be conducted a background investigation to ensure that the

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applicant is qualified for licensing.

2. Background checks of applicants will be performed pursuant to the following procedures:

(a) The Tribal Gaming Agency will provide applications to potential applicants upon request and shall collect and maintain the applications.

(b) Pursuant to a Memorandum of Understanding between the Tribe and the Commission, tribal police officers will collect fingerprints from all applicants and forward the fingerprint cards directly to the Commission. The Commission will obtain a criminal history record from the Federal Bureau of Investigation on each applicant and forward such information to the Tribal Gaming Agency.

(c) The Tribal Gaming Agency shall investigate the information provided in the applications.

This investigation shall include:

- (1) contacting persons or entities identified in the application and verifying by written or oral communication that the information contained in the application is accurate;
- (2) interviewing a sufficient number of

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knowledgeable people, such as former employers, partners, business associates, and others referred to in the application, to provide a basis for the Tribal Gaming Agency to make a determination concerning whether the applicant meets applicable eligibility requirements;

- (3) reviewing relevant financial records of the applicant for the three (3) years preceding the application; and
  - (4) contacting any state, federal or other government agency that is referred to in the application.
- (d) The Tribal Gaming Agency shall document any information it obtains that calls into question whether the applicant would meet the eligibility requirements under the Ordinance. The Tribal Gaming Agency shall then document in detail the disposition of these problem areas, indicating the follow-up investigations performed on the problem areas and the result of such investigations.
- (e) The Tribal Gaming Agency will review the results of the investigation. This review



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will include a determination as to the scope of the investigation and whether sufficient information was obtained and verified. If such information is found not sufficient, the Tribal Gaming Agency will perform additional investigations.

(f) Once the investigation is complete, the Tribal Gaming Agency will decide whether the applicant meets the eligibility criteria under the Ordinance.

3. In conducting a background investigation, the Tribal Gaming Agency and its agents shall keep confidential the identity of each person interviewed in the course of the investigation.

4. Within twenty (20) days of the receipt of a completed application for licensing, and upon request of an applicant, the Tribal Gaming Agency may issue a temporary license to the applicant, unless the background investigation undertaken discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant are apparent on the face of the application. The temporary license shall become void and be of no effect upon either:

(a) the issuance of the license;

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- (b) the issuance of a notice of denial; or
- (c) ninety (90) days after the temporary license is issued, whichever occurs first.

5. The Tribal Gaming Agency shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility or suitability of an applicant, or a principal, key employee or primary management official of an applicant, for employment or involvement in a gaming enterprise. After such consultation, the Tribal Gaming Agency shall either issue a license or deny the application. If the Tribal Gaming Agency determines that employment or involvement of the applicant poses a threat to the public interest or to the effective regulation of Class III Gaming or creates or enhances dangers of unsuitable, unfair or illegal practices, methods or activities in the conduct of Class III Gaming, the Tribal Gaming Agency shall deny the application.

6. The Tribal Gaming Agency shall retain the right to conduct additional background investigations of any person required to be licensed at any time while the license is valid.

D. Procedure for Forwarding Applications and Reports.

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1 Procedures for forwarding applications and investigative reports to  
2 the Commission and State Gaming Representative.

3 1. When a key employee or primary management official  
4 begins work at a gaming enterprise authorized by  
5 this Compact, the Tribal Gaming Agency shall forward  
6 to the Commission and the State Gaming  
7 Representative a completed application for  
8 employment.

9 2. The Tribal Gaming Agency shall forward the report  
10 referred to in Paragraph D.4. of this section to the  
11 Commission and the State Gaming Representative  
12 within sixty (60) days after an employee begins  
13 work, or within sixty (60) days of the approval of  
14 this Compact by the Secretary of the Interior.

15 3. A key employee or primary management official who  
16 does not have a license shall not be employed after  
17 ninety (90) days.

18 4. The Tribal Gaming Agency shall prepare and forward  
19 to the Commission and the State Gaming  
20 Representative a report on each background  
21 investigation ("Investigative Report"). An  
22 Investigative Report shall include all of the  
23 following:

24 (a) steps taken in conducting the background  
25 investigation;

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- (b) results obtained;
- (c) conclusions reached; and
- (d) the basis for those conclusions.

- 5. The Tribal Gaming Agency shall submit with the Investigative Report a copy of the eligibility determination made under Paragraph C.5. of this section.
- 6. If a license is not issued to an applicant, the Tribal Gaming Agency shall notify the Commission and the State Gaming Representative.
- 7. With respect to principals, key employees and primary management officials, the Tribal Gaming Agency shall retain applications for employment and Investigative Reports (if any) for no less than three (3) years from the date of termination of employment.

E. Granting a Gaming License.

- 1. If within thirty (30) days after it receives an Investigative Report, neither the Commission nor the State Gaming Representative has notified the Tribal Gaming Agency that it has an objection to the issuance of a license pursuant to a license application filed by a principal, key employee or primary management official, the Tribal Gaming Agency may issue a license to such applicant.

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2. The Tribal Gaming Agency shall respond to any request for additional information from the Commission or the State Gaming Representative concerning a principal, key employee or primary management official who is the subject of an Investigative Report. Such a request shall suspend the thirty-day (30-day) period under Paragraph E. 1. of this section until the Commission or the State Gaming Representative receives the additional information.

3. If, within the thirty-day (30-day) period described above, the Commission or the State Gaming Representative provides the Tribal Gaming Agency with a statement itemizing objections to the issuance of a license to a principal, key employee or primary management official for whom the Tribal Gaming Agency has provided an application and Investigative Report, the Tribal Gaming Agency shall reconsider the application, taking into account the objections itemized by the Commission and/or the State Gaming Representative, and make a final decision whether to issue a license to such applicant.

F. Management Contract.

1. If the Tribe chooses to enter into a Management

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Contract, the Tribal Gaming Agency shall require that all principals, primary management officials and key employees of the Management Contractor be licensed.

2. The Tribe may enter into a Management Contract only if the Management Contract:

(a) provides that all Class III Gaming covered by the Management Contract will be conducted in accordance with the IGRA, the Ordinance and this Compact;

(b) enumerates the responsibilities of each of the parties for each identifiable function, including:

- (1) maintaining and improving the Gaming Facility;
- (2) providing operating capital;
- (3) establishing operating days and hours;
- (4) hiring, firing, training and promoting employees;
- (5) maintaining the gaming enterprise's books and records;
- (6) preparing the gaming enterprise's financial statements and reports;
- (7) paying for the services of the independent auditor engaged pursuant to

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- 25 C.F.R. § 571.12;
  - (8) hiring and supervising security personnel;
  - (9) providing fire protection services;
  - (10) setting an advertising budget and placing advertising;
  - (11) paying bills and expenses;
  - (12) establishing and administering employment practices;
  - (13) obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;
  - (14) complying with all applicable provisions of the Internal Revenue Code of 1986, as amended;
  - (15) paying the cost of public safety services; and
  - (16) if applicable, supplying the Commission with all information necessary for the Commission to comply with the National Environmental Policy Act of 1969.
- (c) provides for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:
- (1) include an adequate system of internal

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- controls;
  - (2) permit the preparation of financial statements in accordance with generally accepted accounting principles;
  - (3) be susceptible to audit;
  - (4) permit the calculation and payment of the Management Contractor's fee; and
  - (5) provide for the allocation of operating expenses or overhead expenses among the Tribe, the Management Contractor and any other user of a shared Gaming Facility and services;
- (d) requires the Management Contractor to provide the Tribe, not less frequently than monthly, verifiable financial reports or all information necessary to prepare such reports;
- (e) requires the Management Contractor to provide immediate access to the Gaming Facility, including its books and records, by appropriate officials of the Tribe, who shall have:
- (1) the right to verify the daily gross revenues and income from the gaming enterprise; and
  - (2) access to any other gaming-related



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- information the Tribe deems appropriate;
- (f) provides for a minimum guaranteed monthly payment to the Tribe in a sum certain that has preference over the retirement of development and construction costs;
- (g) provides an agreed upon maximum dollar amount for the recoument of development and construction costs;
- (h) provides for a term not to exceed the period allowed by the IGRA;
- (i) details the method of compensating and reimbursing the Management Contractor. If a Management Contract provides for a percentage fee, such fee shall be either:
  - (1) not more than thirty percent (30%) of the net revenues of the gaming enterprise if the Chairman of the Commission determines that such percentage is reasonable considering the circumstances; or
  - (2) not more than forty percent (40%) of the net revenues if the Chairman of the Commission is satisfied that the capital investment required and income projections for the gaming enterprise require the additional fee;

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- (j) provides the grounds and mechanisms for modifying or terminating the Management Contract;
  - (k) contains a mechanism to resolve disputes between:
    - (1) the Management Contractor and customers, consistent with the procedures in the Ordinance;
    - (2) the Management Contractor and the Tribe; and
    - (3) the Management Contractor and the gaming enterprise employees;
  - (l) indicates whether and to what extent contract assignments and subcontracting are permissible;
  - (m) indicates whether and to what extent changes in the ownership interest in the Management Contract require advance approval by the Tribe; and
  - (n) states that the Management Contract shall not be effective unless and until it is approved by the Chairman of the Commission, date of signature of the parties notwithstanding.
3. The Tribe shall not enter into any Management Contract if the Tribal Gaming Agency determines

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1                   that the Management Contractor or any principal,  
2                   primary management official or key employee of the  
3                   Management Contractor is not licensed or is  
4                   ineligible to be licensed.

5                   G. Confidentiality of Records. Any and all background  
6                   investigative reports on employees or contractors, supporting  
7                   documents acquired or generated in connection therewith, and any  
8                   other investigative reports or documents acquired or generated in  
9                   the course of investigations performed by the Tribe or the Tribal  
10                  Gaming Agency, that are provided to the State Gaming  
11                  Representative or any other agency or official of the State by the  
12                  Tribal Gaming Agency or the Tribe pursuant to the provisions of  
13                  this Compact, shall not be deemed public records of the State and  
14                  shall not be disclosed to any member of the public without the  
15                  prior express written authorization of an authorized  
16                  representative of the Tribe; provided, that nothing herein shall  
17                  preclude any State agency or official from providing information  
18                  to a federal agency or official having responsibility relative to  
19                  Indian Gaming or from compliance with any valid order of a court  
20                  having jurisdiction.

21                  SECTION 6. Providers of Class III Gaming Equipment or Devices or  
22                  Supplies.

23                  A. Within thirty (30) days after the effective date of this  
24                  Compact, if it has not already done so, the Tribal Gaming Agency  
25                  will adopt standards for any and all Class III Gaming equipment,

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1 devices or supplies to be purchased, leased or otherwise acquired  
2 by the Tribe after the effective date of this Compact for use in  
3 any Gaming Facility, which standards shall be at least as strict  
4 as the comparable standards applicable to Class III Gaming  
5 equipment, devices or supplies within the State of Nevada. Any  
6 and all Class III Gaming equipment, devices or supplies acquired  
7 by the Tribe after the date of this Compact shall meet or exceed  
8 the standards thereby adopted, and any and all Class III Gaming  
9 equipment, devices or supplies used by the Tribe in its Gaming  
10 Facilities as of the effective date of this Compact shall be  
11 upgraded or replaced, if necessary, so as to comply with such  
12 standards, by no later than one (1) year after the effective date  
13 of this Compact.

14 B. Prior to entering into any future lease or purchase  
15 agreement for Class III Gaming equipment, devices or supplies, the  
16 Tribe shall obtain sufficient information and identification from  
17 the proposed seller or lessor and all persons holding any direct  
18 or indirect financial interest in the lessor or the lease/purchase  
19 agreement to permit the Tribe to license those persons in  
20 accordance with Section 5, hereof.

21 C. The seller, lessor, manufacturer or distributor shall  
22 provide, assemble and install all Class III Gaming equipment,  
23 devices or supplies in a manner approved and licensed by the  
24 Tribe.

25 SECTION 7. Dispute Resolution.

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1           A. In the event either party believes that the other party  
2 has failed to comply with or has otherwise breached any  
3 provision of this Compact, such party may invoke the following  
4 procedure:

5           1. The party asserting noncompliance shall serve  
6 written notice on the other party. The notice  
7 shall identify the specific Compact provision  
8 believed to have been violated and shall specify  
9 the factual and legal basis for the alleged  
10 noncompliance. The notice shall specifically  
11 identify the date, time and nature of the alleged  
12 noncompliance. Representatives of the State and  
13 Tribe shall thereafter meet within thirty (30) days  
14 in an effort to resolve the dispute.

15           2. In the event an allegation by the complaining party  
16 is not resolved to the satisfaction of such party  
17 within ninety (90) days after service of the notice  
18 set forth in Paragraph (A)(1) of this section, the  
19 complaining party may serve upon the other party a  
20 notice to cease conduct of the particular game(s)  
21 or activities alleged by the complaining party to  
22 be in noncompliance. Upon receipt of such notice,  
23 the responding party may elect to stop the game(s)  
24 or activities specified in the notice or invoke  
25 arbitration and continue the game(s) or activities

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pending the results of arbitration. The responding party shall act upon one of the foregoing options within thirty (30) days of receipt of notice from the complaining party.

3. Arbitration under this authority shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association, except that the arbitrators shall be attorneys who are licensed members in good standing of the State Bar of New Mexico or of the bar of another state. The State will select one arbitrator, the Tribe a second arbitrator, and the two so chosen shall select a third arbitrator. If the third arbitrator is not chosen in this manner within ten (10) days after the second arbitrator is selected, the third arbitrator will be chosen in accordance with the rules of the American Arbitration Association.
4. All parties shall bear their own costs of arbitration and attorney fees.
5. The results of arbitration shall be enforceable by an action for injunctive or mandatory injunctive relief against the State and the Tribe in any court of competent jurisdiction. For purposes of any such action, the State and the Tribe acknowledge that any action or failure to act on the part of

1           any agent or employee of the State or the Tribe,  
2           contrary to a decision of the arbitrators in an  
3           arbitration proceeding conducted under the  
4           provisions of this section, occurring after such  
5           decision, shall be wholly unauthorized and ultra  
6           vires acts, not protected by the sovereign immunity  
7           of the State or the Tribe.

8           B. Nothing in Subsection 7(A) shall be construed to waive,  
9           limit or restrict any remedy that is otherwise available to  
10          either party to enforce or resolve disputes concerning the  
11          provisions of this Compact. Nothing in this Compact shall be  
12          deemed a waiver of the Tribe's sovereign immunity. Nothing in  
13          this Compact shall be deemed a waiver of the State's sovereign  
14          immunity.

15          SECTION 8. Protection of Patrons.

16          A. Liability to Patrons. To ensure the personal safety  
17          and protection of patrons and other invitees of a Tribe's Gaming  
18          Facility operated under the provisions of this Compact, the  
19          Tribe shall at all times maintain in effect a policy of public  
20          liability insurance, insuring the Tribe, its agents and  
21          employees against any claims, demands or liability that may  
22          arise as a result of personal injury to any person (other than  
23          an employee of the gaming establishment) occurring anywhere on  
24          the premises of any gaming establishment operated by the Tribe  
25          under the provisions of this Compact, or as a result of any act

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1 or omission of any agent or employee of such gaming  
2 establishment while in the course of his or her employment,  
3 which policy shall provide personal injury coverage of no less  
4 than one million dollars (\$1,000,000) per injured person and ten  
5 million dollars (\$10,000,000) per occurrence.

6 The Tribe agrees that in the event of any claim made  
7 against it or its gaming enterprise, or any agent or employee  
8 thereof, arising out of any personal injury as described above,  
9 neither the Tribe nor its insurer will assert any defense of  
10 immunity from suit as to such claim for compensatory damages up  
11 to the amount of one million dollars (\$1,000,000) per injured  
12 person, and ten million dollars (\$10,000,000) per occurrence, in  
13 any action filed in a court of competent jurisdiction to be  
14 tried to the court; provided, however, that this agreement not  
15 to assert such defense shall be strictly limited as provided  
16 herein, and shall not apply to any claim for punitive damages,  
17 or to any claim for which a jury trial is demanded, or to any  
18 claim for any loss or damage other than that arising from actual  
19 bodily injury or death, or to any claim for damages in excess of  
20 the amount set forth herein. Nothing herein shall be construed  
21 as stating or implying that the Tribe has waived or agreed not  
22 to assert its immunity from suit for any other purpose or in any  
23 other circumstance other than the limited purposes and  
24 circumstances expressly set forth herein, and nothing herein  
25 shall be construed as an admission of liability as to any claim

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1 for damages or as an agreement or indication of willingness to  
2 pay any amount as damages absent a judicial determination of  
3 fault, and the Tribe or its insurer, or both, shall in every  
4 instance have the right to defend any such claim fully on the  
5 merits.

6 The Tribe shall provide to the State Gaming Representative  
7 annually a certificate of insurance showing that its gaming  
8 enterprise and its agents and employees engaged therein are  
9 insured to the extent and in the circumstances required by this  
10 section, or that it is self-insured to such extent and in such  
11 circumstances. If the State Gaming Representative so requests  
12 in writing, the certificate of insurance may be furnished  
13 directly to the State Gaming Representative from the insurance  
14 carrier or the insuring agency for the insured Tribe.

15 B. Public Health and Safety. The Tribe shall establish  
16 for its Gaming Facility health, safety and construction  
17 standards that are at least as stringent as the current editions  
18 of the National Electrical Code, the Uniform Building Code, the  
19 Uniform Mechanical Code, the Uniform Fire Code and the Uniform  
20 Plumbing Code, and any and all gaming facilities or additions  
21 thereto constructed by the Tribe hereafter shall be constructed  
22 and all facilities shall be maintained so as to comply with such  
23 standards. Inspections will be conducted with respect to these  
24 standards at least annually. If the State Gaming Representative  
25 requests sufficiently in advance of an annual inspection, the

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1 State Gaming Representative may be present during such  
2 inspection. The Tribe agrees to correct any deficiencies noted  
3 in such inspections within a reasonable period of time. The  
4 Tribal Gaming Agency will provide copies of such inspection  
5 reports to the State Gaming Representative, if requested to do  
6 so in writing.

7 SECTION 9. Effective Date. This Compact shall be effective  
8 immediately upon the occurrence of the last of the following:

- 9 A. execution by the Tribe's Governor after approval of the  
10 Tribal Council;
- 11 B. execution by the Governor of the State;
- 12 C. approval by the Secretary of the Interior; and
- 13 D. publication in the Federal Register.

14 The Governor is authorized to execute compacts with an  
15 individual Tribe that has also entered into revenue-sharing  
16 agreements and has passed resolutions described herein, in  
17 substantially the same form as set forth herein. Upon signature  
18 by the Governor and the Tribe, the Compact shall be transmitted  
19 to the Secretary of the Interior for approval.

20 SECTION 10. Criminal Jurisdiction.

21 The Tribe and the State acknowledge that under the  
22 provisions of § 23 of the IGRA, especially that portion codified  
23 at 18 U.S.C. § 1166(d), jurisdiction to prosecute violations of  
24 State gambling laws made applicable by that section to Indian  
25 country is vested exclusively within the United States, unless

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1 the Tribe and the State agree in a compact entered into the IGRA  
2 to transfer such jurisdiction to the State. The Tribe and the  
3 State hereby agree that, in the event of any violation of any  
4 State gambling law within the Indian Lands by any person who is  
5 not a member of the Tribe, the State shall have and may exercise  
6 jurisdiction, concurrent with that of the United States, to  
7 prosecute such person, under its laws and in its courts;  
8 provided, however, that this concurrent jurisdiction shall (1)  
9 not take effect unless and until the State, the Tribe and the  
10 Office of the United States Attorney for the District of New  
11 Mexico shall have entered into a Memorandum of Understanding  
12 with respect to the manner in which State, federal and tribal  
13 law enforcement agencies shall cooperate in the detection of  
14 violations, apprehension and detention of any suspected violator  
15 and the investigation and prosecution of any charges brought by  
16 the State pursuant to this section and (2) continue so long as  
17 the Memorandum of Understanding remains in effect.

18 SECTION 11. Binding Effect and Duration.

19 A. This Compact shall be binding upon the State and Tribe  
20 for a term of fifteen (15) years from the date it becomes  
21 effective and will automatically renew for an additional five-  
22 year (5-year) period.

23 B. Before the date that is one (1) year prior to the  
24 expiration of the fifteen-year (15-year) initial term, and/or  
25 before the date that is one year prior to the expiration of the

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1 five-year (5-year) renewal period, either party may serve  
2 written notice on the other of its desire to renegotiate this  
3 Compact.

4 C. In the event that either party gives written notice to  
5 the other of its desire to renegotiate this Compact pursuant to  
6 Subsection (B) of this section, the Tribe may, pursuant to the  
7 procedures of the IGRA, request the State to enter into  
8 negotiations for a new compact governing the conduct of Class  
9 III Gaming. If the parties are unable to conclude a successor  
10 compact, this Compact shall remain in full force and effect in  
11 accordance with its terms pending exhaustion of the  
12 administrative and judicial remedies set forth in the IGRA and  
13 any other applicable federal law.

14 D. Notwithstanding the foregoing, at any time while this  
15 Compact remains in effect, either party may, by written notice  
16 to the other party, request reopening of negotiations with  
17 respect to any provision of this Compact, or with respect to any  
18 issue not addressed in the Compact, specifying such provision or  
19 issue in such notice. No such request shall be unreasonably  
20 refused, but neither party shall be required to agree to any  
21 change in the Compact, and no agreement to supplement or amend  
22 this Compact in any respect shall have any validity until the  
23 same shall have been approved in writing by the Tribe, the State  
24 and the Secretary of the Interior and notice of such approval  
25 published in the Federal Register.

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1 E. The Tribe may operate Class III Gaming only while this  
2 Compact or any renegotiated compact is in effect.

3 SECTION 12. Severability.

4 In the event that any section or provision of this Compact  
5 is held invalid by any court of competent jurisdiction, it is  
6 the intent of the parties that the remaining sections or  
7 provisions of this Compact, and any amendments thereto, shall  
8 continue in full force and effect.

9 SECTION 13. Notice to Parties.

10 Unless otherwise indicated, all notices, payments,  
11 requests, reports, information or demand that any party hereto  
12 may desire or may be required to give to the other party hereto,  
13 shall be in writing and shall be personally delivered or sent by  
14 first-class mail sent to the other party at the address provided  
15 in writing by the other party. Every notice, payment, request,  
16 report, information or demand so given shall be deemed effective  
17 upon receipt or, if mailed, upon receipt or the expiration of  
18 the third day following the day of mailing, whichever occurs  
19 first, except that any notice of change of address shall be  
20 effective only upon receipt by the party to whom said notice is  
21 addressed.

22 SECTION 14. Entire Agreement.

23 This Compact is the entire agreement between the parties  
24 and supersedes all prior agreements, whether written or oral,  
25 with respect to the subject matter hereof. Neither this Compact

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1 nor any provision herein may be changed, waived, discharged or  
2 terminated orally, but only by an instrument, in writing, signed  
3 by the Tribe and the State and approved by the Secretary of the  
4 Interior.

5 SECTION 15. Filing of Compact with State Records Center.

6 Upon the effective date of this Compact, a copy shall be  
7 filed by the Governor with the New Mexico Records Center. Any  
8 subsequent amendment or modification of this Compact shall be  
9 filed with the New Mexico Records Center.

10 SECTION 16. Counterparts.

11 This Compact may be executed by the parties in any number  
12 of separate counterparts with the same effect as if the  
13 signatures were upon the same instrument. All such counterparts  
14 shall together constitute one and the same document. "

15 Section 2. [NEW MATERIAL] REVENUE SHARING OF TRIBAL  
16 GAMING REVENUE. --The governor is authorized to execute a  
17 revenue-sharing agreement in the form substantially set forth in  
18 this section with any New Mexico Indian nation, tribe or pueblo  
19 that has also entered into an Indian gaming compact as provided  
20 by law. Execution of an Indian gaming compact is conditioned  
21 upon execution of a revenue-sharing agreement. The  
22 consideration for the Indian entity entering into the revenue-  
23 sharing agreement is the condition of the agreement providing  
24 limited exclusivity of gaming activities to the tribal entity.  
25 The revenue-sharing agreement shall be in substantially the

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1 following form and is effective when executed by the governor on  
2 behalf of the state and the appropriate official of the Indian  
3 entity:

4 "REVENUE- SHARING AGREEMENT

5 1. Summary and consideration. The Tribe shall agree to  
6 contribute certain of its Class III Gaming revenues, as  
7 described below.

8 2. Revenue to State. The parties agree that, after the  
9 effective date hereof, the Tribe shall make semi-annual payments  
10 to the General Fund of the State ("State General Fund").

11 3. Calculation of Revenue to State.

12 A. The parties agree that, as used herein, "net win"  
13 is defined as the total amount wagered at each Gaming Facility  
14 on Class III Gaming, which is protected by the limitations in  
15 Paragraph 5, below, and elsewhere herein, minus the total amount  
16 paid as prizes (including noncash prizes) and winning wagers at  
17 said games, and minus all tribal regulatory fees and expenses,  
18 supported by reasonable, adequate documentation, not to exceed  
19 Two Hundred Fifty Thousand Dollars (\$250,000) per year and minus  
20 federal and State regulatory fees and expenses, and taxes.

21 B. The total revenue the Tribe will pay to the State  
22 in the aggregate pursuant to Paragraph 3, above, shall be  
23 determined as follows:

- 24 (1) three percent (3%) of the first four million  
25 dollars (\$4,000,000) of net win at each Gaming

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1 Facility derived annually from Class III Gaming,  
2 which is protected by the limitations herein;

3 (2) five percent (5%) of the next six million dollars  
4 (\$6,000,000) of net win at each Gaming Facility  
5 derived annually from Class III Gaming, which is  
6 protected by the limitations herein; and/or

7 (3) eight percent (8%) of the net win over ten million  
8 dollars (\$10,000,000) at each gaming facility  
9 derived annually from Class III Gaming, which is  
10 protected by the limitations provided herein.

11 C. For purposes of these payments, all calculations of  
12 amounts due shall be based upon a calendar year beginning January 1  
13 and ending December 31, unless the parties agree on a different  
14 fiscal year. The semiannual payments due to the State pursuant to  
15 these terms shall be paid no later than twenty-five (25) days after  
16 December 31 and June 30 of each year (or commensurate dates if the  
17 fiscal year agreed upon is different from the calendar year). Any  
18 payments due and owing from the Tribe in the year the Compact is  
19 approved, or the final year the Compact is in force, shall reflect  
20 the net win, but only for the portion of the year the Compact is in  
21 effect.

22 4. Limitations. The Tribe's obligation to make the  
23 payments provided for in Paragraphs 2 and 3 of this section  
24 shall apply and continue only so long as there is a binding

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1 Indian Gaming Compact in effect between the Tribe and the State,  
2 which Compact provides for the play of Class III Gaming, but  
3 shall terminate in the event of any of the following conditions:

4 A. If the State passes, amends, or repeals any law,  
5 or takes any other action, which would directly or indirectly  
6 attempt to restrict, or has the effect of restricting, the scope  
7 of Indian gaming.

8 B. If the State permits any expansion of nontribal  
9 Class III Gaming in the State. Notwithstanding this general  
10 prohibition against permitted expansion of gaming activities,  
11 the State may permit: (1) the enactment of a State lottery, (2)  
12 any fraternal, veterans or other nonprofit membership  
13 organization to operate such electronic gaming devices lawfully,  
14 but only for the benefit of such organization's members, (3)  
15 limited fundraising activities conducted by nonprofit tax exempt  
16 organizations pursuant to Section 30-19-6 NMSA 1978, and (4) any  
17 horse racetracks to operate electronic gaming devices on days on  
18 which live or simulcast horse racing occurs. "Simulcast horse  
19 racing" means live broadcasting of horse races occurring at  
20 horseracing tracks elsewhere within New Mexico. However, for  
21 any day on which electronic gaming devices are permitted to be  
22 operated under this provision at any horse racetracks located  
23 within one hundred fifty (150) miles of a Gaming Facility owned  
24 by the Tribe, one-half (½) of the net win derived from  
25 electronic gaming devices at such Gaming Facility for such day

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1 would be exempt from any revenue-sharing obligation under the  
2 provisions of this Agreement (except if electronic gaming  
3 devices are operated at such horse racetracks for more than  
4 twelve (12) hours on any such day, all of the Tribe's revenues  
5 from electronic gaming devices on such day shall be exempt from  
6 any revenue-sharing obligation under the provisions of this  
7 Agreement); and provided further that there will be no exemption  
8 from State taxes imposed on the operation of electronic gaming  
9 devices for those devices operated at horse racetracks.

10 5. Effect of Variance.

11 A. In the event the acts or omissions of the State  
12 cause the Tribe's obligation to make payments under Paragraph 3  
13 of this section to terminate under the provisions of Paragraph 4  
14 of this section, such cessation of obligation to pay will not  
15 adversely affect the validity of the Compact, but the maximum  
16 amount that the Tribe agrees to reimburse the State for actual  
17 documented regulatory costs under the Compact shall  
18 automatically increase to one hundred thousand dollars  
19 (\$100,000) per year.

20 B. In the event a Tribe's revenue-sharing payment to  
21 the State is less than one hundred thousand dollars (\$100,000)  
22 per year, the maximum amount that the Tribe agrees to reimburse  
23 the State for actual documented regulatory costs under the  
24 Compact shall automatically increase to one hundred thousand  
25 dollars (\$100,000) per year less the amount of the revenue-

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1 sharing payment.

2 6. Third-Party Beneficiaries. This Agreement is not  
3 intended to create any third-party beneficiaries and is entered  
4 into solely for the benefit of the Tribe and the State."

5 Section 3. [NEW MATERIAL] SHORT TITLE. -- Sections 3  
6 through 26 of this act may be cited as the "Video Gambling Act".

7 Section 4. [NEW MATERIAL] AUTHORITY AND PURPOSE. -- The  
8 purpose of the Video Gambling Act is to make lawful and regulate  
9 the conduct and operation of certain electronic video games of  
10 chance by certain nonprofit organizations and racetracks.

11 Section 5. [NEW MATERIAL] DEFINITIONS. -- As used in the  
12 Video Gambling Act:

13 A. "director" means the director of the alcohol and  
14 gaming division of the regulation and licensing department;

15 B. "distributor" means a person who sells, offers for  
16 sale or furnishes to another person a video gambling machine;

17 C. "division" means the alcohol and gaming division  
18 of the regulation and licensing department;

19 D. "fraternal organization" means any organization  
20 within the state that is not organized for pecuniary profit, is  
21 a branch, lodge or chapter of a national or state organization,  
22 exists for the common business, brotherhood or other interests  
23 of its members and has existed in New Mexico for at least three  
24 years immediately prior to making application for a license  
25 pursuant to the Video Gambling Act, but "fraternal organization"

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1 does not include college and high school fraternities or  
2 sororities;

3 E. "gross receipts" means the total amount of money  
4 or the value of other consideration received from selling,  
5 renting, leasing or distributing a video gambling machine, but  
6 in an exchange in which the money or other consideration  
7 received does not represent the value of the property exchanged,  
8 "gross receipts" means the reasonable value of the property  
9 exchanged as determined by the director;

10 F. "licensee" means the holder of any license issued  
11 pursuant to the Video Gambling Act;

12 G. "manufacturer" means a person that assembles, from  
13 parts or raw materials, a video gambling machine;

14 H. "net drop" means the amount wagered on a video  
15 gambling machine less the amounts paid as winnings on the  
16 machine;

17 I. "operate" means to possess or maintain any video  
18 gambling machine for the purpose of allowing a person to play  
19 it;

20 J. "person" means an individual or other entity;

21 K. "play" means to activate a video gambling machine  
22 and to manipulate or work it for the purpose of trying to win  
23 money, prizes or other consideration;

24 L. "racetrack" means a facility or person licensed by  
25 the state racing commission to conduct horse racing within this

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1 state;

2 M "veterans' organization" means any organization  
3 within this state or any branch, lodge or chapter of a national  
4 or state organization within this state that is organized not  
5 for pecuniary profit, the membership of which consists entirely  
6 of individuals who were members of the armed services of the  
7 United States, and which has been in existence in New Mexico for  
8 at least three years immediately prior to its making application  
9 for a license under the Video Gambling Act; and

10 N. "video gambling machine" means an electronic  
11 device, except amusement-type video game machines not operated  
12 by a licensee that are commonly used for amusement only and only  
13 pay out tickets or credits that may only be exchanged for  
14 merchandise of insignificant value, that:

15 (1) upon payment of any consideration simulates  
16 the play of any game of chance;

17 (2) utilizes a video display and  
18 microprocessors; and

19 (3) by chance or through some combination of  
20 chance and skill dispenses or the player may otherwise receive  
21 cash, coins, tokens, free gambling or credits that can be  
22 redeemed for cash, coins, tokens, prizes or other consideration.

23 Section 6. [NEW MATERIAL] PROHIBITION AGAINST  
24 UNAUTHORIZED ACTS RELATING TO VIDEO GAMBLING. -- Except as  
25 provided pursuant to a valid Indian gaming compact between the

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1 state and an Indian nation, tribe or pueblo in effect and except  
2 as provided pursuant to Section 30-19-6 NMSA 1978, no person  
3 shall manufacture, import, sell, lease, rent, distribute,  
4 operate, participate in the operation of or conduct an activity  
5 using a video gambling machine without having first obtained an  
6 appropriate license issued by the division pursuant to the Video  
7 Gambling Act.

8 Section 7. [NEW MATERIAL] LICENSING--GENERAL  
9 PROVISIONS.--

10 A. A license may be issued only in accordance with  
11 the provisions of the Video Gambling Act.

12 B. An applicant for a license or a licensee shall  
13 produce records or evidence and give all information requested  
14 by the director. An applicant or licensee shall not interfere  
15 or attempt to interfere with any investigation by the director.

16 C. The director shall investigate the qualifications  
17 of an applicant for a license and shall investigate the  
18 conditions existing in the community in which the premises for  
19 which a license is sought is located before the license is  
20 issued so that a license is not issued to a person or for a  
21 location if the issuance is prohibited by law or contrary to the  
22 public health or safety.

23 D. No license shall be issued to a person that:

- 24 (1) has been convicted of a felony; or  
25 (2) has as a majority shareholder, director or

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1 officer a person who has been convicted of a felony.

2 E. A licensee shall not employ in a position having  
3 authority to conduct or supervise video gambling for the  
4 licensee a person that has been convicted of a felony.

5 F. An applicant that is a proprietor shall file with  
6 an application two complete sets of his fingerprints. An  
7 applicant that is a general partnership shall file with an  
8 application two complete sets of fingerprints of all general  
9 partners.

10 G. If the applicant is a limited partnership, it  
11 shall file two complete sets of fingerprints for each general  
12 partner and for each limited partner contributing ten percent or  
13 more of the total value of contributions made to the limited  
14 partnership or entitled to ten percent or more of the profits  
15 earned or other compensation by way of income paid by the  
16 limited partnership.

17 H. If the applicant is a limited liability company,  
18 it shall file two complete sets of fingerprints for each manager  
19 or member with management responsibilities.

20 I. If the applicant is a corporation, it shall file  
21 two complete sets of fingerprints for a stockholder holding ten  
22 percent or more of the outstanding stock, principal officer,  
23 director and the agent responsible for the operation of the  
24 licensed business.

25 J. Fingerprints taken pursuant to the provisions of  
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1 this section shall be taken under the supervision of and  
2 certified to by an officer of the New Mexico state police, a  
3 county sheriff or a municipal chief of police.

4 K. The director may exchange identification records  
5 and information with law enforcement agencies for official use.  
6 Any identification records received from the United States  
7 department of justice, including identification records based on  
8 fingerprints, shall be used only for licensing purposes and to  
9 achieve compliance with the provisions of the Video Gambling  
10 Act. The department shall not disseminate information obtained  
11 pursuant to the provisions of this subsection except to law  
12 enforcement agencies for official use only.

13 L. An application for the issuance of a license or  
14 annual renewal of a license shall be accompanied by a fee in the  
15 following amounts:

16 (1) for manufacturer licensees, the initial  
17 license fee shall be fifteen thousand dollars (\$15,000) and the  
18 annual renewal fee shall be one thousand dollars (\$1,000); and

19 (2) for racetrack licensees, video gambling  
20 machine licensees and distributor licensees, the initial license  
21 fee and the annual renewal fee shall be one thousand dollars  
22 (\$1,000).

23 M. The director shall prescribe the requirements for  
24 and contents of each application, consistent with the provisions  
25 of the Video Gambling Act.

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1 N. Licenses issued pursuant to the Video Gambling Act  
2 shall expire on June 30 of each year and may be renewed upon  
3 proper application and payment of the required application fee.  
4 If a license expires, the licensee shall cease all activities  
5 subject to licensure until the license is renewed.

6 O. A licensee has no vested property right in a  
7 license. It is the property of the state. Licenses issued  
8 pursuant to the provisions of the Video Gambling Act are not  
9 subject to sale, lease, devise, transfer, assignment, execution,  
10 attachment, a security transaction, liens or receivership.

11 Section 8. [NEW MATERIAL] VIDEO GAMBLING MACHINE  
12 LICENSE. --

13 A. A license may be issued to a fraternal  
14 organization or veterans' organization to own or operate, or  
15 both, video gambling machines for which permits have been issued  
16 by the director.

17 B. A video gambling machine licensee may install and  
18 operate video gambling machines only at the location stated in  
19 its application and approved by the director.

20 C. No person other than an active member of a  
21 veterans' organization or a fraternal organization that is a  
22 video gambling machine licensee and bona fide guests of that  
23 member may play video gambling machines operated by the video  
24 gambling machine licensee.

25 D. A video gambling machine licensee shall report

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1 information required by division regulations to the division  
2 every three months. Forms for reporting shall be prescribed and  
3 furnished by the director.

4 E. A video gambling machine licensee shall not  
5 purchase, lease or otherwise acquire a video gambling machine  
6 except from a distributor licensee.

7 F. No more than one video gambling machine for every  
8 twenty members of a video gambling machine licensee, not to  
9 exceed twenty-five machines per organization, shall be permitted  
10 by the director or operated by the licensee.

11 Section 9. [NEW MATERIAL] RACETRACK LICENSE. --

12 A. A license may be issued to a racetrack to own or  
13 operate, or both, video gambling machines for which permits have  
14 been issued by the director.

15 B. A racetrack licensee may install and operate video  
16 gambling machines only at the location stated in its application  
17 and approved by the director.

18 C. A racetrack licensee shall not operate or allow a  
19 person to play a video gambling machine at the racetrack except  
20 in accordance with the following provisions:

21 (1) a video gambling machine shall not be  
22 operated or played except on days that the racetrack is holding  
23 a live formal race meet or simulcasting New Mexico horse race  
24 meets authorized by the state racing commission and only during  
25 the periods of time authorized by the commission but not to

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1 exceed twelve consecutive hours on a day;

2 (2) members of the public patronizing the  
3 racetrack, except minors, may play video gambling machines  
4 operated by the racetrack licensee; and

5 (3) only racetrack employees may operate video  
6 gambling machines at the racetrack.

7 D. A racetrack licensee shall report information  
8 required by division regulations to the division every three  
9 months. Forms for reporting shall be prescribed and furnished  
10 by the director.

11 E. A racetrack licensee shall not purchase, lease or  
12 otherwise acquire a video gambling machine except from a  
13 distributor licensee.

14 Section 10. [NEW MATERIAL] MANUFACTURER LICENSE. --

15 A. A license may be issued to a person desiring to  
16 manufacture video gambling machines in this state.

17 B. A person shall not manufacture video gambling  
18 machines in this state without a license issued to the  
19 manufacturer by the director.

20 C. Each licensed manufacturer shall report  
21 information required by division regulations to the division  
22 every three months. Forms for reporting shall be prescribed and  
23 furnished by the director.

24 D. A licensed manufacturer shall not sell a video  
25 gambling machine to or solicit the purchase of a video gambling

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1 machine by a person other than a licensed distributor.

2 E. A licensed manufacturer shall not operate, receive  
3 for resale or participate either directly or indirectly in the  
4 operation or resale of a video gambling machine.

5 Section 11. [NEW MATERIAL] DISTRIBUTOR LICENSE. --

6 A. A license may be issued to a person desiring to  
7 distribute video gambling machines in this state.

8 B. A person shall not distribute video gambling  
9 machines in this state without a license issued by the director.

10 C. A licensed distributor shall not distribute a  
11 video gambling machine except to a video gambling licensee.

12 D. A licensed distributor shall report information  
13 required by division regulations to the division every three  
14 months. Forms for reporting shall be prescribed and furnished by  
15 the director.

16 E. A licensed distributor shall not operate or  
17 participate either directly or indirectly in the operation of  
18 any video gambling machine.

19 Section 12. [NEW MATERIAL] RULES AND REGULATIONS. --

20 A. The director may adopt reasonable rules and  
21 regulations necessary to implement the Video Gambling Act.  
22 Except for emergency regulations adopted pursuant to the  
23 provisions of Subsection B of this section, no rule or  
24 regulation affecting any person outside the division shall be  
25 adopted, amended or repealed without a public hearing on the

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1 proposed action before the director or a hearing officer  
2 designated by him. The public hearing shall be held in Santa  
3 Fe. Notice of the subject matter of the proposed action, the  
4 date, time and place of the public hearing, the manner in which  
5 an interested person may present his views and the method by  
6 which copies of the proposed regulation, amendment or repeal may  
7 be obtained shall be published once at least thirty days prior  
8 to the hearing date in a newspaper of general circulation. All  
9 regulations shall be filed in accordance with the State Rules  
10 Act.

11 B. If the director determines that an emergency  
12 exists that requires immediate action to implement or enforce  
13 the provisions of the Video Gambling Act, he may adopt, amend or  
14 repeal a regulation without notice and hearing and the emergency  
15 action shall become effective immediately upon its filing under  
16 the State Rules Act. The emergency adoption, amendment or  
17 repeal of a regulation shall not continue in effect longer than  
18 forty-five days unless within that time the director commences  
19 proceedings to take the action by issuing the notice required in  
20 Subsection A of this section. If the director commences  
21 proceedings by issuing notice, the emergency adoption, amendment  
22 or repeal of a regulation shall remain in effect until a  
23 permanent action takes effect or until the procedures are  
24 otherwise completed.

25 C. Regulations adopted by the director may provide

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1 for the following:

2 (1) any reasonable reporting requirements in  
3 addition to those set forth in the Video Gambling Act;

4 (2) required provisions in purchase or leasing  
5 contracts relating to video gambling machines;

6 (3) appropriate security measures providing for  
7 the safety of participants in the conduct of video gambling;

8 (4) the contents of and process for applications  
9 for licenses or permits pursuant to the Video Gambling Act;

10 (5) electronic fund transfers from licensees of  
11 taxes owed to the state as provided herein, and trust accounts  
12 for the collection and maintenance of those funds; and

13 (6) other rules and regulations that are  
14 consistent with the provisions of the Video Gambling Act and  
15 provide for the integrity, honesty and security of the conduct of  
16 video gambling activities by a licensee.

17 D. The division shall adopt by regulation mechanical  
18 and electronic standards for video gambling machines ensuring the  
19 integrity, honesty and security of the machines. The standards  
20 shall not be more lenient than those applied to similar machines  
21 in lawful use within the United States by any other jurisdiction  
22 regulating the conduct of video gambling.

23 Section 13. [NEW MATERIAL] CONTRACT WITH NEW MEXICO  
24 LOTTERY AUTHORITY. --The division shall enter into a contract  
25 with the New Mexico lottery authority to conduct the monitoring

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1 of video gambling machines, including receiving and transmitting  
2 information required by the Video Gambling Act to the division  
3 by the authority. The contract shall allow the authority to  
4 electronically disable any video gambling machine that is not  
5 operated in compliance with the Video Gambling Act upon request  
6 from the division. The contract is not subject to the  
7 provisions of the Procurement Code, and may provide for the  
8 compensation agreed to by the division and the authority.

9 Section 14. [NEW MATERIAL] PERMITS REQUIRED FOR VIDEO  
10 GAMBLING MACHINES. --

11 A. A licensee that intends to operate a video  
12 gambling machine shall file an application with the division for  
13 a permit for each video gambling machine purchased, leased or  
14 otherwise acquired by the licensee within twenty days of  
15 purchasing, leasing or otherwise acquiring the machine. The  
16 application shall be on forms prescribed and furnished by the  
17 director. The division shall not issue a permit for any machine  
18 that has not been tested in accordance with the provisions of  
19 the Video Gambling Act or does not comply with standards adopted  
20 by the division by regulation.

21 B. An application for a permit shall be accompanied  
22 by a permit fee of one hundred dollars (\$100) per machine.

23 C. The division shall issue a permit number for a  
24 machine based upon compliance with all applicable provisions of  
25 the Video Gambling Act and upon filing a properly completed

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1 application along with the required permit fee for the machine,  
2 but the director may refuse to issue a permit for a specific  
3 machine if he believes that the machine is inaccurate,  
4 unreliable or will not be operated in accordance with the  
5 provisions of the Video Gambling Act or regulations adopted  
6 pursuant to that act.

7 D. A video gambling machine shall not be operated and  
8 a person shall not play a video gambling machine unless the  
9 licensee has a current permit to operate the machine.

10 E. An application for a permit shall provide  
11 information required by regulations adopted by the director.

12 F. A licensee shall place a video gambling machine  
13 into operation within ten days of issuance of the permit for  
14 that machine. If the machine is not placed into operation  
15 within ten days, the permit shall be canceled by the director.

16 Section 15. [NEW MATERIAL] VIDEO GAMBLING MACHINE TESTING  
17 AND INSPECTION. --

18 A. A permit shall not be issued for a video gambling  
19 machine unless it is first tested and certified for accuracy and  
20 reliability by an independent testing laboratory approved by the  
21 director. The costs of the testing shall be paid by the  
22 licensee that proposes to operate the machine.

23 B. No video gambling machine may be operated if it,  
24 or the software used to control its electronic functions, has  
25 been modified in any way without having been tested after the

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1 modification and certified for accuracy and reliability by an  
2 independent testing laboratory approved by the director.

3 C. A video gambling machine and the premises at which  
4 it is being operated or played shall be open to inspection at  
5 all times by the director, his authorized employees or any law  
6 enforcement officer. Whenever the director or any law  
7 enforcement officer has probable cause to believe that any video  
8 gambling machine was obtained from an unlicensed manufacturer or  
9 distributor, is being operated by an unlicensed person, is being  
10 operated without a permit or otherwise fails to meet the  
11 requirements of the Video Gambling Act or regulations adopted  
12 pursuant to that act, he shall remove and impound the video  
13 gambling machine for the purpose of testing and detention and  
14 shall retain possession of the machine until otherwise ordered  
15 by a district court.

16 Section 16. [NEW MATERIAL] CONDUCT OF VIDEO MACHINE  
17 GAMBLING. --

18 A. A licensee shall not allow access to a video  
19 gambling machine for the purpose of play by a person who has not  
20 reached his twenty-first birthday.

21 B. Except for video gambling machines located on the  
22 premises of a racetrack licensee, a licensee shall not allow  
23 access to a video gambling machine for the purpose of play by a  
24 person who is not a bona fide member of the licensee or a bona  
25 fide guest of the member.

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1 C. A video gambling machine for which a permit has  
2 been issued by the division may be located and operated on a  
3 liquor premises licensed pursuant to the Liquor Control Act if  
4 the person holding the liquor license is also a video gambling  
5 machine licensee.

6 D. If a video gambling machine fails to meet  
7 specifications and requirements of the Video Gambling Act or a  
8 regulation adopted pursuant to that act after a permit is  
9 issued, the licensee shall remove the machine from public access  
10 immediately and not operate it until it has been adjusted to  
11 meet all requirements.

12 E. All tables displaying prizes or awards shall be  
13 prominently displayed on a video gambling machine operated by a  
14 licensee. A licensee may establish house rules regulating the  
15 operation or conduct of video gambling machines if the rules do  
16 not conflict with provisions of the Video Gambling Act or a  
17 regulation adopted pursuant to that act.

18 F. A licensee operating a video gambling machine  
19 shall display on each machine, or in a conspicuously visible  
20 place, the telephone number of the division that can be called  
21 to report device malfunctions or complaints.

22 Section 17. [NEW MATERIAL] VIDEO GAMBLING MACHINE  
23 REQUIREMENTS-- MONITORING. --

24 A. Prior to operation, a licensee, at his own  
25 expense, shall connect each video gambling machine to existing

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1 telecommunications lines and systems and ensure that the video  
2 gambling machine is capable of providing the following  
3 information to the division or its contractor through a data  
4 report or detailed tape:

- 5 (1) the time of day in hours and minutes in  
6 which the video gambling machine is in operation;
- 7 (2) the location of the video gambling machine;
- 8 (3) the number of the pool of tickets or deal  
9 and the size of the pool;
- 10 (4) the serial and permit numbers of the video  
11 gambling machine;
- 12 (5) the cumulative amount of money inserted  
13 into the video gambling machine at any given time;
- 14 (6) the amount of money contained in the video  
15 gambling machine at a given time;
- 16 (7) the amount of money, credits or other  
17 consideration paid to players by the video gambling machine at  
18 any given time;
- 19 (8) the version number of the software running  
20 on the gambling machine; and
- 21 (9) other information required by regulations  
22 adopted by the director.

23 B. A video gambling machine shall contain a printer  
24 that is capable of printing a performance synopsis of the  
25 gambling played and that creates an exact and identical copy of

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1 all items printed that is retained inside the video gambling  
2 machine. A video gambling machine shall have electronic and  
3 mechanical meters. The printer inside the video gambling  
4 machine shall be capable of printing the information on the  
5 meters.

6 C. The main logic board and the printed circuit board  
7 of a video gambling machine containing gambling erasable program  
8 read-only memories shall be isolated in a locked area of the  
9 video gambling machine. The memories shall be sealed to the  
10 board by the manufacturer using a process approved by the  
11 division. The sealing shall be of a type that permits field  
12 examination of the memories and effective resealing after  
13 examination.

14 D. A video gambling machine shall have a nonremovable  
15 serial number plate that provides at least the following  
16 information:

17 (1) the permit number issued by the division;

18 and

19 (2) the manufacturer's name, date of  
20 manufacture and manufacturer's serial number.

21 E. Access to a video gambling machine shall be  
22 controlled through locks.

23 F. A video gambling machine shall have surge  
24 protection and battery backup systems and shall pass a static  
25 discharge test of at least forty thousand volts.

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1           G. A video gambling machine shall allow for random  
2 play and winning.

3           H. Each video gambling machine shall be capable of  
4 being deactivated by an electronic signal generated by the  
5 division or its contractor.

6           Section 18. [NEW MATERIAL] TESTING, AUDITING AND SEIZURE  
7 OF VIDEO GAMBLING MACHINES. --

8           A. The director may by written directive require a  
9 licensee, at the licensee's expense, to have a video gambling  
10 machine manufactured, distributed, owned, leased or operated by  
11 that licensee tested for reliability and accuracy by an  
12 independent laboratory approved or designated by the director.  
13 No video gambling machine may be operated or distributed by a  
14 licensee until it has been tested and the director is satisfied  
15 that the video gambling machine is accurate and reliable based  
16 upon the results of the test.

17           B. The director or his designated agents or  
18 contractors may, without advance notice to the licensee, audit  
19 or test the operation of a video gambling machine to ensure  
20 reliability and accuracy. A licensee shall allow access to its  
21 video gambling machines and its premises by the director or his  
22 designated agents or contractors immediately upon request.

23           C. The director or his designated agents or  
24 contractors may audit all records of a licensee, whether or not  
25 they are in the licensee's possession, to ensure compliance with

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1 the provisions of the Video Gambling Act or regulations adopted  
2 pursuant to the provisions of that act. A licensee requested to  
3 produce records relating to its video gambling machine  
4 activities by the director, his designated agents or  
5 contractors, shall do so immediately upon request.

6 D. The director may seize or seal a video gambling  
7 machine, and he may order a licensee to cease operating a video  
8 gambling machine, without prior notice if the director believes  
9 that the licensee is violating any provision of the Video  
10 Gambling Act or a regulation adopted pursuant to the provisions  
11 of that act. He also may take the foregoing actions if a  
12 machine is not accurate or reliable or has been changed or  
13 modified in any manner not approved by the director.

14 Section 19. [NEW MATERIAL] DENIAL, SUSPENSION OR  
15 REVOCATION OF LICENSE. --

16 A. The director may refuse to issue or renew a  
17 license or suspend or revoke a license, and he may fine a  
18 licensee in an amount not to exceed ten thousand dollars  
19 (\$10,000) per incident, or both, upon a finding that the  
20 applicant or licensee or any member, officer, director, employee  
21 or agent of the applicant or licensee has:

22 (1) violated any provision of the Video  
23 Gambling Act or a regulation adopted pursuant to that act;

24 (2) provided false or misleading information to  
25 the director;

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1 (3) been convicted of a felony or any gambling-  
2 related offense;

3 (4) modified or changed any video gambling  
4 machine so as to endanger or compromise its accuracy, security  
5 or reliability;

6 (5) engaged in dishonest or deceptive practices  
7 with respect to its video gambling machine activities; or

8 (6) conducted its video gambling activities in  
9 a manner that may be considered a public nuisance.

10 B. When the director contemplates taking an action  
11 against an applicant or licensee to refuse to issue or renew or  
12 to revoke or suspend a license or impose a fine, he shall serve  
13 written notice upon the applicant or licensee containing the  
14 following:

15 (1) a statement that the director has  
16 sufficient evidence that, if not rebutted or explained, will  
17 justify the director in taking the contemplated action;

18 (2) a statement indicating the general nature  
19 of the evidence; and

20 (3) a statement advising the applicant or  
21 licensee that unless the applicant or licensee within twenty  
22 days after service of the notice delivers a written request for  
23 hearing to the director, the director will take the contemplated  
24 action.

25 C. If the applicant or licensee does not deliver a

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1 request for hearing within the time required by Paragraph (3) of  
2 Subsection B of this section, the director may take the action  
3 contemplated in the notice, and that action is final and not  
4 subject to judicial review.

5 D. If the applicant or licensee delivers a request  
6 for hearing within the time required by Paragraph (3) of  
7 Subsection B of this section, the director shall, within twenty  
8 days of receipt of the request, notify the applicant or licensee  
9 of the time and place of hearing and the name of the person who  
10 shall conduct the hearing for the director. The hearing shall  
11 be held not more than sixty and not less than fifteen days from  
12 the date of service of the notice of hearing.

13 E. Hearings held pursuant to the provisions of this  
14 section shall be:

- 15 (1) in Santa Fe;  
16 (2) conducted by the director or by a hearing  
17 officer appointed by the director; and  
18 (3) open to the public.

19 F. A licensee or applicant entitled to and requesting  
20 a hearing has the right to be represented by counsel, to present  
21 all relevant evidence, to examine all opposing witnesses, and to  
22 have subpoenas issued by the director to compel the attendance  
23 of witnesses and the production of documents.

24 G. The director or hearing officer may impose  
25 appropriate evidentiary sanctions against a party who fails to

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1 provide discovery or to comply with a subpoena.

2 H. The director or hearing officer shall cause a  
3 complete record to be made of all evidence received during the  
4 course of a hearing.

5 I. After a hearing has been completed, the director  
6 shall render his decision as soon as is practicable.

7 J. An applicant or licensee that is aggrieved by an  
8 adverse decision of the director may obtain a review of the  
9 decision in the district court of Santa Fe county by filing with  
10 the court a petition for review within twenty days after the  
11 date of service of the decision. Failure to file a petition for  
12 review in the manner and within the time stated shall operate as  
13 a waiver of the right to judicial review and shall result in the  
14 decision of the director becoming final.

15 K. Upon the review of a decision of the director, the  
16 court shall affirm the decision of the director unless it finds  
17 that the substantial rights of the petitioner have been  
18 prejudiced because the decision was in violation of  
19 constitutional provisions; in excess of the statutory authority  
20 or jurisdiction of the director, or made upon unlawful  
21 procedure; affected by other error of law; unsupported by  
22 substantial evidence based upon a review of the entire record  
23 submitted; or arbitrary or capricious.

24 L. A party to the review proceeding in the district  
25 court may appeal to the supreme court from the decision of the

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1 district court.

2 Section 20. [NEW MATERIAL] SHIPMENT OF VIDEO GAMBLING  
3 MACHINES. --Shipments of video gambling machines into this state  
4 shall comply with all requirements of the Video Gambling Act and  
5 all applicable federal laws.

6 Section 21. [NEW MATERIAL] RECORDS REQUIRED AND RECORD  
7 RETENTION. --

8 A. In addition to other records required to be  
9 generated or kept pursuant to the Video Gambling Act, each  
10 licensee operating video gambling machines shall maintain  
11 complete operation records, including audit tapes, and shall  
12 make them available for inspection by the director, authorized  
13 employees of the division or any law enforcement officer upon  
14 request. Those records shall include:

15 (1) all permit and licensing documents issued  
16 by the division;

17 (2) a complete record of all winnings paid out  
18 by each video gambling machine, including the date, time and  
19 amount of the winnings paid out;

20 (3) a record of gross receipts from operation  
21 of each video gambling machine by date; and

22 (4) records required by regulations adopted  
23 pursuant to the Video Gambling Act.

24 B. A licensee shall maintain records required by the  
25 Video Gambling Act, or a regulation adopted pursuant to that

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1 act, within this state for a minimum of three years.

2 C. An applicant for a license or a licensee, as a  
3 condition of issuance or continuation of licensure, shall grant  
4 the director, or his designee, access to all tax returns  
5 maintained by the United States internal revenue service or the  
6 taxation and revenue department that have been filed on behalf  
7 of any person having an ownership or other financial interest in  
8 the applicant or the video gambling activities of the licensee  
9 or having a function in relation to the video gambling  
10 activities of the licensee. The director shall consider those  
11 records when determining qualifications for initial and  
12 continuing licensure or other actions pursuant to the Video  
13 Gambling Act.

14 Section 22. [NEW MATERIAL] TAX IMPOSED--PURSE  
15 ALLOCATION. --

16 A. An excise tax known as the "gambling tax" is  
17 imposed upon the privilege of manufacturing, distributing or  
18 operating a video gambling machine in this state or receiving  
19 revenue from the operation of a video gambling machine within  
20 this state. The amount of the gambling tax is, for:

21 (1) manufacturer licensees, ten percent of the  
22 gross receipts from each sale or other transfer of a video  
23 gambling machine manufactured within this state;

24 (2) distributor licensees, ten percent of gross  
25 receipts from the distribution of a video gambling machine

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1 within this state;

2 (3) video gambling machine licensees, fifteen  
3 percent of the net drop derived from the operation of a video  
4 gambling machine; and

5 (4) racetrack licensees, the following amounts:

6 (a) for the 1997 calendar year, fifteen  
7 percent of the net drop derived from the operation of a video  
8 gambling machine;

9 (b) for the calendar year beginning January  
10 1, 1998 and ending December 31, 1998, twenty percent of the net  
11 drop derived from the operation of a video gambling machine; and

12 (c) for the calendar year beginning January  
13 1, 1999 and ending December 31, 1999 and each year thereafter,  
14 twenty-five percent of the net drop derived from the operation of  
15 a video gambling machine.

16 B. The gambling tax shall be paid to the division on or  
17 before the twenty-fifth day of the month following the month in  
18 which the taxable event occurs.

19 C. Revenue received by the division from the  
20 imposition of the gambling tax shall be deposited into the  
21 general fund.

22 D. In addition to the taxes set forth herein, each  
23 racetrack licensee shall allocate not less than the following  
24 amounts to purses in accordance with regulations adopted by the  
25 state racing commission:

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1 (1) for the 1997 calendar year, fifteen percent  
2 of the net drop derived from the operation of a video gambling  
3 machine;

4 (2) for the calendar year beginning January 1,  
5 1998 and ending December 31, 1998, twenty percent of the net drop  
6 derived from the operation of a video gambling machine; and

7 (3) for the calendar year beginning January 1,  
8 1999 and ending December 31, 1999 and each year thereafter,  
9 twenty-five percent of the net drop derived from the operation of  
10 a video gambling machine.

11 Section 23. [NEW MATERIAL] CRIMINAL PENALTIES. -- A person  
12 who violates a provision of the Video Gambling Act or a  
13 regulation adopted pursuant to that act is guilty of a  
14 misdemeanor and upon conviction shall be sentenced pursuant to  
15 the provisions of Section 31-19-1 NMSA 1978. A person convicted  
16 pursuant to this section is prohibited from owning, operating or  
17 participating in the proceeds from the operation of a video  
18 gambling machine for a period of five years after the date of the  
19 conviction.

20 Section 24. [NEW MATERIAL] ENFORCEMENT. -- The special  
21 investigations division of the department of public safety, and  
22 any other law enforcement agency entering into a joint powers  
23 agreement with the department of public safety, has the authority  
24 to enforce the provisions of the Video Gambling Act by  
25 investigating all violations and by issuing administrative

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1 citations or by initiating criminal prosecutions, or both.

2 Section 25. [NEW MATERIAL] FUND CREATED-- APPROPRIATION. --

3 There is created in the state treasury the "video gambling  
4 fund". All money in the fund and all interest attributable to  
5 it is appropriated to the division for the purpose of carrying  
6 out the provisions of the Video Gambling Act. All license fees  
7 paid by licensees pursuant to the provisions of the Video  
8 Gambling Act or regulations adopted pursuant to that act shall  
9 be credited to the fund. Money in the fund at the end of a  
10 fiscal year shall not revert to the general fund.

11 Section 26. SEVERABILITY.--If any part or application of  
12 the Video Gambling Act is held invalid, the remainder or its  
13 application to other situations or persons shall not be  
14 affected.

15 Section 27. Section 13-1-98 NMSA 1978 (being Laws 1984,  
16 Chapter 65, Section 71, as amended) is amended to read:

17 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE. --The  
18 provisions of the Procurement Code shall not apply to:

19 A. procurement of items of tangible personal property  
20 or services by a state agency or a local public body from a  
21 state agency, a local public body, the New Mexico lottery  
22 authority or an external procurement unit except as otherwise  
23 provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

24 B. procurement of tangible personal property or  
25 services for the governor's mansion and grounds;

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1 C. printing and duplicating contracts involving  
2 materials [~~which~~] that are required to be filed in connection  
3 with proceedings before administrative agencies or state or  
4 federal courts;

5 D. purchases of publicly provided or publicly  
6 regulated gas, electricity, water, sewer and refuse collection  
7 services;

8 E. purchases of books and periodicals from the  
9 publishers or copyright holders thereof;

10 F. travel or shipping by common carrier or by private  
11 conveyance or to meals and lodging;

12 G. purchase of livestock at auction rings or to the  
13 procurement of animals to be used for research and  
14 experimentation or exhibit;

15 H. contracts with businesses for public school  
16 transportation services;

17 I. procurement of tangible personal property or  
18 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,  
19 by the corrections industries division of the corrections  
20 department pursuant to regulations adopted by the corrections  
21 [~~industries~~] commission, which shall be reviewed by the  
22 purchasing division of the general services department prior to  
23 adoption;

24 J. minor purchases consisting of magazine  
25 subscriptions, conference registration fees and other similar

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1 purchases where prepayments are required;

2 K. municipalities having adopted home rule charters  
3 and having enacted their own purchasing ordinances;

4 L. the issuance, sale and delivery of public  
5 securities pursuant to the applicable authorizing statute, with  
6 the exception of bond attorneys and general financial  
7 consultants;

8 M. contracts entered into by a local public body with  
9 a private independent contractor for the operation, or provision  
10 and operation, of a jail pursuant to Sections 33-3-26 and  
11 33-3-27 NMSA 1978;

12 N. contracts for maintenance of grounds and  
13 facilities at highway rest stops and other employment  
14 opportunities, excluding those intended for the direct care and  
15 support of persons with handicaps, entered into by state  
16 agencies with private, nonprofit, independent contractors who  
17 provide services to persons with handicaps;

18 O. contracts and expenditures for services to be paid  
19 or compensated by money or other property transferred to New  
20 Mexico law enforcement agencies by the United States department  
21 of justice drug enforcement administration;

22 P. contracts for retirement and other benefits  
23 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978; and

24 Q. contracts with professional entertainers. "

25 Section 28. Section 30-19-1 NMSA 1978 (being Laws 1963,

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1 Chapter 303, Section 19-1, as amended) is amended to read:

2 "30-19-1. DEFINITIONS RELATING TO GAMBLING. --As used in  
3 Chapter 30, Article 19 NMSA 1978:

4 A. "antique gambling device" means a gambling device  
5 twenty-five years of age or older and substantially in original  
6 condition that is not used for gambling or commercial gambling  
7 or located in a gambling place;

8 B. "bet" means a bargain in which the parties agree  
9 that, dependent upon chance, even though accompanied by some  
10 skill, one stands to win or lose anything of value specified in  
11 the agreement. A bet does not include:

12 (1) bona fide business transactions that are  
13 valid under the law of contracts, including ~~without~~  
14 ~~limitation~~]:

15 (a) contracts for the purchase or sale,  
16 at a future date, of securities or other commodities; and

17 (b) agreements to compensate for loss  
18 caused by the happening of the chance, including ~~without~~  
19 ~~limitation~~] contracts for indemnity or guaranty and life or  
20 health and accident insurance;

21 (2) offers of purses, prizes or premiums to the  
22 actual contestants in any bona fide contest for the  
23 determination of skill, speed, strength or endurance or to the  
24 bona fide owners of animals or vehicles entered in such contest;

25 (3) a lottery as defined in this section; or

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1 (4) betting otherwise permitted by law;

2 C. "lottery" means an enterprise other than the New  
3 Mexico state lottery established and operated pursuant to the  
4 New Mexico Lottery Act wherein, for a consideration, the  
5 participants are given an opportunity to win a prize, the award  
6 of which is determined by chance, even though accompanied by  
7 some skill. As used in this subsection, "consideration" means  
8 anything of pecuniary value required to be paid to the promoter  
9 in order to participate in such enterprise;

10 D. "gambling device" means a contrivance other than  
11 an antique gambling device that, for a consideration, affords  
12 the player an opportunity to obtain anything of value, the award  
13 of which is determined by chance, even though accompanied by  
14 some skill and whether or not the prize is automatically paid by  
15 the device, but "gambling device" does not include a video  
16 gambling machine for which a permit has been issued pursuant to  
17 the Video Gambling Act; and

18 E. "gambling place" means any building or tent, any  
19 vehicle, whether self-propelled or not, or any room within any  
20 of them, one of whose principal uses is:

- 21 (1) making and settling of bets;
- 22 (2) receiving, holding, recording or forwarding  
23 bets or offers to bet;
- 24 (3) conducting lotteries; or
- 25 (4) playing gambling devices. "

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Underscored material = new  
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1 Section 29. Section 30-19-6 NMSA 1978 (being Laws 1963,  
2 Chapter 303, Section 19-6, as amended) is amended to read:

3 "30-19-6. [~~PERMISSIVE LOTTERY~~] AUTHORIZED ACTIVITIES--  
4 FAIRS-- THEATERS-- TAX-EXEMPT ORGANIZATIONS --

5 A. Nothing in [~~Article 19~~] Chapter 30, Article 19  
6 NMSA 1978 [~~shall be construed to apply to any~~] prohibits a sale  
7 or drawing of [~~any~~] a prize at [~~any~~] a fair held in this state  
8 for the benefit of [~~any~~] a church, public library or religious  
9 society [~~situate or being~~] located in this state, or for  
10 charitable purposes when all the proceeds of [~~such~~] the fair  
11 [~~shall be~~] are expended in this state for the benefit of [~~such~~]  
12 the church, public library, religious society or charitable  
13 purposes. A [~~lottery shall be operated~~] sale or drawing  
14 conducted pursuant to this subsection is for the benefit of the  
15 organization or charitable purpose only [~~when~~] if the entire  
16 proceeds [~~of the lottery~~] from the sale or drawing go to the  
17 organization or charitable purpose and no part of [~~such~~] the  
18 proceeds go to [~~any~~] an individual member or employee [~~thereof~~]  
19 of the organization.

20 B. Nothing in [~~Article 19~~] Chapter 30, Article 19  
21 NMSA 1978 [~~shall be held to prohibit any~~] prohibits a bona fide  
22 motion picture [~~theatre~~] theater from offering prizes of cash or  
23 merchandise for advertising purposes, in connection with [~~such~~]  
24 the business of the theater or for the purpose of stimulating  
25 business, whether or not [~~any~~] consideration other than a

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1 monetary consideration in excess of the regular price of  
2 admission is ~~[exacte~~ charged for participation in drawings for  
3 prizes.

4 C. Nothing in ~~[Article 19]~~ Chapter 30, Article 19  
5 NMSA 1978 ~~[shall be held to apply to any]~~ prohibits a bona fide  
6 county fair, including ~~[fairs]~~ a fair for more than one county,  
7 ~~[which shall have]~~ that has been held annually at the same  
8 location for at least two years ~~[and which shall offer]~~ from  
9 offering prizes of livestock or poultry in connection with  
10 ~~[such]~~ the fair ~~[when]~~ if the proceeds of ~~[such]~~ the drawings  
11 ~~[shall be]~~ are used for the benefit of ~~[said]~~ the fair.

12 ~~[D. Nothing in Article 19, Chapter 30 NMSA 1978 shall~~  
13 ~~be construed to apply to any lottery operated by an organization~~  
14 ~~exempt from the state income tax pursuant to Subsection C of~~  
15 ~~Section 7-2-4 NMSA 1978 and not subject to the provisions of~~  
16 ~~Subsection A of this section; provided that:~~

17 ~~(1) no more than two lotteries shall be~~  
18 ~~operated in any year by such an organization;~~

19 ~~(2) all the gross proceeds less the reasonable~~  
20 ~~cost of prizes of any lottery operated by such an organization~~  
21 ~~shall be expended in the state for the benefit of the~~  
22 ~~organization or public purposes; and~~

23 ~~(3) no part of the proceeds of any lottery~~  
24 ~~shall go to any individual member or employee of any~~  
25 ~~organization except as payment for the purchase of prizes at no~~

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1 ~~more than the reasonable retail price.]~~

2 D. Nothing in Chapter 30, Article 19 NMSA 1978

3 prohibits an organization that is exempt from state income tax  
4 pursuant to Section 7-2-4 NMSA 1978 and in good standing as a  
5 not for profit corporation as shown by the records of the state  
6 corporation commission from conducting electronic gambling,  
7 bingo games, raffles, lotteries or table games, including poker,  
8 craps, blackjack, roulette and the like, at a fundraising event  
9 if:

10 (1) the fundraising event is conducted no more  
11 than four times in a calendar year by the qualifying  
12 organization;

13 (2) the only persons authorized to participate  
14 in the operation or management of the fundraising event are:

15 (a) bona fide members of the qualifying  
16 organization who are not paid for their services in the  
17 operation or management of the event; or

18 (b) persons who provide goods or services  
19 for the fundraising event for a flat fee or an hourly fee  
20 pursuant to a written contract with the qualifying organization;

21 (3) no person receives any part of the proceeds  
22 of the fundraising event except:

23 (a) as payment for prizes purchased at no  
24 more than the reasonable retail prices for the prizes; or

25 (b) pursuant to a contract described in

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1 Subparagraph (b) of Paragraph (2) of this subsection:

2 (4) the net proceeds of the fundraising event  
3 are expended in the state for the benefit of the qualifying  
4 organization or purposes for which it was formed;

5 (5) gross revenue, expenses, prizes paid and  
6 the date, time and location of the fundraising event are  
7 reported to the alcohol and gaming division of the regulation  
8 and licensing department within thirty days after the event;

9 (6) the qualifying organization conducting the  
10 fundraising event maintains records for a period of one year  
11 after the date of the event that accurately show the gross  
12 revenue generated by the event, details of the expenses of  
13 conducting the event and details of how the gross revenue is  
14 used, and the qualifying organization makes the records  
15 available for review by the director of the alcohol and gaming  
16 division of the regulation and licensing department or the  
17 attorney general, or both, at their request;

18 (7) no more than five electronic gambling  
19 devices are operated during the fundraising event;

20 (8) no person younger than the age of twenty-  
21 one is allowed to participate in the operation or management of  
22 the fundraising event or to play any game at the event; and

23 (9) the fundraising event is conducted pursuant  
24 to regulations and a permit issued by the alcohol and gaming  
25 division of the regulation and licensing department.

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1                   E. As used in Subsection D of this section  
2                   "electronic gambling device" means a gambling device consisting  
3                   of an electronic device that simulates the play of any game of  
4                   chance, uses microprocessors and that, by chance or through some  
5                   combination of chance and skill, the device dispenses or the  
6                   player may otherwise receive cash, coins, tokens for free games  
7                   or credits that can be redeemed for cash, coins or tokens;  
8                   "electronic gambling" means the play of an electronic gambling  
9                   device. Electronic gambling conducted pursuant to the  
10                   provisions of this section shall be conducted in accordance with  
11                   regulations adopted by the regulation and licensing department.  
12                   Those regulations may provide for minimum standards for  
13                   security, restrictions of amounts wagered, limits on amounts  
14                   paid by electronic gambling devices, recordkeeping by the  
15                   operator and sponsor of the gaming event and monitoring,  
16                   electronic or otherwise, of the electronic gambling conducted.

17                   F. The provisions of the Bingo and Raffle Act and the  
18                   New Mexico Lottery Act do not apply to the activities described  
19                   in Subsection D of this section

20                   G. Activities authorized by this section may be  
21                   conducted on licensed premises, as that term is defined in  
22                   Section 60-3A-3 NMSA 1978."

23                   Section 30. EMERGENCY. --It is necessary for the public  
24                   peace, health and safety that this act take effect immediately.

**State of New Mexico**  
**House of Representatives**

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**FORTY- THIRD LEGISLATURE**  
**FIRST SESSION, 1997**

February 21, 1997

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has  
been referred

HOUSE BILL 399

has had it under consideration and reports same with  
recommendation that it DO NOT PASS, but that

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE  
FOR HOUSE BILL 399

be reported WITHOUT RECOMMENDATION, and thence  
referred to JUDICIARY COMMITTEE.



FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HBI C/HB 399

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Respectfully submitted,

\_\_\_\_\_  
Fred Luna, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 3 Against

Yes: 8

No: Alwin, Gubbels, Lutz

Excused: Getty, Varela

Absent: None

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HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 399

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO GAMING; ENACTING THE INDIAN GAMING COMPACT; ENACTING  
A REVENUE-SHARING AGREEMENT TO PROVIDE FOR REVENUE SHARING  
BETWEEN THE STATE AND AN INDIAN NATION, TRIBE OR PUEBLO  
CONDUCTING GAMING PURSUANT TO THE COMPACT; ENACTING THE GAMING  
CONTROL ACT TO PERMIT CERTAIN NONTRIBAL GAMING; PROVIDING  
PENALTIES; IMPOSING A GAMING TAX AND FEES; AMENDING AND ENACTING  
SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN  
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] INDIAN GAMING COMPACT ENTERED  
INTO. --The Indian Gaming Compact is enacted into law and entered  
into with all Indian nations, tribes and pueblos in the state  
legally joining in it by enactment of a resolution pursuant to  
the requirements of applicable tribal and federal law. The  
compact is enacted and entered into in the form substantially as  
follows:

"INDIAN GAMING COMPACT

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1 INTRODUCTION

2 The State is a sovereign State of the United States of  
3 America, having been admitted to the Union pursuant to the Act  
4 of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and is  
5 authorized by its constitution to enter into contracts and  
6 agreements, including this Compact, with the Tribe;

7 The Tribe is a sovereign federally recognized Indian tribe  
8 and its governing body has authorized the officials of the Tribe  
9 to enter into contracts and agreements of every description,  
10 including this Compact, with the State;

11 The Congress of the United States has enacted the Indian  
12 Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701-2721  
13 (hereinafter "IGRA"), which permits Indian tribes to conduct  
14 Class III Gaming on Indian Lands pursuant to a tribal-state  
15 compact entered into for that purpose;

16 The Tribe owns or controls Indian Lands and by Ordinance  
17 has adopted rules and regulations governing Class III games  
18 played and related activities at any Gaming Facility;

19 The State and the Tribe, in recognition of the sovereign  
20 rights of each party and in a spirit of cooperation to promote  
21 the best interests of the citizens of the State and the members  
22 of the Tribe, have engaged in good faith negotiations  
23 recognizing and respecting the interests of each party and have  
24 agreed to this Compact.

25 NOW, THEREFORE, the State and the Tribe agree as follows:

TERMS AND CONDITIONS

SECTION 1. Purpose and Objectives.

The purpose and objectives of the State and the Tribe in making this Compact are as follows:

A. To evidence the good will and cooperative spirit between the State and the Tribe;

B. To continue the development of an effective government-to-government relationship between the State and the Tribe;

C. To provide for the regulation of Class III Gaming on Indian Lands as required by the IGRA;

D. To fulfill the purpose and intent of the IGRA by providing for tribal gaming as a means of generating tribal revenues, thereby promoting tribal economic development, tribal self-sufficiency, and strong tribal government;

E. To provide revenues to fund tribal government operations or programs, to provide for the general welfare of the tribal members and for other purposes allowed under the IGRA;

F. To provide for the effective regulation of Class III Gaming in which the Tribe shall have the sole proprietary interest and be the primary beneficiary; and

G. To address the State's interest in the establishment, by the Tribe, of rules and procedures for ensuring that Class III Gaming is conducted fairly and honestly by the owners, operators, employees and patrons of any Class III Gaming enterprise on Indian Lands.

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1 SECTION 2. Definitions.

2 For purposes of this Compact, the following definitions  
3 pertain:

4 A. "Class III Gaming" means all forms of gaming as defined  
5 in 25 U. S. C. § 2703(8), and 25 C. F. R. § 502. 4.

6 B. "Indian Lands" means:

7 1. all lands within the exterior boundaries of the  
8 Tribe's reservation and its confirmed grants from prior sovereigns;  
9 or

10 2. any other lands title to which is either held in  
11 trust by the United States for the exclusive benefit of the Tribe  
12 or a member thereof or is held by the Tribe or a member thereof  
13 subject to restrictions against alienation imposed by the United  
14 States, and over which the Tribe exercises jurisdiction and  
15 governmental authority.

16 C. "Tribal Gaming Agency" means the tribal governmental  
17 agency which will be identified to the State Gaming Representative  
18 as the agency responsible for actions of the Tribe set out in the  
19 Compact. It will be the single contact with the State and may be  
20 relied upon as such by the State.

21 D. "State Gaming Representative" means that person  
22 designated by the Governor of the State, who will be responsible  
23 for actions of the State set out in the Compact. The  
24 representative will be the single contact with the Tribe and may be  
25 relied upon as such by the Tribe. If the State Legislature enacts

1 legislation to establish an agency of the State, such agency may  
2 assume the duties of the State Gaming Representative.

3 E. "Compact" means this compact between the State and the  
4 Tribe.

5 F. "Gaming Facility" means the buildings or structures in  
6 which Class III Gaming is conducted on Indian Lands.

7 G. "Management Contract" means a contract within the meaning  
8 of 25 U. S. C. §§ 2710(d) (9) and 2711.

9 H. "Management Contractor" means any person or entity that  
10 has entered into a Management Contract with the Tribe.

11 I. "Ordinance" means the gaming ordinance and any amendments  
12 thereto adopted by the Tribal Council of the Tribe.

13 J. "Tribe" means any Indian Tribe or Pueblo located within  
14 the State of New Mexico entering into this Compact as provided for  
15 herein.

16 K. "State" means the State of New Mexico.

17 SECTION 3. Authorized Class III Gaming.

18 The Tribe may conduct, only on Indian Lands, subject to all  
19 of the terms and conditions of this Compact, any or all forms of  
20 casino-style gaming, including but not limited to slot machines and  
21 other forms of electronic gaming devices; all forms of poker,  
22 blackjack and other casino-style card games, both banked and  
23 unbanked; roulette; craps; keno; wheel of fortune; pai gow; and  
24 other games played in casino settings, and any form of a lottery.

25 Subject to the foregoing, the Tribe shall establish, in its

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1 discretion, by tribal law, such limitations as it deems appropriate  
2 on the number and type of Class III Gaming conducted, the location  
3 of Class III Gaming on Indian Lands, the hours and days of  
4 operation, and betting and pot limits, applicable to such gaming.

5 SECTION 4. Regulation of Class III Gaming.

6 A. Tribal Gaming Agency. The Tribal Gaming Agency will  
7 assure that the Tribe will:

- 8 1. operate all Class III Gaming pursuant to this  
9 Compact, tribal law, the IGRA and other applicable  
10 Federal law;
- 11 2. provide for the physical safety of patrons in any  
12 Gaming Facility;
- 13 3. provide for the physical safety of personnel  
14 employed by the gaming enterprise;
- 15 4. provide for the physical safeguarding of assets  
16 transported to and from the Gaming Facility and  
17 cashier's cage department;
- 18 5. provide for the protection of the property of the  
19 patrons and the gaming enterprise from illegal  
20 activity;
- 21 6. participate in licensing of primary management  
22 officials and key employees of a Class III Gaming  
23 enterprise;
- 24 7. detain persons who may be involved in illegal acts  
25 for the purpose of notifying law enforcement

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authorities; and

- 8. record and investigate any and all unusual occurrences related to Class III Gaming within the Gaming Facility.

B. Regulations. Without affecting the generality of the foregoing, the Tribe shall adopt laws:

- 1. prohibiting participation in any Class III Gaming by any person under the age of twenty-one (21);
- 2. prohibiting the employment of any person as a key employee or primary management official in a position that is directly involved in Class III Gaming activities who is under the age of twenty-one (21) or who has not been licensed in accordance with Section 5, herein;
- 3. providing to all employees of a gaming establishment employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave, medical and dental insurance as well as providing unemployment insurance and workers' compensation insurance through participation in the state programs offering those benefits;
- 4. providing a grievance process for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the

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- immediate supervisor of the employee;
- 5. prohibiting a gaming enterprise from cashing any paycheck or any type of government assistance check, including Social Security, AFDC, pension and other such checks, for any patron;
- 6. requiring that, if feasible, automatic teller machines on Gaming Facility premises be programmed so that the machines will not accept cards issued by the State to AFDC recipients for access to AFDC benefits;
- 7. providing that each electronic or electromechanical gaming device in use at the Gaming Facility must pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than seventy-five percent (75%);
- 8. providing that no later than July 1, 1997, all gaming machines on the premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual basis the activity of each gaming machine in use at the Gaming Facility, and that such data shall be electronically accessible to the State Gaming Representative upon entry of appropriate security codes;

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- 1           9. enacting provisions that are at least as stringent
- 2           as the provisions of Section 41-11-1 NMSA 1978 that
- 3           provide that the gaming establishment shall be
- 4           liable if one of its employees sells or serves
- 5           alcohol to a person who is intoxicated and who is
- 6           the cause of injury, death or property damage while
- 7           intoxicated;
- 8           10. prohibiting alcoholic beverages from being sold,
- 9           served, delivered or consumed in that part of a
- 10          Gaming Facility where gaming is allowed;
- 11          11. requiring the gaming enterprise to spend an amount
- 12          that is no less than one-quarter of one percent
- 13          (.25%) of its net win as that term is defined herein
- 14          annually to fund or support programs for the
- 15          treatment and assistance of compulsive gamblers and
- 16          for the prevention of compulsive gambling; and
- 17          12. governing any Management Contract regarding its
- 18          Class III Gaming activity such that it conforms to
- 19          the requirements of tribal law and the IGRA and the
- 20          regulations issued thereunder.

21           The Tribal Gaming Agency will provide true copies of all

22           tribal laws and regulations affecting Class III Gaming conducted

23           under the provisions of this Compact to the State Gaming

24           Representative within thirty (30) days after the effective date of

25           this Compact, and will provide true copies of any amendments

1 thereto or additional laws or regulations affecting gaming within  
2 thirty (30) days after their enactment (or approval, if any).

3 C. Audit and Financial Statements. The Tribal Gaming Agency  
4 shall require all books and records relating to Class III Gaming to  
5 be maintained in accordance with generally accepted accounting  
6 principles. All such books and records shall be retained for a  
7 period of at least six (6) years from the date of creation. Not  
8 less than annually, the Tribal Gaming Agency shall require an audit  
9 and a certified financial statement covering all financial  
10 activities of the gaming enterprise by an independent certified  
11 public accountant licensed by the State. The financial statement  
12 shall be prepared in accordance with generally accepted accounting  
13 principles and shall be submitted to the Tribal Gaming Agency  
14 within one hundred twenty (120) days of the close of the Tribe's  
15 fiscal year. The Tribe will maintain the following records for not  
16 less than six (6) years:

- 17 1. revenues, expenses, assets, liabilities and equity  
18 for each Gaming Facility;
- 19 2. daily cash transactions for each Class III Gaming  
20 activity at each Gaming Facility, including but not  
21 limited to transactions relating to each gaming  
22 table bank, game drop box and gaming room bank;
- 23 3. all markers, IOU's, returned checks, hold check or  
24 other similar credit instruments;
- 25 4. individual and statistical game records (except card

1 games) to reflect statistical drop and statistical  
 2 win; for electronic, computer, or other  
 3 technologically assisted games, analytic reports  
 4 which show the total amount of cash wagered and the  
 5 total amount of prizes won;

- 6 5. contracts, correspondence and other transaction
- 7 documents relating to all vendors and contractors;
- 8 6. records of all tribal gaming enforcement activities;
- 9 7. audits prepared by or on behalf of the Tribe; and
- 10 8. personnel information on all Class III Gaming
- 11 employees or agents, including rotation sheets,
- 12 hours worked, employee profiles and background
- 13 checks.

14 D. Violations. The agents of the Tribal Gaming Agency shall  
 15 have unrestricted access to the Gaming Facility during all hours of  
 16 Class III Gaming activity, and shall have immediate and  
 17 unrestricted access to any and all areas of the Gaming Facility for  
 18 the purpose of ensuring compliance with the provisions of this  
 19 Compact and the Ordinance. The agents shall report immediately to  
 20 the Tribal Gaming Agency any suspected violation of this Compact,  
 21 the Ordinance, or regulations of the Tribal Gaming Agency by the  
 22 gaming enterprise, Management Contractor, or any person, whether or  
 23 not associated with Class III Gaming.

24 E. State Gaming Representative.

- 25 1. Upon written request by the State to the Tribe, the

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Tribe will provide information on primary management officials, key employees and suppliers, sufficient to allow the State to conduct its own background investigations, as it may deem necessary, so that it may make an independent determination as to the suitability of such individuals, consistent with the standards set forth in Section 5, hereinafter. The Tribe shall consider any information or recommendations provided to it by the State as to any such person or entity, but the Tribe shall have the final say with respect to the hiring or licensing of any such person or entity.

2. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements, the State Gaming Representative authorized in writing by the Governor of the State or by legislation duly enacted by the State Legislature shall have the right to inspect a Gaming Facility, Class III Gaming activity, and all records relating to Class III Gaming (including those set forth in Section 5, hereinafter) of the Tribe, subject to the following conditions:

- (a) with respect to public areas of a Gaming Facility, at any time without prior notice during normal business hours;

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- 1 (b) with respect to private areas of a Gaming  
2 Facility not accessible to the public, at any  
3 time during normal Gaming Facility business  
4 hours, immediately after notifying the gaming  
5 enterprise management of his or her presence on  
6 the premises and presenting proper  
7 identification, and requesting access to such  
8 non-public areas of the Gaming Facility;
- 9 (c) with respect to inspection and copying of all  
10 management records relating to Class III Gaming,  
11 with forty-eight (48) hours prior written notice,  
12 not including weekends. The reasonable costs of  
13 copying will be borne by the State; and
- 14 (d) whenever the State Gaming Representative, or his  
15 designee, enters the premises of the Gaming  
16 Facility for any such inspection, such  
17 Representative, or designee, shall identify  
18 himself to security or supervisory personnel of  
19 the Gaming Facility.

- 20 3. The financial information, proprietary ideas, plans,  
21 methods, data, development inventions or other  
22 proprietary information regarding the gaming  
23 enterprise of the Tribe, Class III Gaming conducted by  
24 the Tribe, or the operation thereof, which is provided  
25 to the State by the Tribe shall not be deemed public

1 records as a matter of state law, and shall not be  
2 disclosed to any member of the public, without the  
3 prior written approval of a duly authorized  
4 representative of the Tribe. These prohibitions shall  
5 not be construed to prohibit:

- 6 (a) the furnishing of any information to a law  
7 enforcement or regulatory agency of the Federal  
8 Government;
- 9 (b) the State from making known the names of persons,  
10 firms, or corporations conducting Class III  
11 Gaming pursuant to the terms of this Compact,  
12 locations at which such activities are conducted,  
13 or the dates on which such activities are  
14 conducted;
- 15 (c) publishing the terms of this Compact;
- 16 (d) disclosing information as necessary to audit,  
17 investigate, prosecute or arbitrate violations of  
18 this Compact or other applicable laws or to  
19 defend suits against the State; and
- 20 (e) complying with subpoenas or court orders issued  
21 by courts of competent jurisdiction.

22 4. To the fullest extent allowed by State law, the Tribe  
23 shall have the right to inspect State records  
24 concerning all Class III Gaming conducted by the  
25 Tribe; the Tribe shall have the right to copy such

1 State records, with the Tribe bearing the reasonable  
2 cost of copying.

- 3 5. For every year or part thereof in which the Tribe is  
4 actually engaged in Class III Gaming hereunder, the  
5 Tribe shall reimburse the State for the actual costs  
6 the State incurs in carrying out any functions  
7 authorized by the terms of this Compact, in an amount  
8 not to exceed twenty-five thousand dollars (\$25,000)  
9 per year. All calculations of amounts due shall be  
10 based upon a fiscal year beginning October 1, and  
11 ending September 30, unless the parties select a  
12 different fiscal year. Payments due the State shall  
13 be made no later than sixty (60) days after the  
14 beginning of each fiscal year. Payments due the State  
15 during any partial fiscal year this Compact is in  
16 effect shall be adjusted to reflect only that portion  
17 of the fiscal year. Within sixty (60) days after each  
18 fiscal year in which this Compact is in effect, the  
19 State shall submit to the Tribe an accounting of  
20 actual costs incurred in carrying out any functions  
21 authorized by the terms of this Compact. Any amount  
22 of said twenty-five thousand dollars (\$25,000) not  
23 expended by the State on said actual costs shall be  
24 returned to the Tribe by the State within sixty (60)  
25 days after the fiscal year or treated as a prepayment



1 of the Tribe's obligation during the subsequent fiscal  
2 year.

3 6. In the event the State believes that the Tribe is not  
4 administering and enforcing the regulatory  
5 requirements set forth herein, it may invoke the  
6 procedures set forth in Section 7 of this Compact.

7 F. The Tribe shall comply with all applicable provisions of  
8 the Bank Secrecy Act, P. L. 91-508, October 26, 1970, 31 U. S. C.  
9 §§ 5311-5314, and all reporting requirements of the Internal  
10 Revenue Service.

11 SECTION 5. Licensing Requirements.

12 A. License Required. The Gaming Facility operator, (but not  
13 including the Tribe) including its principals, primary management  
14 officials, and key employees, the Management Contractor and its  
15 principals, primary management officials, and key employees (if the  
16 Tribe hires a Management Contractor); any person, corporation, or  
17 other entity that has supplied or proposes to supply any gaming  
18 device to the Tribe or the Management Contractor; and any person,  
19 corporation or other entity providing gaming services within or  
20 without a Gaming Facility, shall apply for and receive a license  
21 from the Tribal Gaming Agency before participating in any way in  
22 the operation or conduct of any Class III Gaming on Indian Lands.

23 B. License Application. Each applicant for a license shall  
24 file with the Tribal Gaming Agency a written application in the  
25 form prescribed by the Tribal Gaming Agency, along with the

1 applicant's fingerprint card, current photograph and the fee  
2 required by the Tribal Gaming Agency.

- 3 1. The following Notice ("Privacy Act Notice") shall be  
4 placed on the application form for a principal, key  
5 employee or a primary management official before that  
6 form is filled out by an applicant:

7 "In compliance with the Privacy Act of 1974,  
8 the following information is provided:  
9 Solicitation of the information on this form  
10 is authorized by 25 U.S.C. §§ 2701-2721.  
11 The purpose of the requested information is  
12 to determine the eligibility of individuals  
13 to be employed in a gaming enterprise. The  
14 information will be used by members and  
15 staff of the Tribal Gaming Agency and the  
16 National Indian Gaming Commission who have  
17 need for the information in the performance  
18 of their official duties. The information  
19 may be disclosed to appropriate federal,  
20 tribal, state, local or foreign law  
21 enforcement and regulatory agencies when  
22 relevant to civil, criminal or regulatory  
23 investigations or prosecutions or when,  
24 pursuant to a requirement by a Tribe, or the  
25 National Indian Gaming Commission, the

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information is relevant to the hiring or firing of an employee, the issuance or revocation of a gaming license or investigations of activities while associated with a Tribe or a gaming enterprise. Failure to consent to the disclosures indicated in this Notice will result in a Tribe being unable to hire you in a primary management official or key employee position with a tribal gaming enterprise.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply an SSN may result in errors in processing your application."

- 2. Existing principals, key employees and primary management officials shall be notified, in writing, that they shall either:
  - (a) complete a new application form that contains a Privacy Act Notice; or
  - (b) sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that Notice.
- 3. The following Notice ("False Statement Notice") shall be placed on the application form for a principal, key

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1 employee or a primary management official before that  
 2 form is filled out by an applicant:

3 "A false statement on any part of your  
 4 application may be grounds for not hiring you or  
 5 for firing you after you begin work. Also, you  
 6 may be punished by fine or imprisonment. See 18  
 7 U. S. C. § 1001. "

- 8 4. The Tribal Gaming Agency shall notify, in writing,  
 9 existing principals, key employees and primary  
 10 management officials that they shall either:
- 11 (a) complete a new application form that contains a
  - 12 False Statement Notice; or
  - 13 (b) sign a statement that contains the False
  - 14 Statement Notice.
- 15 5. The Tribal Gaming Agency shall request from each  
 16 applicant, and from each principal, primary management  
 17 official and key employee of each applicant, all of  
 18 the following information:
- 19 (a) full name, other names used (oral or written),
  - 20 Social Security Number(s), birth date, place of
  - 21 birth, citizenship, gender and all languages
  - 22 spoken or written;
  - 23 (b) currently, and for the previous ten (10) years,
  - 24 business and employment positions held, ownership
  - 25 interests in those businesses, business and

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residence addresses and driver's license numbers; provided, that any applicant who is a principal, primary management official, key employee, Management Contractor, manufacturer or supplier of gaming devices, and/or a person providing gaming services, must provide such information currently, and from the age of eighteen (18);

(c) the names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed in Paragraph B. 5. (b) of this section;

(d) current business and residence telephone numbers;

(e) a description of any existing and previous business relationships with a Tribe, including ownership interests in those businesses, and a description of any potential or actual conflict of interests between such businesses and a Tribe;

(f) a description of any existing and previous business relationships in the gaming industry, including, but not limited to, ownership interests in those businesses;

(g) the name and address of any licensing or regulatory agency with which the applicant has filed an application for a license or permit

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- 1 related to gaming, whether or not such license or  
2 permit was granted;
- 3 (h) for each felony for which there is an ongoing  
4 prosecution or a conviction, the charge, the date  
5 of the charge, the name and address of the court  
6 involved and the disposition, if any;
- 7 (i) for each misdemeanor for which there is an  
8 ongoing prosecution or conviction (excluding  
9 minor traffic violations), the charge, the date  
10 of the charge, the name and address of the court  
11 involved, and the disposition, if any;
- 12 (j) for each criminal charge (excluding minor traffic  
13 charges), whether or not there is a conviction,  
14 if such criminal charge is not otherwise listed  
15 pursuant to Paragraph B. 5. (h) or B. 5. (i) of this  
16 Section, the criminal charge, the date of the  
17 charge, the name and address of the court  
18 involved and the disposition, if any;
- 19 (k) the name and address of any licensing or  
20 regulatory agency with which the person has filed  
21 an application for an occupational license or  
22 permit, as an applicant, principal, primary  
23 management official or key employee, and whether  
24 or not such license or permit was granted;
- 25 (l) a current photograph;

- 1 (m) fingerprints, which shall be taken by officers of
- 2 the tribal police department. Pursuant to a
- 3 Memorandum of Understanding between the Tribe and
- 4 the National Indian Gaming Commission
- 5 ("Commission"), tribal police officers shall
- 6 forward the fingerprint cards directly to the
- 7 Commission;
- 8 (n) the fee required by the Tribal Gaming Agency; and
- 9 (o) any other information the Tribal Gaming Agency
- 10 deems relevant.

11 C. Background Investigations.

- 12 1. Upon receipt of a completed application and required
- 13 fee for licensing, the Tribal Gaming Agency shall
- 14 conduct or cause to be conducted a background
- 15 investigation to ensure that the applicant is
- 16 qualified for licensing.
- 17 2. Background checks of applicants will be performed
- 18 pursuant to the following procedures:
- 19 (a) The Tribal Gaming Agency will provide
- 20 applications to potential applicants upon request
- 21 and shall collect and maintain the applications.
- 22 (b) Pursuant to a Memorandum of Understanding between
- 23 the Tribe and the Commission, tribal police
- 24 officers will collect fingerprints from all
- 25 applicants and forward the fingerprint cards

1 directly to the Commission. The Commission will  
2 obtain a criminal history record from the Federal  
3 Bureau of Investigation on each applicant and  
4 forward such information to the Tribal Gaming  
5 Agency.

6 (c) The Tribal Gaming Agency shall investigate the  
7 information provided in the applications. This  
8 investigation shall include:

- 9 (1) contacting persons or entities identified in  
10 the application and verifying by written or  
11 oral communication that the information  
12 contained in the application is accurate;
- 13 (2) interviewing a sufficient number of  
14 knowledgeable people, such as former  
15 employers, partners, business associates,  
16 and others referred to in the application,  
17 to provide a basis for the Tribal Gaming  
18 Agency to make a determination concerning  
19 whether the applicant meets applicable  
20 eligibility requirements;
- 21 (3) reviewing relevant financial records of the  
22 applicant for the three (3) years preceding  
23 the application; and
- 24 (4) contacting any state, federal or other  
25 government agency that is referred to in the



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application.

(d) The Tribal Gaming Agency shall document any information it obtains that calls into question whether the applicant would meet the eligibility requirements under the Ordinance. The Tribal Gaming Agency shall then document in detail the disposition of these problem areas, indicating the follow-up investigations performed on the problem areas and the result of such investigations.

(e) The Tribal Gaming Agency will review the results of the investigation. This review will include a determination as to the scope of the investigation and whether sufficient information was obtained and verified. If such information is found not sufficient, the Tribal Gaming Agency will perform additional investigations.

(f) Once the investigation is complete, the Tribal Gaming Agency will decide whether the applicant meets the eligibility criteria under the Ordinance.

3. In conducting a background investigation, the Tribal Gaming Agency and its agents shall keep confidential the identity of each person interviewed in the course of the investigation.

- 1           4. Within twenty (20) days of the receipt of a completed  
2           application for licensing, and upon request of an  
3           applicant, the Tribal Gaming Agency may issue a  
4           temporary license to the applicant, unless the  
5           background investigation undertaken discloses that the  
6           applicant has a criminal history, or unless other  
7           grounds sufficient to disqualify the applicant are  
8           apparent on the face of the application. The  
9           temporary license shall become void and be of no  
10          effect upon either:  
11          (a) the issuance of the license;  
12          (b) the issuance of a notice of denial; or  
13          (c) ninety (90) days after the temporary license is  
14          issued, whichever occurs first.
- 15          5. The Tribal Gaming Agency shall review a person's prior  
16          activities, criminal record, if any, and reputation,  
17          habits and associations to make a finding concerning  
18          the eligibility or suitability of an applicant, or a  
19          principal, key employee or primary management official  
20          of an applicant, for employment or involvement in a  
21          gaming enterprise. After such consultation, the Tribal  
22          Gaming Agency shall either issue a license or deny the  
23          application. If the Tribal Gaming Agency determines  
24          that employment or involvement of the applicant poses  
25          a threat to the public interest or to the effective

1 regulation of Class III Gaming or creates or enhances  
2 dangers of unsuitable, unfair or illegal practices,  
3 methods or activities in the conduct of Class III  
4 Gaming, the Tribal Gaming Agency shall deny the  
5 application.

- 6 6. The Tribal Gaming Agency shall retain the right to  
7 conduct additional background investigations of any  
8 person required to be licensed at any time while the  
9 license is valid.

10 D. Procedure for Forwarding Applications and Reports.

11 Procedures for forwarding applications and investigative reports to  
12 the Commission and State Gaming Representative.

- 13 1. When a key employee or primary management official  
14 begins work at a gaming enterprise authorized by this  
15 Compact, the Tribal Gaming Agency shall forward to the  
16 Commission and the State Gaming Representative a  
17 completed application for employment.
- 18 2. The Tribal Gaming Agency shall forward the report  
19 referred to in Paragraph D. 4. of this section to the  
20 Commission and the State Gaming Representative within  
21 sixty (60) days after an employee begins work, or  
22 within sixty (60) days of the approval of this Compact  
23 by the Secretary of the Interior.
- 24 3. A key employee or primary management official who does  
25 not have a license shall not be employed after ninety

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(90) days.

4. The Tribal Gaming Agency shall prepare and forward to the Commission and the State Gaming Representative a report on each background investigation ("Investigative Report"). An Investigative Report shall include all of the following:
  - (a) steps taken in conducting the background investigation;
  - (b) results obtained;
  - (c) conclusions reached; and
  - (d) the basis for those conclusions.
5. The Tribal Gaming Agency shall submit with the Investigative Report a copy of the eligibility determination made under Paragraph C. 5. of this section.
6. If a license is not issued to an applicant, the Tribal Gaming Agency shall notify the Commission and the State Gaming Representative.
7. With respect to principals, key employees and primary management officials, the Tribal Gaming Agency shall retain applications for employment and Investigative Reports (if any) for no less than three (3) years from the date of termination of employment.

E. Granting a Gaming License.

1. If within thirty (30) days after it receives an

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1 Investigative Report, neither the Commission nor the  
2 State Gaming Representative has notified the Tribal  
3 Gaming Agency that it has an objection to the issuance  
4 of a license pursuant to a license application filed  
5 by a principal, key employee or primary management  
6 official, the Tribal Gaming Agency may issue a license  
7 to such applicant.

8 2. The Tribal Gaming Agency shall respond to any request  
9 for additional information from the Commission or the  
10 State Gaming Representative concerning a principal,  
11 key employee or primary management official who is the  
12 subject of an Investigative Report. Such a request  
13 shall suspend the thirty-day (30-day) period under  
14 Paragraph E. 1. of this section until the Commission or  
15 the State Gaming Representative receives the  
16 additional information.

17 3. If, within the thirty-day (30-day) period described  
18 above, the Commission or the State Gaming  
19 Representative provides the Tribal Gaming Agency with  
20 a statement itemizing objections to the issuance of a  
21 license to a principal, key employee or primary  
22 management official for whom the Tribal Gaming Agency  
23 has provided an application and Investigative Report,  
24 the Tribal Gaming Agency shall reconsider the  
25 application, taking into account the objections

1           itemized by the Commission and/or the State Gaming  
 2           Representative, and make a final decision whether to  
 3           issue a license to such applicant.

4           F. Management Contract.

5           1. If the Tribe chooses to enter into a Management  
 6           Contract, the Tribal Gaming Agency shall require that  
 7           all principals, primary management officials and key  
 8           employees of the Management Contractor be licensed.

9           2. The Tribe may enter into a Management Contract only if  
 10          the Management Contract:

11          (a) provides that all Class III Gaming covered by the  
 12          Management Contract will be conducted in  
 13          accordance with the IGRA, the Ordinance and this  
 14          Compact;

15          (b) enumerates the responsibilities of each of the  
 16          parties for each identifiable function,  
 17          including:

- 18               (1) maintaining and improving the Gaming
- 19               Facility;
- 20               (2) providing operating capital;
- 21               (3) establishing operating days and hours;
- 22               (4) hiring, firing, training and promoting
- 23               employees;
- 24               (5) maintaining the gaming enterprise's books
- 25               and records;

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- (6) preparing the gaming enterprise's financial statements and reports;
  - (7) paying for the services of the independent auditor engaged pursuant to 25 C. F. R. § 571. 12;
  - (8) hiring and supervising security personnel;
  - (9) providing fire protection services;
  - (10) setting an advertising budget and placing advertising;
  - (11) paying bills and expenses;
  - (12) establishing and administering employment practices;
  - (13) obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;
  - (14) complying with all applicable provisions of the Internal Revenue Code of 1986, as amended;
  - (15) paying the cost of public safety services; and
  - (16) if applicable, supplying the Commission with all information necessary for the Commission to comply with the National Environmental Policy Act of 1969.
- (c) provides for the establishment and maintenance of

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satisfactory accounting systems and procedures that shall, at a minimum:

- (1) include an adequate system of internal controls;
- (2) permit the preparation of financial statements in accordance with generally accepted accounting principles;
- (3) be susceptible to audit;
- (4) permit the calculation and payment of the Management Contractor's fee; and
- (5) provide for the allocation of operating expenses or overhead expenses among the Tribe, the Management Contractor and any other user of a shared Gaming Facility and services;

(d) requires the Management Contractor to provide the Tribe, not less frequently than monthly, verifiable financial reports or all information necessary to prepare such reports;

(e) requires the Management Contractor to provide immediate access to the Gaming Facility, including its books and records, by appropriate officials of the Tribe, who shall have:

- (1) the right to verify the daily gross revenues and income from the gaming enterprise; and

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- (2) access to any other gaming-related information the Tribe deems appropriate;
- (f) provides for a minimum guaranteed monthly payment to the Tribe in a sum certain that has preference over the retirement of development and construction costs;
- (g) provides an agreed upon maximum dollar amount for the recoupment of development and construction costs;
- (h) provides for a term not to exceed the period allowed by the IGRA;
- (i) details the method of compensating and reimbursing the Management Contractor. If a Management Contract provides for a percentage fee, such fee shall be either:
  - (1) not more than thirty percent (30%) of the net revenues of the gaming enterprise if the Chairman of the Commission determines that such percentage is reasonable considering the circumstances; or
  - (2) not more than forty percent (40%) of the net revenues if the Chairman of the Commission is satisfied that the capital investment required and income projections for the gaming enterprise require the additional

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- fee;
- (j) provides the grounds and mechanisms for modifying or terminating the Management Contract;
  - (k) contains a mechanism to resolve disputes between:
    - (1) the Management Contractor and customers, consistent with the procedures in the Ordinance;
    - (2) the Management Contractor and the Tribe; and
    - (3) the Management Contractor and the gaming enterprise employees;
  - (l) indicates whether and to what extent contract assignments and subcontracting are permissible;
  - (m) indicates whether and to what extent changes in the ownership interest in the Management Contract require advance approval by the Tribe; and
  - (n) states that the Management Contract shall not be effective unless and until it is approved by the Chairman of the Commission, date of signature of the parties notwithstanding.

3. The Tribe shall not enter into any Management Contract if the Tribal Gaming Agency determines that the Management Contractor or any principal, primary management official or key employee of the Management Contractor is not licensed or is ineligible to be licensed.

1           G. Confidentiality of Records. Any and all background  
2 investigative reports on employees or contractors, supporting  
3 documents acquired or generated in connection therewith, and any  
4 other investigative reports or documents acquired or generated in  
5 the course of investigations performed by the Tribe or the Tribal  
6 Gaming Agency, that are provided to the State Gaming Representative  
7 or any other agency or official of the State by the Tribal Gaming  
8 Agency or the Tribe pursuant to the provisions of this Compact,  
9 shall not be deemed public records of the State and shall not be  
10 disclosed to any member of the public without the prior express  
11 written authorization of an authorized representative of the Tribe;  
12 provided, that nothing herein shall preclude any State agency or  
13 official from providing information to a federal agency or official  
14 having responsibility relative to Indian Gaming or from compliance  
15 with any valid order of a court having jurisdiction.

16 SECTION 6. Providers of Class III Gaming Equipment or Devices or  
17 Supplies.

18           A. Within thirty (30) days after the effective date of this  
19 Compact, if it has not already done so, the Tribal Gaming Agency  
20 will adopt standards for any and all Class III Gaming equipment,  
21 devices or supplies to be purchased, leased or otherwise acquired  
22 by the Tribe after the effective date of this Compact for use in  
23 any Gaming Facility, which standards shall be at least as strict as  
24 the comparable standards applicable to Class III Gaming equipment,  
25 devices or supplies within the State of Nevada. Any and all Class

1 III Gaming equipment, devices or supplies acquired by the Tribe  
 2 after the date of this Compact shall meet or exceed the standards  
 3 thereby adopted, and any and all Class III Gaming equipment,  
 4 devices or supplies used by the Tribe in its Gaming Facilities as  
 5 of the effective date of this Compact shall be upgraded or  
 6 replaced, if necessary, so as to comply with such standards, by no  
 7 later than one (1) year after the effective date of this Compact.

8 B. Prior to entering into any future lease or purchase  
 9 agreement for Class III Gaming equipment, devices or supplies, the  
 10 Tribe shall obtain sufficient information and identification from  
 11 the proposed seller or lessor and all persons holding any direct or  
 12 indirect financial interest in the lessor or the lease/purchase  
 13 agreement to permit the Tribe to license those persons in  
 14 accordance with Section 5, hereof.

15 C. The seller, lessor, manufacturer or distributor shall  
 16 provide, assemble and install all Class III Gaming equipment,  
 17 devices or supplies in a manner approved and licensed by the Tribe.

18 SECTION 7. Dispute Resolution.

19 A. In the event either party believes that the other party  
 20 has failed to comply with or has otherwise breached any provision  
 21 of this Compact, such party may invoke the following procedure:

- 22 1. The party asserting noncompliance shall serve written  
 23 notice on the other party. The notice shall identify  
 24 the specific Compact provision believed to have been  
 25 violated and shall specify the factual and legal basis

1 for the alleged noncompliance. The notice shall  
2 specifically identify the date, time and nature of the  
3 alleged noncompliance. Representatives of the State  
4 and Tribe shall thereafter meet within thirty (30)  
5 days in an effort to resolve the dispute.

6 2. In the event an allegation by the complaining party is  
7 not resolved to the satisfaction of such party within  
8 ninety (90) days after service of the notice set forth  
9 in Paragraph (A)(1) of this section, the complaining  
10 party may serve upon the other party a notice to cease  
11 conduct of the particular game(s) or activities  
12 alleged by the complaining party to be in  
13 noncompliance. Upon receipt of such notice, the  
14 responding party may elect to stop the game(s) or  
15 activities specified in the notice or invoke  
16 arbitration and continue the game(s) or activities  
17 pending the results of arbitration. The responding  
18 party shall act upon one of the foregoing options  
19 within thirty (30) days of receipt of notice from the  
20 complaining party.

21 3. Arbitration under this authority shall be conducted  
22 under the Commercial Arbitration Rules of the American  
23 Arbitration Association, except that the arbitrators  
24 shall be attorneys who are licensed members in good  
25 standing of the State Bar of New Mexico or of the bar

1 of another state. The State will select one  
 2 arbitrator, the Tribe a second arbitrator, and the two  
 3 so chosen shall select a third arbitrator. If the  
 4 third arbitrator is not chosen in this manner within  
 5 ten (10) days after the second arbitrator is selected,  
 6 the third arbitrator will be chosen in accordance with  
 7 the rules of the American Arbitration Association.

8 4. All parties shall bear their own costs of arbitration  
 9 and attorney fees.

10 5. The results of arbitration shall be enforceable by an  
 11 action for injunctive or mandatory injunctive relief  
 12 against the State and the Tribe in any court of  
 13 competent jurisdiction. For purposes of any such  
 14 action, the State and the Tribe acknowledge that any  
 15 action or failure to act on the part of any agent or  
 16 employee of the State or the Tribe, contrary to a  
 17 decision of the arbitrators in an arbitration  
 18 proceeding conducted under the provisions of this  
 19 section, occurring after such decision, shall be  
 20 wholly unauthorized and ultra vires acts, not  
 21 protected by the sovereign immunity of the State or  
 22 the Tribe.

23 B. Nothing in Subsection 7(A) shall be construed to waive,  
 24 limit or restrict any remedy that is otherwise available to either  
 25 party to enforce or resolve disputes concerning the provisions of

1 this Compact. Nothing in this Compact shall be deemed a waiver of  
2 the Tribe's sovereign immunity. Nothing in this Compact shall be  
3 deemed a waiver of the State's sovereign immunity.

4 SECTION 8. Protection of Patrons.

5 A. Liability to Patrons. To ensure the personal safety and  
6 protection of patrons and other invitees of a Tribe's Gaming  
7 Facility operated under the provisions of this Compact, the Tribe  
8 shall at all times maintain in effect a policy of public liability  
9 insurance, insuring the Tribe, its agents and employees against any  
10 claims, demands or liability that may arise as a result of personal  
11 injury to any person (other than an employee of the gaming  
12 establishment) occurring anywhere on the premises of any gaming  
13 establishment operated by the Tribe under the provisions of this  
14 Compact, or as a result of any act or omission of any agent or  
15 employee of such gaming establishment while in the course of his or  
16 her employment, which policy shall provide personal injury coverage  
17 of no less than one million dollars (\$1,000,000) per injured person  
18 and ten million dollars (\$10,000,000) aggregate per policy year.

19 The Tribe agrees that in the event of any claim made against  
20 it or its gaming enterprise, or any agent or employee thereof,  
21 arising out of any personal injury as described above, neither the  
22 Tribe nor its insurer will assert any defense of immunity from suit  
23 as to such claim for compensatory damages up to the amount of one  
24 million dollars (\$1,000,000) per injured person, and ten million  
25 dollars (\$10,000,000) aggregate per policy year, in any action

1 filed in a court of competent jurisdiction to be tried to the  
2 court; provided, however, that this agreement not to assert such  
3 defense shall be strictly limited as provided herein, and shall not  
4 apply to any claim for punitive damages, or to any claim for which  
5 a jury trial is demanded, or to any claim for any loss or damage  
6 other than that arising from actual bodily injury or death, or to  
7 any claim for damages in excess of the amount set forth herein.

8 Nothing herein shall be construed as stating or implying that the  
9 Tribe has waived or agreed not to assert its immunity from suit for  
10 any other purpose or in any other circumstance other than the  
11 limited purposes and circumstances expressly set forth herein, and  
12 nothing herein shall be construed as an admission of liability as  
13 to any claim for damages or as an agreement or indication of  
14 willingness to pay any amount as damages absent a judicial  
15 determination of fault, and the Tribe or its insurer, or both,  
16 shall in every instance have the right to defend any such claim  
17 fully on the merits.

18 The Tribe shall provide to the State Gaming Representative  
19 annually a certificate of insurance showing that its gaming  
20 enterprise and its agents and employees engaged therein are insured  
21 to the extent and in the circumstances required by this section, or  
22 that it is self-insured to such extent and in such circumstances.  
23 If the State Gaming Representative so requests in writing, the  
24 certificate of insurance may be furnished directly to the State  
25 Gaming Representative from the insurance carrier or the insuring

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1 agency for the insured Tribe.

2 B. Public Health and Safety. The Tribe shall establish for  
3 its Gaming Facility health, safety and construction standards that  
4 are at least as stringent as the current editions of the National  
5 Electrical Code, the Uniform Building Code, the Uniform Mechanical  
6 Code, the Uniform Fire Code and the Uniform Plumbing Code, and any  
7 and all gaming facilities or additions thereto constructed by the  
8 Tribe hereafter shall be constructed and all facilities shall be  
9 maintained so as to comply with such standards. Inspections will  
10 be conducted with respect to these standards at least annually. If  
11 the State Gaming Representative requests sufficiently in advance of  
12 an annual inspection, the State Gaming Representative may be  
13 present during such inspection. The Tribe agrees to correct any  
14 deficiencies noted in such inspections within a reasonable period  
15 of time. The Tribal Gaming Agency will provide copies of such  
16 inspection reports to the State Gaming Representative, if requested  
17 to do so in writing.

18 SECTION 9. Effective Date. This Compact shall be effective  
19 immediately upon the occurrence of the last of the following:

- 20 A. execution by the Tribe's Governor after approval of the  
21 Tribal Council;
- 22 B. execution by the Governor of the State;
- 23 C. approval by the Secretary of the Interior; and
- 24 D. publication in the Federal Register.

25 The Governor is authorized to execute compacts with an

1 individual Tribe that has also entered into revenue-sharing  
2 agreements and has passed resolutions described herein, in  
3 substantially the same form as set forth herein. Upon signature by  
4 the Governor and the Tribe, the Compact shall be transmitted to the  
5 Secretary of the Interior for approval.

6 SECTION 10. Criminal Jurisdiction.

7 The Tribe and the State acknowledge that under the provisions  
8 of § 23 of the IGRA, especially that portion codified at 18 U. S. C.  
9 § 1166(d), jurisdiction to prosecute violations of State gambling  
10 laws made applicable by that section to Indian country is vested  
11 exclusively within the United States, unless the Tribe and the  
12 State agree in a compact entered into the IGRA to transfer such  
13 jurisdiction to the State. The Tribe and the State hereby agree  
14 that, in the event of any violation of any State gambling law  
15 within the Indian Lands by any person who is not a member of the  
16 Tribe, the State shall have and may exercise jurisdiction,  
17 concurrent with that of the United States, to prosecute such  
18 person, under its laws and in its courts; provided, however, that  
19 this concurrent jurisdiction shall (1) not take effect unless and  
20 until the State, the Tribe and the Office of the United States  
21 Attorney for the District of New Mexico shall have entered into a  
22 Memorandum of Understanding with respect to the manner in which  
23 State, federal and tribal law enforcement agencies shall cooperate  
24 in the detection of violations, apprehension and detention of any  
25 suspected violator and the investigation and prosecution of any

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1 charges brought by the State pursuant to this section and (2)  
2 continue so long as the Memorandum of Understanding remains in  
3 effect.

4 SECTION 11. Binding Effect and Duration.

5 A. This Compact shall be binding upon the State and Tribe  
6 for a term of fifteen (15) years from the date it becomes effective  
7 and will automatically renew for an additional five-year (5-year)  
8 period.

9 B. Before the date that is one (1) year prior to the  
10 expiration of the fifteen-year (15-year) initial term, and/or  
11 before the date that is one year prior to the expiration of the  
12 five-year (5-year) renewal period, either party may serve written  
13 notice on the other of its desire to renegotiate this Compact.

14 C. In the event that either party gives written notice to  
15 the other of its desire to renegotiate this Compact pursuant to  
16 Subsection (B) of this section, the Tribe may, pursuant to the  
17 procedures of the IGRA, request the State to enter into  
18 negotiations for a new compact governing the conduct of Class III  
19 Gaming. If the parties are unable to conclude a successor compact,  
20 this Compact shall remain in full force and effect in accordance  
21 with its terms pending exhaustion of the administrative and  
22 judicial remedies set forth in the IGRA and any other applicable  
23 federal law.

24 D. Notwithstanding the foregoing, at any time while this  
25 Compact remains in effect, either party may, by written notice to

1 the other party, request reopening of negotiations with respect to  
2 any provision of this Compact, or with respect to any issue not  
3 addressed in the Compact, specifying such provision or issue in  
4 such notice. No such request shall be unreasonably refused, but  
5 neither party shall be required to agree to any change in the  
6 Compact, and no agreement to supplement or amend this Compact in  
7 any respect shall have any validity until the same shall have been  
8 approved in writing by the Tribe, the State and the Secretary of  
9 the Interior and notice of such approval published in the Federal  
10 Register.

11 E. The Tribe may operate Class III Gaming only while this  
12 Compact or any renegotiated compact is in effect.

13 SECTION 12. Notice to Parties.

14 Unless otherwise indicated, all notices, payments, requests,  
15 reports, information or demand that any party hereto may desire or  
16 may be required to give to the other party hereto, shall be in  
17 writing and shall be personally delivered or sent by first-class  
18 mail sent to the other party at the address provided in writing by  
19 the other party. Every notice, payment, request, report,  
20 information or demand so given shall be deemed effective upon  
21 receipt or, if mailed, upon receipt or the expiration of the third  
22 day following the day of mailing, whichever occurs first, except  
23 that any notice of change of address shall be effective only upon  
24 receipt by the party to whom said notice is addressed.

25 SECTION 13. Entire Agreement.

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1           This Compact is the entire agreement between the parties and  
2           supersedes all prior agreements, whether written or oral, with  
3           respect to the subject matter hereof. Neither this Compact nor any  
4           provision herein may be changed, waived, discharged or terminated  
5           orally, but only by an instrument, in writing, signed by the Tribe  
6           and the State and approved by the Secretary of the Interior.

7           SECTION 14. Filing of Compact with State Records Center.

8           Upon the effective date of this Compact, a copy shall be  
9           filed by the Governor with the New Mexico Records Center. Any  
10          subsequent amendment or modification of this Compact shall be filed  
11          with the New Mexico Records Center.

12          SECTION 15. Counterparts.

13          This Compact may be executed by the parties in any number of  
14          separate counterparts with the same effect as if the signatures  
15          were upon the same instrument. All such counterparts shall  
16          together constitute one and the same document. "

17          Section 2. [NEW MATERIAL] REVENUE SHARING OF TRIBAL GAMING  
18          REVENUE. --The governor is authorized to execute a revenue-sharing  
19          agreement in the form substantially set forth in this section with  
20          any New Mexico Indian nation, tribe or pueblo that has also entered  
21          into an Indian gaming compact as provided by law. Execution of an  
22          Indian gaming compact is conditioned upon execution of a revenue-  
23          sharing agreement. The consideration for the Indian entity  
24          entering into the revenue-sharing agreement is the condition of the  
25          agreement providing limited exclusivity of gaming activities to the

1 tribal entity. The revenue-sharing agreement shall be in  
2 substantially the following form and is effective when executed by  
3 the governor on behalf of the state and the appropriate official of  
4 the Indian entity:

5 "REVENUE-SHARING AGREEMENT

6 1. Summary and consideration. The Tribe shall agree to  
7 contribute certain of its Class III Gaming revenues, as described  
8 below.

9 2. Revenue to State. The parties agree that, after the  
10 effective date hereof, the Tribe shall make semi-annual payments to  
11 the General Fund of the State ("State General Fund").

12 3. Calculation of Revenue to State.

13 A. The parties agree that, as used herein, "net win" is  
14 defined as the total amount wagered at each Gaming Facility on  
15 Class III Gaming, which is protected by the limitations in  
16 Paragraph 5, below, and elsewhere herein, minus the total amount  
17 paid as prizes (including noncash prizes) and winning wagers at  
18 said games, and minus all tribal regulatory fees and expenses,  
19 supported by reasonable, adequate documentation, not to exceed Two  
20 Hundred Fifty Thousand Dollars (\$250,000) per year and minus  
21 federal and State regulatory fees and expenses, and taxes.

22 B. The tribe shall pay the state fifteen percent of the  
23 net win of each Gaming Facility.

24 C. For purposes of these payments, all calculations of  
25 amounts due shall be based upon a calendar year beginning January 1

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1 and ending December 31, unless the parties agree on a different  
2 fiscal year. The semi annual payments due to the State pursuant to  
3 these terms shall be paid no later than twenty-five (25) days after  
4 December 31 and June 30 of each year (or commensurate dates if the  
5 fiscal year agreed upon is different from the calendar year). Any  
6 payments due and owing from the Tribe in the year the Compact is  
7 approved, or the final year the Compact is in force, shall reflect  
8 the net win, but only for the portion of the year the Compact is in  
9 effect.

10 4. Limitations. The Tribe's obligation to make the payments  
11 provided for in Paragraphs 2 and 3 of this section shall apply and  
12 continue only so long as there is a binding Indian Gaming Compact  
13 in effect between the Tribe and the State, which Compact provides  
14 for the play of Class III Gaming, but shall terminate in the event  
15 of any of the following conditions:

16 A. If the State passes, amends, or repeals any law, or  
17 takes any other action, which would directly or indirectly attempt  
18 to restrict, or has the effect of restricting, the scope of Indian  
19 gami ng.

20 B. If the State permits any expansion of nontribal Class  
21 III Gaming in the State. Notwithstanding this general prohibition  
22 against permitted expansion of gaming activities, the State may  
23 permit: (1) the enactment of a State lottery, (2) any fraternal,  
24 veterans or other nonprofit membership organization to operate such  
25 electronic gaming devices lawfully, but only for the benefit of

1 such organization's members, (3) limited fundraising activities  
2 conducted by nonprofit tax exempt organizations pursuant to Section  
3 30-19-6 NMSA 1978, and (4) any horse racetracks to operate  
4 electronic gaming devices on days on which live or simulcast horse  
5 racing occurs.

6 5. Effect of Variance.

7 A. In the event the acts or omissions of the State cause  
8 the Tribe's obligation to make payments under Paragraph 3 of this  
9 section to terminate under the provisions of Paragraph 4 of this  
10 section, such cessation of obligation to pay will not adversely  
11 affect the validity of the Compact, but the maximum amount that the  
12 Tribe agrees to reimburse the State for actual documented  
13 regulatory costs under the Compact shall automatically increase to  
14 one hundred thousand dollars (\$100,000) per year.

15 B. In the event a Tribe's revenue-sharing payment to the  
16 State is less than one hundred thousand dollars (\$100,000) per  
17 year, the maximum amount that the Tribe agrees to reimburse the  
18 State for actual documented regulatory costs under the Compact  
19 shall automatically increase to one hundred thousand dollars  
20 (\$100,000) per year less the amount of the revenue-sharing payment.

21 6. Third-Party Beneficiaries. This Agreement is not  
22 intended to create any third-party beneficiaries and is entered  
23 into solely for the benefit of the Tribe and the State."

24 Section 3. [NEW MATERIAL] SHORT TITLE. -- Sections 3 through  
25 63 of this act may be cited as the "Gaming Control Act".



1           Section 4.   ~~[NEW MATERIAL]~~   POLICY.--It is the state's policy  
2 on gaming that:

3           A.   limited gaming activities should be allowed in the  
4 state if those activities are strictly regulated to ensure honest  
5 and competitive gaming that is free from criminal and corruptive  
6 elements and influences; and

7           B.   the holder of any license issued by the state in  
8 connection with the regulation of gaming activities has a revocable  
9 privilege only and has no property right or vested interest in the  
10 license.

11           Section 5.   ~~[NEW MATERIAL]~~   DEFINITIONS.--As used in the  
12 Gaming Control Act:

13           A.   "affiliate" means a person who, directly or  
14 indirectly through one or more intermediaries, controls, is  
15 controlled by or is under common control with a specified person;

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

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

19                   (2) is involved in gaming activities or involved in  
20 the ownership of property on which gaming is conducted;

21           C.   "applicant" means a person who has applied for a  
22 license or for approval of an act or transaction for which approval  
23 is required or allowed pursuant to the provisions of the Gaming  
24 Control Act;

25           D.   "application" means a request for the issuance of a

1 license or for approval of an act or transaction for which approval  
2 is required or allowed pursuant to the provisions of the Gaming  
3 Control Act, but "application" does not include a supplemental form  
4 or information that may be required with the application;

5 E. "associated equipment" means equipment or a  
6 mechanical, electromechanical or electronic contrivance, component  
7 or machine used in connection with gaming;

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

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

11 H. "company" means a corporation, partnership, limited  
12 partnership, trust, association, joint stock company, joint  
13 venture, limited liability company or other form of business  
14 organization that is not a natural person;

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

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

20 (1) voting stock or similar security;

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

25 (3) a warrant or right to subscribe to or purchase

1 voting stock or similar security; or

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

4 K. "executive director" means the chief administrative  
5 officer appointed by the board pursuant to Section 7 of the Gaming  
6 Control Act;

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

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

17 N. "gaming" means offering a game for play;

18 O. "gaming activity" means any endeavor associated with  
19 the manufacture or distribution of gaming devices or the conduct of  
20 gaming;

21 P. "gaming device" means associated equipment or a  
22 gaming machine and includes a system for processing information  
23 that can alter the normal criteria of random selection that affects  
24 the operation of a game or determines the outcome of a game;

25 "gaming device" does not include a system or device that affects a

1 game solely by stopping its operation so that the outcome remains  
 2 undetermined;

3 Q. "gaming employee" means a person connected directly  
 4 with a gaming activity; "gaming employee" does not include:

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

7 (2) secretarial or janitorial personnel;

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

9 (4) other nongaming personnel;

10 R. "gaming establishment" means the premises on or in  
 11 which gaming is conducted;

12 S. "gaming machine" means a mechanical,  
 13 electromechanical or electronic contrivance or machine that, upon  
 14 insertion of a coin, token or similar object, or upon payment of  
 15 any consideration, is available to play or operate a game, whether  
 16 the payoff is made automatically from the machine or in any other  
 17 manner;

18 T. "gaming operator" means a person who conducts  
 19 gaming;

20 U. "holding company" means a company that directly or  
 21 indirectly owns or has the power or right to control a company that  
 22 is an applicant or licensee, but a company that does not have a  
 23 beneficial ownership of more than ten percent of the equity  
 24 securities of a publicly traded corporation is not a holding  
 25 company;

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1           V. "immediate family" means natural persons who are  
2 related to a specified natural person by affinity or consanguinity  
3 in the first through the third degree;

4           W. "institutional investor" means a state or federal  
5 government pension plan or a person that meets the requirements of  
6 a qualified institutional buyer as defined in Rule 144A of the  
7 federal Securities Act of 1933, and is:

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

10                   (2) an insurance company as defined in Section  
11 2(a)(17) of the federal Investment Company Act of 1940;

12                   (3) an investment company registered under Section  
13 8 of the federal Investment Company Act of 1940;

14                   (4) an investment adviser registered under Section  
15 203 of the federal Investment Advisers Act of 1940;

16                   (5) collective trust funds as defined in Section  
17 3(c)(11) of the federal Investment Company Act of 1940;

18                   (6) an employee benefit plan or pension fund that  
19 is subject to the federal Employee Retirement Income Security Act  
20 of 1974, excluding an employee benefit plan or pension fund  
21 sponsored by a publicly traded corporation registered with the  
22 board; or

23                   (7) a group comprised entirely of persons specified  
24 in Paragraphs (1) through (6) of this subsection;

25           X. "intermediary company" means a company that:

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

3                   (2) is a subsidiary with respect to any holding  
4 company;

5                   Y. "key executive" means an executive of a licensee  
6 having the power to exercise significant influence over decisions  
7 concerning any part of the licensed operations of the licensee or  
8 whose compensation exceeds an amount established by the board in a  
9 regulation;

10                  Z. "license" means an authorization required by the  
11 board for engaging in gaming activities;

12                  AA. "licensee" means a person to whom a valid license  
13 has been issued;

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

19                  CC. "net take" means the total of the following, less  
20 the total of all cash paid out as losses to winning patrons and  
21 those amounts paid to purchase annuities to fund losses paid to  
22 winning patrons over several years by independent administrators:

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

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

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

3 DD. "nonprofit organization" means an organization  
4 that:

5 (1) is described in Section 501(c)(8), (10), (19)  
6 or (23) of the federal Internal Revenue Code of 1986 and that is  
7 exempt from federal income taxation pursuant to Section 501(a) of  
8 that code;

9 (2) has been issued a license pursuant to Section  
10 60-6A-5 NMSA 1978 but does not have gaming as its primary activity;  
11 and

12 (3) has been in continuous existence at the same  
13 location since before January 1, 1987;

14 EE. "person" means a legal entity;

15 FF. "premises" means land, together with all buildings,  
16 improvements and personal property located on the land;

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

21 HH. "progressive system" means one or more gaming  
22 machines linked to one or more common progressive jackpots;

23 II. "publicly traded corporation" means a corporation  
24 that:

25 (1) has one or more classes of securities

1 registered pursuant to the securities laws of the United States or  
2 New Mexico;

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

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

10 JJ. "registration" means a board action that authorizes  
11 a company to be a holding company with respect to a company that  
12 holds or applies for a license or that relates to other persons  
13 required to be registered pursuant to the Gaming Control Act;

14 KK. "subsidiary" means a company, all or a part of  
15 whose outstanding equity securities are owned, subject to a power  
16 or right of control or held, with power to vote, by a holding  
17 company or intermediary company; and

18 LL. "work permit" means a card, certificate or permit  
19 issued by the board, whether denominated as a work permit,  
20 registration card or otherwise, authorizing the employment of the  
21 holder as a gaming employee.

22 Section 6. [NEW MATERIAL] LIMITED GAMING ACTIVITY  
23 PERMITTED. --Gaming activity is permitted in New Mexico only if it  
24 is conducted in compliance with and pursuant to:

25 A. the Gaming Control Act; or

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1           B. a state or federal law other than the Gaming Control  
2 Act that expressly permits the activity or exempts it from the  
3 application of the state criminal law, or both.

4           Section 7. [NEW MATERIAL] GAMING CONTROL BOARD CREATED. --

5           A. The "gaming control board" is created and consists  
6 of five members appointed by the governor with the advice and  
7 consent of the senate. All members of the board shall be  
8 residents of New Mexico and citizens of the United States. At  
9 least one member of the board shall have a minimum of five years  
10 of previous employment in a supervisory and administrative  
11 position in a law enforcement agency; at least one member of the  
12 board shall be a certified public accountant in New Mexico who  
13 has had at least five years of experience in public accountancy;  
14 at least one member of the board shall be an attorney who has  
15 been admitted to practice before the supreme court of New Mexico;  
16 and at least one member of the board shall have at least five  
17 years of previous employment in a top-level supervisory and  
18 administrative position in a governmental gaming regulatory  
19 agency.

20           B. The members of the board shall be appointed for  
21 terms of five years, except, of the members who are first  
22 appointed, one member with law enforcement experience and one  
23 member who is a certified public accountant shall be appointed  
24 for terms of five years; one member who is an attorney and one  
25 member who has gaming regulatory experience shall be appointed

1 for terms of four years; and the fifth member shall be appointed  
2 for a term of three years. Thereafter, all members shall be  
3 appointed for terms of five years. No person shall serve as a  
4 board member for more than two consecutive terms or ten years  
5 total.

6 C. No person appointed to the board may be employed  
7 in any other capacity or shall in any manner receive compensation  
8 for services rendered to any person or entity other than the  
9 board while a member of the board.

10 D. A vacancy on the board shall be filled within  
11 thirty days by the governor with the advice and consent of the  
12 senate for the unexpired portion of the term in which the vacancy  
13 occurs. A person appointed to fill a vacancy shall meet all  
14 qualification requirements of the office established in this  
15 section.

16 E. The governor shall choose a chairman annually from  
17 the board's membership.

18 F. No more than three members of the board shall be  
19 from the same political party.

20 G. The members of the board shall be full-time state  
21 officials and shall receive a salary set by the governor.

22 H. The department of public safety shall conduct  
23 background investigations of all members of the board prior to  
24 confirmation by the senate. To assist the department in the  
25 background investigation, a prospective board member shall

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1 furnish a disclosure statement to the department on a form  
2 provided by the department containing that information deemed by  
3 the department as necessary for completion of a detailed and  
4 thorough background investigation. The required information  
5 shall include at least:

6 (1) a full set of fingerprints made by a law  
7 enforcement agency on forms supplied by the department;

8 (2) complete information and details with  
9 respect to the prospective board member's antecedents, habits,  
10 immediate family, character, criminal record, business  
11 activities, financial affairs and business associates covering at  
12 least a ten-year period immediately preceding the date of  
13 submitting the disclosure statement;

14 (3) complete disclosure of any equity interest  
15 held by the prospective board member or a member of his immediate  
16 family in a business connected with gaming; and

17 (4) the names and addresses of members of the  
18 immediate family of the prospective board member.

19 I. No person may be appointed or confirmed as a  
20 member of the board if that person or member of his immediate  
21 family holds an equity interest in a business connected with  
22 gaming.

23 J. A prospective board member shall provide  
24 assistance and information requested by the department of public  
25 safety or the governor and shall cooperate in any inquiry or

1 investigation of the prospective board member's fitness or  
2 qualifications to hold the office to which he is appointed. The  
3 senate shall not confirm a prospective board member if it has  
4 reasonable cause to believe that the prospective board member  
5 has:

6 (1) knowingly misrepresented or omitted a  
7 material fact required in a disclosure statement;

8 (2) been convicted of a felony, a gaming related  
9 offense or a crime involving fraud, theft or moral turpitude  
10 within ten years immediately preceding the date of submitting a  
11 disclosure statement required pursuant to the provisions of  
12 Subsection H of this section;

13 (3) exhibited a history of willful disregard for  
14 the gaming laws of this or any other state or the United States;  
15 or

16 (4) had a permit or license issued pursuant to  
17 the gaming laws of this or any other state or the United States  
18 permanently suspended or revoked for cause.

19 K. The senate may in its discretion not confirm a  
20 prospective board member.

21 L. At the time of taking office, each board member  
22 shall file with the secretary of state a sworn statement that he  
23 is not disqualified under the provisions of Subsection I of this  
24 section.

25 Section 8. [NEW MATERIAL] BOARD- - MEETINGS- - QUORUM- -

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[bracketed material] = delete

1 RECORDS. --

2 A. A majority of the qualified membership of the  
3 board then in office constitutes a quorum. No action may be  
4 taken by the board unless at least three members concur.

5 B. Written notice of the time and place of each board  
6 meeting shall be given to each member of the board at least ten  
7 days prior to the meeting.

8 C. Meetings of the board shall be open and public in  
9 accordance with the Open Meetings Act, except that the board may  
10 close a meeting to hear confidential security and investigative  
11 information and other information made confidential by the  
12 provisions of the Gaming Control Act.

13 D. All proceedings of the board shall be recorded by  
14 audiotape or other equivalent verbatim audio recording device.

15 E. The chairman of the board, the executive director  
16 or a majority of the members of the board then in office may call  
17 a special meeting of the board upon at least five days' prior  
18 written notice to all members of the board and the executive  
19 director.

20 Section 9. [NEW MATERIAL] BOARD' S POWERS AND DUTIES. --

21 A. The board shall implement the state's policy on  
22 gaming consistent with the provisions of the Gaming Control Act.  
23 It has the duty to fulfill all responsibilities assigned to it  
24 pursuant to that act, and it has all authority necessary to carry  
25 out those responsibilities. It may delegate authority to the

1 executive director, but it retains accountability. The board is  
2 an adjunct agency.

3 B. The board shall:

4 (1) employ the executive director;

5 (2) make the final decision on issuance, denial,  
6 suspension and revocation of all licenses pursuant to and  
7 consistent with the provisions of the Gaming Control Act;

8 (3) develop, adopt and promulgate all  
9 regulations necessary to implement and administer the provisions  
10 of the Gaming Control Act;

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

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

16 (6) prepare and submit an annual report in  
17 December of each year to the governor and the legislature,  
18 covering activities of the board in the most recently completed  
19 fiscal year, a summary of gaming activities in the state and any  
20 recommended changes in or additions to the laws relating to  
21 gaming in the state.

22 C. The board may:

23 (1) impose civil fines not to exceed twenty-five  
24 thousand dollars (\$25,000) for the first violation and fifty  
25 thousand dollars (\$50,000) for subsequent violations of any

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1 prohibitory provision of the Gaming Control Act or any  
2 prohibitory provision of a regulation adopted pursuant to that  
3 act;

4 (2) conduct investigations;

5 (3) subpoena persons and documents to compel  
6 access to or the production of documents and records, including  
7 books and memoranda, in the custody or control of any licensee;

8 (4) compel the appearance of employees of a  
9 licensee or persons for the purpose of ascertaining compliance  
10 with provisions of the Gaming Control Act or a regulation adopted  
11 pursuant to its provisions;

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

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

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

20 (8) conduct audits of applicants, licensees and  
21 persons affiliated with licensees;

22 (9) inspect, examine, photocopy and audit all  
23 documents and records of an applicant or licensee relevant to his  
24 gaming activities in the presence of the applicant or licensee or  
25 his agent;

1 (10) require verification of income and all  
2 other matters pertinent to the gaming activities of an applicant  
3 or licensee affecting the enforcement of any provision of the  
4 Gaming Control Act;

5 (11) inspect all places where gaming activities  
6 are conducted and inspect all property connected with gaming in  
7 those places;

8 (12) summarily seize, remove and impound from  
9 places inspected any gaming devices, property connected with  
10 gaming, documents or records for the purpose of examination or  
11 inspection;

12 (13) inspect, examine, photocopy and audit all  
13 documents and records of any affiliate of an applicant or  
14 licensee who the board knows or reasonably suspects is involved  
15 in the financing, operation or management of the applicant or  
16 licensee. The inspection, examination, photocopying and audit  
17 shall be in the presence of a representative of the affiliate or  
18 its agent when practicable; and

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

23 Section 10. [NEW MATERIAL] BOARD REGULATIONS--  
24 DISCRETIONARY REGULATIONS-- PROCEDURE-- REQUIRED PROVISIONS. --

25 A. The board may adopt any regulation:

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1 (1) consistent with the provisions of the Gaming  
2 Control Act; and

3 (2) it decides is necessary to implement the  
4 provisions of the Gaming Control Act.

5 B. No regulation shall be adopted, amended or  
6 repealed without a public hearing on the proposed action before  
7 the board or a hearing officer designated by it. The public  
8 hearing shall be held in Santa Fe. Notice of the subject matter  
9 of the regulation, the action proposed to be taken, the time and  
10 place of the hearing, the manner in which interested persons may  
11 present their views and the method by which copies of the  
12 proposed regulation, amendment or repeal may be obtained shall be  
13 published once at least thirty days prior to the hearing date in  
14 a newspaper of general circulation and mailed at least thirty  
15 days prior to the hearing date to all persons who have made a  
16 written request for advance notice of hearing. All regulations  
17 and actions taken on regulations shall be filed in accordance  
18 with the State Rules Act.

19 C. The board shall adopt regulations:

20 (1) prescribing the method and form of  
21 application to be followed by an applicant;

22 (2) prescribing the information to be furnished  
23 by an applicant or licensee concerning his antecedents, immediate  
24 family, habits, character, associates, criminal record, business  
25 activities and financial affairs, past or present;

1 (3) prescribing the manner and procedure of all  
 2 hearings conducted by the board or a hearing officer;

3 (4) prescribing the manner and method of  
 4 collection and payment of fees;

5 (5) prescribing the manner and method of the  
 6 issuance of licenses, permits, registrations, certificates and  
 7 other actions of the board not elsewhere prescribed in the Gaming  
 8 Control Act;

9 (6) defining the area, games and gaming devices  
 10 allowed and the methods of operation of the games and gaming  
 11 devices for authorized gaming;

12 (7) prescribing under what conditions the  
 13 nonpayment of winnings is grounds for suspension or revocation of  
 14 a license of a gaming operator;

15 (8) governing the manufacture, sale,  
 16 distribution, repair and servicing of gaming devices;

17 (9) prescribing accounting procedures, security,  
 18 collection and verification procedures required of licensees and  
 19 matters regarding financial responsibility of licensees;

20 (10) prescribing what shall be considered to be  
 21 an unsuitable method of operating gaming activities;

22 (11) restricting access to confidential  
 23 information obtained pursuant to the provisions of the Gaming  
 24 Control Act and ensuring that the confidentiality of that  
 25 information is maintained and protected;

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1                   (12) prescribing financial reporting and  
2 internal control requirements for licensees;

3                   (13) prescribing the manner in which winnings,  
4 compensation from gaming activities and net take shall be  
5 computed and reported by a gaming operator licensee;

6                   (14) prescribing the frequency of and the  
7 matters to be contained in audits of and periodic financial  
8 reports from a gaming operator licensee consistent with standards  
9 prescribed by the board;

10                  (15) prescribing the procedures to be followed  
11 by a gaming operator licensee for the exclusion of persons from  
12 gaming establishments;

13                  (16) establishing criteria and conditions for  
14 the operation of progressive systems;

15                  (17) establishing criteria and conditions for  
16 approval of procurement by the board of personal property valued  
17 in excess of twenty thousand dollars (\$20,000), including  
18 background investigation requirements for a person submitting a  
19 bid or proposal; and

20                  (18) establishing an applicant fee schedule for  
21 processing applications that is based on costs of the application  
22 review incurred by the board whether directly or through payment  
23 by the board for costs charged for investigations of applicants  
24 by state departments and agencies other than the board, which  
25 regulation shall set a maximum fee of one hundred thousand

1 dollars (\$100,000).

2 Section 11. [NEW MATERIAL] EXECUTIVE DIRECTOR--  
3 EMPLOYMENT-- QUALIFICATIONS. --

4 A. The executive director shall be employed by,  
5 report directly to and serve at the pleasure of the board.

6 B. The executive director shall have had at least  
7 five years of responsible supervisory administrative experience  
8 in a governmental gaming regulatory agency.

9 Section 12. [NEW MATERIAL] EXECUTIVE DIRECTOR-- POWERS--  
10 DUTIES. --

11 A. The executive director shall implement the  
12 policies of the board.

13 B. The executive director shall employ all personnel  
14 who work for the board. The employees shall be covered employees  
15 pursuant to the provisions of the Personnel Act. Among those  
16 personnel he shall employ and designate an appropriate number of  
17 individuals as law enforcement officers subject to proper  
18 certification pursuant to the Law Enforcement Training Act.

19 C. The executive director shall establish  
20 organizational units he determines are appropriate to administer  
21 the provisions of the Gaming Control Act.

22 D. The executive director:

23 (1) may delegate authority to subordinates as he  
24 deems necessary and appropriate, clearly delineating the  
25 delegated authority and the limitations on it, if any;

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1           (2) shall take administrative action by issuing  
2 orders and instructions consistent with the Gaming Control Act  
3 and regulations of the board to assure implementation of and  
4 compliance with the provisions of that act and those regulations;

5           (3) may conduct research and studies that will  
6 improve the operations of the board and the provision of services  
7 to the citizens of the state;

8           (4) may provide courses of instruction and  
9 practical training for employees of the board and other persons  
10 involved in the activities regulated by the board with the  
11 objectives of improving operations of the board and achieving  
12 compliance with the law and regulations;

13           (5) shall prepare an annual budget for the board  
14 and submit it to the board for approval; and

15           (6) shall make recommendations to the board of  
16 proposed regulations and any legislative changes needed to  
17 provide better administration of the Gaming Control Act and fair  
18 and efficient regulation of gaming activities in the state.

19           Section 13. [NEW MATERIAL] INVESTIGATION OF EXECUTIVE  
20 DIRECTOR CANDIDATES AND EMPLOYEES. --

21           A. A person who is under consideration in the final  
22 selection process for appointment as the executive director shall  
23 file a disclosure statement pursuant to the requirements of this  
24 section, and the board shall not make an appointment of a person  
25 as executive director until a background investigation is

1 completed by the department of public safety and a report is made  
2 to the board.

3 B. A person who has reached the final selection  
4 process for employment by the executive director shall file a  
5 disclosure statement pursuant to the requirements of this section  
6 if the executive director or the board has directed the person do  
7 so. The person shall not be further considered for employment  
8 until a background investigation is completed by the department  
9 of public safety and a report is made to the executive director.

10 C. Forms for the disclosure statements required by  
11 this section shall be developed by the board in cooperation with  
12 the department of public safety. At least the following  
13 information shall be required of a person submitting a statement:

14 (1) a full set of fingerprints made by a law  
15 enforcement agency on forms supplied by the board;

16 (2) complete information and details with  
17 respect to the person's antecedents, habits, immediate family,  
18 character, criminal record, business activities and business  
19 associates, covering at least a ten-year period immediately  
20 preceding the date of submitting the disclosure statement; and

21 (3) a complete description of any equity  
22 interest held in a business connected with the gaming industry.

23 D. In preparing an investigative report, the  
24 department of public safety may request and receive criminal  
25 history information from the federal bureau of investigation or

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1 any other law enforcement agency or organization. The department  
2 of public safety shall maintain confidentiality regarding  
3 information received from a law enforcement agency that may be  
4 imposed by the agency as a condition for providing the  
5 information to the department.

6 E. A person required to file a disclosure statement  
7 shall provide any assistance or information requested by the  
8 department of public safety or the board and shall cooperate in  
9 any inquiry or investigation.

10 F. If information required to be included in a  
11 disclosure statement changes or if information is added after  
12 the statement is filed, the person required to file it shall  
13 provide that information in writing to the person requesting the  
14 investigation. The supplemental information shall be provided  
15 within thirty days after the change or addition.

16 G. The board shall not appoint a person as executive  
17 director, and the executive director shall not employ a person,  
18 if the board or the executive director has reasonable cause to  
19 believe that the person has:

20 (1) knowingly misrepresented or omitted a  
21 material fact required in a disclosure statement;

22 (2) been convicted of a felony, a gaming related  
23 offense or a crime involving fraud, theft or moral turpitude  
24 within ten years immediately preceding the date of submitting a  
25 disclosure statement required pursuant to this section;

1 (3) exhibited a history of willful disregard for  
 2 the gaming laws of this or any other state or the United States;  
 3 or

4 (4) had a permit or license issued pursuant to  
 5 the gaming laws of this or any other state or the United States  
 6 permanently suspended or revoked for cause.

7 H. Both the board and the executive director may  
 8 exercise absolute discretion in exercising their respective  
 9 appointing and employing powers.

10 Section 14. [NEW MATERIAL] CONFLICTS OF INTEREST-- BOARD--  
 11 EXECUTIVE DIRECTOR. --

12 A. In addition to all other provisions of New Mexico  
 13 law regarding conflicts of interest of state officials and  
 14 employees, a member of the board, the executive director, or a  
 15 person in the immediate family of or residing in the household of  
 16 any of the foregoing persons, shall not

17 (1) directly or indirectly, as a proprietor or  
 18 as a member, stockholder, director or officer of a company, have  
 19 an interest in a business engaged in gaming activities in this or  
 20 another jurisdiction; or

21 (2) accept or agree to accept any economic  
 22 opportunity, gift, loan, gratuity, special discount, favor,  
 23 hospitality or service having an aggregate value of one hundred  
 24 dollars (\$100) or more in any calendar year from a licensee or  
 25 applicant.

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1           B. If a member of the board, the executive director  
2 or a person in the immediate family of or residing in the  
3 household of a member of the board or the executive director  
4 violates a provision of this section, the member of the board or  
5 executive director shall be removed from office. A board member  
6 shall be removed by the governor, and the executive director  
7 shall be removed from his position by the board.

8           Section 15. [NEW MATERIAL] ACTIVITIES REQUIRING  
9 LICENSING. --

10           A. A person shall not conduct gaming unless he is  
11 licensed as a gaming operator.

12           B. A person shall not sell, supply or distribute any  
13 gaming device or associated equipment for use or play in this  
14 state or for use or play outside of this state from a location  
15 within this state unless he is licensed as a distributor or  
16 manufacturer, but a gaming operator licensee may sell or trade in  
17 a gaming device or associated equipment to a gaming operator  
18 licensee, distributor licensee or manufacturer licensee.

19           C. A person shall not manufacture, fabricate,  
20 assemble, program or make modifications to a gaming device or  
21 associated equipment for use or play in this state or for use or  
22 play outside of this state from any location within this state  
23 unless he is a manufacturer licensee. A manufacturer licensee  
24 may sell, supply or distribute only the gaming devices or  
25 associated equipment that he manufactures, fabricates, assembles,

1 programs or modifies.

2 D. A gaming operator licensee or a person other than  
3 a manufacturer licensee or distributor licensee shall not possess  
4 or control a place where there is an unlicensed gaming machine.  
5 Any unlicensed gaming machine, except one in the possession of a  
6 licensee while awaiting transfer to a gaming operator licensee  
7 for licensure of the machine, is subject to forfeiture and  
8 confiscation by any law enforcement agency or peace officer.

9 E. A person shall not service or repair a gaming  
10 device or associated equipment unless he is licensed as a  
11 manufacturer or employed by a manufacturer licensee.

12 F. A person shall not engage in any activity for  
13 which the board requires a license or permit without obtaining  
14 the license or permit.

15 G. Except as provided in Subsection B of this  
16 section, a person shall not purchase, lease or acquire possession  
17 of a gaming device or associated equipment except from a licensed  
18 distributor or manufacturer.

19 H. A distributor licensee may receive a percentage of  
20 the amount wagered, the net take or other measure related to the  
21 operation of a gaming machine as a payment pursuant to a lease or  
22 other arrangement for furnishing a gaming machine, but the board  
23 shall adopt a regulation setting the maximum allowable  
24 percentage.

25 Section 16. [NEW MATERIAL] LICENSURE- - APPLI CATION. - -

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1           A. The board shall establish and issue the following  
2 categories of licenses:

- 3                   (1) manufacturer;
- 4                   (2) distributor;
- 5                   (3) gaming operator; and
- 6                   (4) gaming machine.

7           B. The board shall issue certifications of findings  
8 of suitability for key executives and other persons for whom  
9 certification is required.

10          C. The board shall issue work permits for gaming  
11 employees.

12          D. A licensee shall not be issued more than one type  
13 of license, but this provision does not prohibit a licensee from  
14 owning, leasing, acquiring or having in his possession licensed  
15 gaming machines if that activity is otherwise allowed by the  
16 provisions of the Gaming Control Act. A licensee shall not own a  
17 majority interest in, manage or otherwise control a holder of  
18 another type of license issued pursuant to the provisions of that  
19 act.

20          E. Applicants shall apply on forms provided by the  
21 board and furnish all information requested by the board.  
22 Submission of an application constitutes consent to a credit  
23 check of the applicant and all persons having a substantial  
24 interest in the applicant and any other background investigations  
25 required pursuant to the Gaming Control Act or deemed necessary

1 by the board.

2 F. All licenses issued by the board pursuant to the  
 3 provisions of this section shall be reviewed for renewal annually  
 4 unless revoked, suspended, canceled or terminated.

5 G. A license shall not be transferred or assigned.

6 H. The application for a license shall include:

7 (1) the name of the applicant;

8 (2) the location of the proposed operation;

9 (3) the gaming devices to be operated,  
 10 manufactured, distributed or serviced;

11 (4) the names of all persons having a direct or  
 12 indirect interest in the business of the applicant and the nature  
 13 of such interest; and

14 (5) such other information and details as the  
 15 board may require.

16 I. The board shall furnish to the applicant  
 17 supplemental forms that the applicant shall complete and file  
 18 with the application. Such supplemental forms shall require  
 19 complete information and details with respect to the applicant's  
 20 antecedents, habits, immediate family, character, criminal  
 21 record, business activities, financial affairs and business  
 22 associates, covering at least a ten-year period immediately  
 23 preceding the date of filing of the application.

24 Section 17. [NEW MATERIAL] LICENSE, CERTIFICATION AND  
 25 WORK PERMIT FEES. --

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1           A. License and other fees shall be established by  
2 board regulation but shall not exceed the following amounts:

3                   (1) manufacturer's license, twenty thousand  
4 dollars (\$20,000) for the initial license and five thousand  
5 dollars (\$5,000) for annual renewal;

6                   (2) distributor's license, ten thousand dollars  
7 (\$10,000) for the initial license and one thousand dollars  
8 (\$1,000) for annual renewal;

9                   (3) gaming operator's license for a racetrack,  
10 fifty thousand dollars (\$50,000) for the initial license and ten  
11 thousand dollars (\$10,000) for annual renewal;

12                   (4) gaming operator's license for a nonprofit  
13 organization, one thousand dollars (\$1,000) for the initial  
14 license and two hundred dollars (\$200) for annual renewal;

15                   (5) for each separate gaming machine licensed to  
16 a person holding an operator's license, five hundred dollars  
17 (\$500) for the initial license and one hundred dollars (\$100) for  
18 annual renewal; and

19                   (6) work permit, one hundred dollars (\$100)  
20 annually.

21           B. The board shall establish the fee for  
22 certifications or other actions by regulation, but no fee  
23 established by the board shall exceed one thousand dollars  
24 (\$1,000), except for fees established pursuant to Paragraph (18)  
25 of Subsection C of Section 8 of the Gaming Control Act.

1           C. All license, certification or work permit fees  
2 shall be paid to the board at the time and in the manner  
3 established by regulations of the board.

4           Section 18. [NEW MATERIAL] ACTION BY BOARD ON  
5 APPLICATIONS. --

6           A. A person that the board determines is qualified to  
7 receive a license pursuant to the provisions of the Gaming  
8 Control Act may be issued a license. The burden of proving  
9 qualifications is on the applicant.

10          B. A license shall not be issued unless the board is  
11 satisfied that the applicant is:

12                 (1) a person of good moral character, honesty  
13 and integrity;

14                 (2) a person whose prior activities, criminal  
15 record, reputation, habits and associations do not pose a threat  
16 to the public interest or to the effective regulation and control  
17 of gaming or create or enhance the dangers of unsuitable, unfair  
18 or illegal practices, methods and activities in the conduct of  
19 gaming or the carrying on of the business and financial  
20 arrangements incidental thereto; and

21                 (3) in all other respects qualified to be  
22 licensed consistent with the laws of this state.

23          C. A license shall not be issued unless the applicant  
24 has satisfied the board that:

25                 (1) the applicant has adequate business probity,

1 competence and experience in business and gaming;

2 (2) the proposed financing of the applicant is  
3 adequate for the nature of the proposed license and from a  
4 suitable source; any lender or other source of money or credit  
5 that the board finds does not meet the standards set forth in  
6 Subsection B of this section shall be deemed unsuitable; and

7 (3) the applicant is sufficiently capitalized  
8 under standards set by the board to conduct the business covered  
9 by the license.

10 D. An application to receive a license, certification  
11 or work permit constitutes a request for a determination of the  
12 applicant's general moral character, integrity and ability to  
13 participate or engage in or be associated with gaming. Any  
14 written or oral statement made in the course of an official  
15 proceeding of the board or by a witness testifying under oath  
16 that is relevant to the purpose of the proceeding is absolutely  
17 privileged and does not impose liability for defamation or  
18 constitute a ground for recovery in any civil action.

19 E. The board shall not issue a license or  
20 certification to an applicant who has been denied a license or  
21 certification in this state or another state, who has had a  
22 certification, permit or license issued pursuant to the gaming  
23 laws of a state or the United States permanently suspended or  
24 revoked for cause or who is currently under suspension or subject  
25 to any other limiting action in this state or another state

1 involving gaming activities or licensure for gaming activities.

2 F. The board shall investigate the qualifications of  
3 each applicant before a license, certification or work permit is  
4 issued by the board and shall continue to observe and monitor the  
5 conduct of all licensees, work permit holders, persons certified  
6 as being suitable and the persons having a material involvement  
7 directly or indirectly with a licensee.

8 G. The board has the authority to deny an application  
9 or limit, condition, restrict, revoke or suspend a license,  
10 certification or permit for any cause.

11 H. After issuance, a license, certification or permit  
12 shall continue in effect upon proper payment of the initial and  
13 renewal fees, subject to the power of the board to revoke,  
14 suspend, condition or limit licenses, certifications and permits.

15 I. The board has full and absolute power and  
16 authority to deny an application for any cause it deems  
17 reasonable. If an application is denied, the board shall prepare  
18 and file its written decision on which its order denying the  
19 application is based.

20 Section 19. [NEW MATERIAL] INVESTIGATION FOR LICENSES,  
21 CERTIFICATIONS AND PERMITS. --The board shall conduct an  
22 investigation of the applicant within thirty days after an  
23 application is filed and supplemental information that the board  
24 may require is received.

25 Section 20. [NEW MATERIAL] ELIGIBILITY REQUIREMENTS FOR

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1 COMPANIES. --In order to be eligible to receive a license, a  
2 company shall:

3 A. be incorporated or otherwise organized and in good  
4 standing in this state or incorporated or otherwise organized in  
5 another state, qualified to do business in this state and in good  
6 standing in this state and in the state of incorporation;

7 B. comply with all of the requirements of the laws of  
8 this state pertaining to the company;

9 C. maintain a ledger in the principal office of the  
10 company in this state, which shall:

11 (1) at all times reflect the ownership according  
12 to company records of every class of security issued by the  
13 company; and

14 (2) be available for inspection by the board at  
15 all reasonable times without notice; and

16 D. file notice of all changes of ownership of all  
17 classes of securities issued by the company with the board within  
18 thirty days of the change.

19 Section 21. [NEW MATERIAL] REGISTRATION WITH BOARD BY  
20 COMPANY APPLICANTS--REQUIRED INFORMATION. --A company applicant  
21 shall provide the following information to the board on forms  
22 provided by the board:

23 A. the organization, financial structure and nature  
24 of the business to be operated, including the names and personal  
25 histories of all officers, directors and key executives;

1           B. the rights and privileges acquired by the holders  
2 of different classes of authorized securities;

3           C. the terms and conditions of all outstanding loans,  
4 mortgages, trust deeds, pledges or any other indebtedness or  
5 security interest evidenced by a security instrument pertaining  
6 to the proposed gaming operation or other licensed activity in  
7 this state and the name and address of the person who is  
8 servicing the loan, mortgage, trust deed, pledge or other  
9 indebtedness or security interest;

10           D. remuneration to persons, other than directors,  
11 officers and key executives, exceeding fifty thousand dollars  
12 (\$50,000) per year;

13           E. bonus and profit-sharing arrangements within the  
14 company;

15           F. management and service contracts pertaining to the  
16 proposed gaming activity in this state;

17           G. balance sheets and profit and loss statements for  
18 at least the three preceding fiscal years, or, if the company has  
19 not been in business for a period of three years, balance sheets  
20 and profit and loss statements from the time of its commencement  
21 of business operations and projected for three years from the  
22 time of its commencement of business operations. All balance  
23 sheets and profit and loss statements shall be certified by  
24 independent certified public accountants; and

25           H. any further financial data that the board deems

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1 necessary or appropriate.

2 Section 22. [NEW MATERIAL] INDIVIDUAL CERTIFICATION OF  
3 OFFICERS, DIRECTORS AND OTHER PERSONS. -- An officer, director,  
4 equity security holder of five percent or more, partner, general  
5 partner, limited partner, trustee or beneficiary of the company  
6 that holds or has applied for a license shall be certified  
7 individually, according to the provisions of the Gaming Control  
8 Act, and if in the judgment of the board the public interest is  
9 served by requiring any or all of the company's key executives to  
10 be certified, the company shall require those persons to apply  
11 for certification. A person who is required to be certified  
12 pursuant to this section shall apply for certification within  
13 thirty days after becoming an officer, director, equity security  
14 holder of five percent or more, partner, general partner, limited  
15 partner of five percent or more, trustee, beneficiary or key  
16 executive. A person who is required to be certified pursuant to  
17 a decision of the board shall apply for certification within  
18 thirty days after the board so requests.

19 Section 23. [NEW MATERIAL] REQUIREMENTS IF COMPANY IS OR  
20 BECOMES A SUBSIDIARY-- INVESTIGATIONS-- RESTRICTIONS ON UNSUITABLE  
21 PERSONS-- OTHER REQUIREMENTS. --

22 A. If the company applicant or licensee is or becomes  
23 a subsidiary, each nonpublicly traded holding company and  
24 intermediary company with respect to the subsidiary company  
25 shall:

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1                   (1) qualify to do business in New Mexico; and  
2                   (2) register with the board and furnish to the  
3 board the following information:

4                   (a) a complete list of all beneficial owners  
5 of five percent or more of its equity securities, which shall be  
6 updated within thirty days after any change;

7                   (b) the names of all company officers and  
8 directors within thirty days of their appointment or election;

9                   (c) its organization, financial structure  
10 and nature of the business it operates;

11                   (d) the terms, position, rights and  
12 privileges of the different classes of its outstanding  
13 securities;

14                   (e) the terms on which its securities are to  
15 be, and during the preceding three years have been, offered;

16                   (f) the holder of and the terms and  
17 conditions of all outstanding loans, mortgages, trust deeds,  
18 pledges or any other indebtedness or security interest pertaining  
19 to the applicant or licensee;

20                   (g) the extent of the securities holdings or  
21 other interest in the holding company or intermediary company of  
22 all officers, directors, key executives, underwriters, partners,  
23 principals, trustees or any direct or beneficial owners, and the  
24 amount of any remuneration paid them as compensation for their  
25 services in the form of salary, wages, fees or by contract

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1 pertaining to the licensee;

2 (h) remuneration to persons other than  
3 directors, officers and key executives exceeding fifty thousand  
4 dollars (\$50,000) per year;

5 (i) bonus and profit-sharing arrangements  
6 within the holding company or intermediary company;

7 (j) management and service contracts  
8 pertaining to the licensee or applicant;

9 (k) options existing or to be created in  
10 respect to the company's securities or other interests;

11 (l) balance sheets and profit and loss  
12 statements, certified by independent certified public  
13 accountants, for not more than the three preceding fiscal years,  
14 or, if the holding company or intermediary company has not been  
15 in existence more than three years, balance sheets and profit and  
16 loss statements from the time of its establishment, together with  
17 projections for three years from the time of its establishment;

18 (m) any further financial statements  
19 necessary or appropriate to assist the board in making its  
20 determinations; and

21 (n) a current annual profit and loss  
22 statement, a current annual balance sheet and a copy of the  
23 company's most recent federal income tax return within thirty  
24 days after the return is filed.

25 B. All holders of five percent or more of the equity

1 security of a holding company or intermediary company shall apply  
2 for a finding of suitability.

3 C. The board may in its discretion perform the  
4 investigations concerning the officers, directors, key  
5 executives, underwriters, security holders, partners, principals,  
6 trustees or direct or beneficial owners of any interest in any  
7 holding company or intermediary company as it deems necessary,  
8 either at the time of initial registration or at any time  
9 thereafter.

10 D. If at any time the board finds that any person  
11 owning, controlling or holding with power to vote all or any part  
12 of any class of securities of, or any interest in, any holding  
13 company or intermediary company is unsuitable to be connected  
14 with a licensee, it shall so notify both the unsuitable person  
15 and the holding company or intermediary company. The unsuitable  
16 person shall immediately offer the securities or other interest  
17 to the issuing company for purchase. The company shall purchase  
18 the securities or interest offered upon the terms and within the  
19 time period ordered by the board.

20 E. Beginning on the date when the board serves notice  
21 that a person has been found to be unsuitable pursuant to  
22 Subsection D of this section, it is unlawful for the unsuitable  
23 person to:

24 (1) receive any dividend or interest upon any  
25 securities held in the holding company or intermediary company,

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1 or any dividend, payment or distribution of any kind from the  
2 holding company or intermediary company;

3 (2) exercise, directly or indirectly or through  
4 a proxy, trustee or nominee, any voting right conferred by the  
5 securities or interest; or

6 (3) receive remuneration in any form from the  
7 licensee, or from any holding company or intermediary company  
8 with respect to that licensee, for services rendered or  
9 otherwise.

10 F. A holding company or intermediary company subject  
11 to the provisions of Subsection A of this section shall not make  
12 any public offering of any of its equity securities unless such  
13 public offering has been approved by the board.

14 G. This section does not apply to a holding company  
15 or intermediary company that is a publicly traded corporation,  
16 the stock of which is traded on recognized stock exchanges, which  
17 shall instead comply with the provisions of Section 22 of the  
18 Gaming Control Act.

19 Section 24. [NEW MATERIAL] REGISTRATION AND CERTIFICATION  
20 OF PUBLICLY TRADED CORPORATIONS. --

21 A. If a company applicant or company licensee is or  
22 becomes a publicly traded corporation, it shall register with the  
23 board and provide the following information:

24 (1) as of the date the company became a publicly  
25 traded corporation, and on any later date when the information

1 changes, the names of all stockholders of record who hold five  
2 percent or more of the outstanding shares of any class of equity  
3 securities issued by the publicly traded corporation;

4 (2) the names of all officers within thirty days  
5 of their respective appointments;

6 (3) the names of all directors within thirty  
7 days of their respective elections or appointments;

8 (4) the organization, financial structure and  
9 nature of the businesses the publicly traded corporation  
10 operates;

11 (5) the terms, position, rights and privileges  
12 of the different classes of securities outstanding as of the date  
13 the company became a publicly traded corporation;

14 (6) the terms on which the company's securities  
15 were issued during the three years preceding the date on which  
16 the company became a publicly traded corporation and the terms on  
17 which the publicly traded corporation's securities are to be  
18 offered to the public as of the date the company became a  
19 publicly traded corporation;

20 (7) the terms and conditions of all outstanding  
21 indebtedness and evidence of security pertaining directly or  
22 indirectly to the publicly traded corporation;

23 (8) remuneration exceeding fifty thousand  
24 dollars (\$50,000) per year paid to persons other than directors,  
25 officers and key executives who are actively and directly engaged

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1 in the administration or supervision of the gaming activities of  
2 the publicly traded corporation;

3 (9) bonus and profit-sharing arrangements within  
4 the publicly traded corporation directly or indirectly relating  
5 to its gaming activities;

6 (10) management and service contracts of the  
7 corporation pertaining to its gaming activities;

8 (11) options existing or to be created pursuant  
9 to its equity securities;

10 (12) balance sheets and profit and loss  
11 statements, certified by independent certified public  
12 accountants, for not less than the three fiscal years preceding  
13 the date the company became a publicly traded corporation;

14 (13) any further financial statements deemed  
15 necessary or appropriate by the board; and

16 (14) a description of the publicly traded  
17 corporation's affiliated companies and intermediary companies and  
18 gaming licenses, permits and approvals held by those entities.

19 B. The board shall consider the following criteria in  
20 determining whether to certify a publicly traded corporation:

21 (1) the business history of the publicly traded  
22 corporation, including its record of financial stability,  
23 integrity and success of its gaming operations in other  
24 jurisdictions;

25 (2) the current business activities and

1 interests of the applicant, as well as those of its officers,  
 2 promoters, lenders and other sources of financing, or any other  
 3 persons associated with it;

4 (3) the current financial structure of the  
 5 publicly traded corporation as well as changes that could  
 6 reasonably be expected to occur to its financial structure as a  
 7 consequence of its proposed action;

8 (4) the present and proposed compensation  
 9 arrangements between the publicly traded corporation and its  
 10 directors, officers, key executives, securities holders, lenders  
 11 or other sources of financing;

12 (5) the equity investment, commitment or  
 13 contribution of present or prospective directors, key executives,  
 14 investors, lenders or other sources of financing; and

15 (6) the dealings and arrangements, prospective  
 16 or otherwise, between the publicly traded corporation and its  
 17 investment bankers, promoters, finders or lenders and other  
 18 sources of financing.

19 C. The board may issue a certification upon receipt  
 20 of a proper application and consideration of the criteria set  
 21 forth in Subsection B of this section if it finds that the  
 22 certification would not be contrary to the public interest or the  
 23 policy set forth in the Gaming Control Act.

24 Section 25. [NEW MATERIAL] FINDING OF SUITABILITY  
 25 REQUIRED FOR DIRECTORS, OFFICERS AND KEY EXECUTIVES-- REMOVAL FROM

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1 POSITION IF FOUND UNSUITABLE--SUSPENSION OF SUITABILITY BY  
2 BOARD. --

3 A. Each officer, director and key executive of a  
4 holding company, intermediary company or publicly traded  
5 corporation that the board determines is or is to become actively  
6 and directly engaged in the administration or supervision of, or  
7 any other significant involvement with, the activities of the  
8 subsidiary licensee or applicant shall apply for a finding of  
9 suitability.

10 B. If any officer, director or key executive of a  
11 holding company, intermediary company or publicly traded  
12 corporation required to be found suitable pursuant to Subsection  
13 A of this section fails to apply for a finding of suitability  
14 within thirty days after being requested to do so by the board,  
15 or is not found suitable by the board, or if his finding of  
16 suitability is revoked after appropriate findings by the board,  
17 the holding company, intermediary company or publicly traded  
18 corporation shall immediately remove that officer, director or  
19 key executive from any office or position in which the person is  
20 engaged in the administration or supervision of, or any other  
21 involvement with, the activities of the certified subsidiary  
22 until the person is thereafter found to be suitable. If the  
23 board suspends the finding of suitability of any officer,  
24 director or key executive, the holding company, intermediary  
25 company or publicly traded corporation shall immediately and for

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1 the duration of the suspension suspend that officer, director or  
 2 key executive from performance of any duties in which he is  
 3 actively and directly engaged in the administration or  
 4 supervision of, or any other involvement with, the activities of  
 5 the subsidiary licensee.

6 Section 26. [NEW MATERIAL] SUITABILITY OF INDIVIDUALS  
 7 ACQUIRING BENEFICIAL OWNERSHIP OF VOTING SECURITY IN PUBLICLY  
 8 TRADED CORPORATION--REPORT OF ACQUISITION--APPLICATION--  
 9 PROHIBITION.--

10 A. Each person who, individually or in association  
 11 with others, acquires, directly or indirectly, beneficial  
 12 ownership of five percent or more of any voting securities in a  
 13 publicly traded corporation registered with the board may be  
 14 required to be found suitable if the board has reason to believe  
 15 that the acquisition of the ownership would otherwise be  
 16 inconsistent with the declared policy of this state.

17 B. Each person who, individually or in association  
 18 with others, acquires, directly or indirectly, beneficial  
 19 ownership of five percent or more of any class of voting  
 20 securities of a publicly traded corporation certified by the  
 21 board shall notify the board within ten days after acquiring such  
 22 interest.

23 C. Each person who, individually or in association  
 24 with others, acquires, directly or indirectly, the beneficial  
 25 ownership of more than ten percent of any class of voting

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1 securities of a publicly traded corporation certified by the  
2 board shall apply to the board for a finding of suitability  
3 within thirty days after acquiring such interest.

4 D. Institutional investors that have been exempted  
5 from or have received a waiver of suitability requirements  
6 pursuant to regulations adopted by the board are not required to  
7 comply with this section.

8 E. Any person required by the board or by the  
9 provisions of this section to be found suitable shall apply for a  
10 finding of suitability within thirty days after the board  
11 requests that he do so.

12 F. Any person required by the board or the provisions  
13 of this section to be found suitable who subsequently is found  
14 unsuitable by the board shall not hold directly or indirectly the  
15 beneficial ownership of any security of a publicly traded  
16 corporation that is registered with the board beyond that period  
17 of time prescribed by the board.

18 G. The board may, but is not required to, deem a  
19 person qualified to hold a license or be found suitable as  
20 required by this section if the person currently holds a valid  
21 license issued by, or has been found suitable by, gaming  
22 regulatory authorities in another jurisdiction, provided that the  
23 board finds that the other jurisdiction has conducted a thorough  
24 investigation of the applicant and has criteria substantially  
25 similar to those of the board to determine when a person is to be

1 found suitable or to obtain a license.

2 Section 27. [NEW MATERIAL] REPORT OF PROPOSED ISSUANCE OR  
3 TRANSFER OF SECURITIES--REPORT OF CHANGE IN CORPORATE OFFICERS  
4 AND DIRECTORS--APPROVAL OF BOARD.--

5 A. Before a company licensee, other than a publicly  
6 traded corporation, may issue or transfer five percent or more of  
7 its securities to any person, it shall file a report of its  
8 proposed action with the board, which report shall request the  
9 approval of the board. The board shall have ninety days within  
10 which to approve or deny the request. If the board fails to act  
11 in ninety days, the request is deemed approved. If the board  
12 denies the request, the company shall not issue or transfer five  
13 percent or more of its securities to the person about whom the  
14 request was made.

15 B. A company licensee shall file a report of each  
16 change of the corporate officers and directors with the board  
17 within thirty days of the change. The board shall have ninety  
18 days from the date the report is filed within which to approve or  
19 disapprove such change. During the ninety-day period and  
20 thereafter, if the board does not disapprove the change, an  
21 officer or director is be entitled to exercise all powers of the  
22 office to which he was elected or appointed.

23 C. A company licensee shall report to the board in  
24 writing any change in company personnel who have been designated  
25 as key executives. The report shall be made no later than thirty

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1 days after the change.

2 D. The board may require that a company licensee  
3 furnish the board with a copy of its federal income tax return  
4 within thirty days after the return is filed.

5 Section 28. [NEW MATERIAL] GAMING OPERATOR LICENSEES--  
6 GENERAL PROVISIONS--PLAYER AGE LIMIT--RULES FOR PLACEMENT.--

7 A. An applicant for licensure as a gaming operator  
8 shall submit with the application a plan for assisting in the  
9 prevention, education and treatment of compulsive gambling. The  
10 plan shall include regular educational training sessions for  
11 employees. Plan approval is a condition of issuance of the  
12 license.

13 B. A gaming operator licensee shall be granted a  
14 license to operate a specific number of machines at a gaming  
15 establishment identified in the license application and shall be  
16 granted a license for each gaming machine.

17 C. A gaming operator licensee who desires to change  
18 the number of machines in operation at a gaming establishment  
19 shall apply to the board for an amendment to his license  
20 authorizing a change in the number of machines.

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

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

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

7 F. A gaming operator licensee shall not have  
 8 automated teller machines on the premises.

9 G. A gaming operator licensee shall not provide,  
 10 allow, contract or arrange to provide alcohol or food for no  
 11 charge or at reduced prices as an incentive or enticement for  
 12 patrons to game.

13 Section 29. [NEW MATERIAL] GAMING OPERATOR LICENSEES--  
 14 SPECIAL CONDITIONS FOR RACETRACKS--NUMBER OF GAMING MACHINES--  
 15 DAYS AND HOURS OF OPERATIONS. --

16 A. A racetrack licensed by the state racing  
 17 commission pursuant to the Horse Racing Act to conduct live horse  
 18 races or simulcast races may be issued a gaming operator's  
 19 license to operate gaming machines on its premises where live  
 20 racing is conducted.

21 B. A racetrack's gaming operator's license shall  
 22 automatically become void if:

23 (1) the racetrack no longer holds an active  
 24 license to conduct pari-mutuel wagering; or

25 (2) the racetrack fails to maintain a minimum of

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1 four live race days a week during its licensed race meet unless  
2 otherwise approved by the board.

3 C. A gaming operator licensee that is a racetrack may  
4 have not more than three hundred licensed gaming machines, but  
5 the number of gaming machines to be located on the licensee's  
6 premises shall be specified in the gaming operator's license.

7 D. Gaming machines on a racetrack gaming operator  
8 licensee's premises may be played only on days when the racetrack  
9 is either conducting live horse races or simulcasting horse race  
10 meets and during times established by regulation of the board,  
11 but the regulations shall provide for a maximum of twelve hours a  
12 day.

13 E. Alcoholic beverages shall not be sold, served,  
14 delivered or consumed in the area where gaming machines are  
15 installed and operated on the premises of a racetrack gaming  
16 operator licensee.

17 Section 30. [NEW MATERIAL] GAMING OPERATOR LICENSEES- -  
18 SPECIAL CONDITIONS FOR NONPROFIT ORGANIZATIONS- - NUMBER OF GAMING  
19 MACHINES- - DAYS AND HOURS OF OPERATIONS. - -

20 A. A nonprofit organization may be issued a gaming  
21 operator's license to operate licensed gaming machines on its  
22 premises.

23 B. No more than twenty-five gaming machines may be  
24 offered for play on the premises of a nonprofit organization  
25 gaming operator licensee.

1           C. No gaming machine on the premises of a nonprofit  
2 organization gaming operator licensee may award a prize that  
3 exceeds one thousand dollars (\$1,000).

4           D. Gaming machines may be played on the premises of a  
5 nonprofit organization gaming operator licensee from 12:00 noon  
6 until 12:00 midnight every day.

7           E. Alcoholic beverages shall not be sold, served,  
8 delivered or consumed in the area where gaming machines are  
9 installed and operated on the premises of a nonprofit  
10 organization gaming operator licensee.

11           Section 31. [NEW MATERIAL] LICENSING OF MANUFACTURERS OF  
12 GAMING DEVICES--EXCEPTION--DISPOSITION OF GAMING DEVICES.--

13           A. It is unlawful for any person to operate, carry  
14 on, conduct or maintain any form of manufacturing of any gaming  
15 device or associated equipment for use or play in New Mexico or  
16 any form of manufacturing of any gaming device or associated  
17 equipment in New Mexico for use or play outside of New Mexico  
18 without first obtaining and maintaining a manufacturer's license.

19           B. If the board revokes a manufacturer's license:

20               (1) no new gaming device manufactured by the  
21 manufacturer may be approved for use in this state;

22               (2) any previously approved gaming device  
23 manufactured by the manufacturer is subject to revocation of  
24 approval if the reasons for the revocation of the license also  
25 apply to that gaming device;

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1                   (3) no new gaming device or associated equipment  
2 made by the manufacturer may be distributed, sold, transferred or  
3 offered for use or play in New Mexico; and

4                   (4) any association or agreement between the  
5 manufacturer and a distributor licensee or gaming operator  
6 licensee in New Mexico shall be terminated.

7                   C. An agreement between a manufacturer licensee and a  
8 distributor licensee or a gaming operator licensee in New Mexico  
9 shall be deemed to include a provision for its termination  
10 without liability for the termination on the part of either party  
11 upon a finding by the board that either party is unsuitable.  
12 Failure to include that condition in the agreement is not a  
13 defense in any action brought pursuant to this section to  
14 terminate the agreement.

15                   D. A gaming device shall not be used and offered for  
16 play by a gaming operator licensee unless it is identical in all  
17 material aspects to a model that has been specifically tested and  
18 approved by:

- 19                               (1) the board;  
20                               (2) a laboratory selected by the board; or  
21                               (3) gaming officials in Nevada or New Jersey  
22 after January 1, 1990.

23                   E. The board may inspect every gaming device that is  
24 manufactured:

- 25                               (1) for use in New Mexico; or

1                   (2) in New Mexico for use outside of New Mexico.

2                   F. The board may inspect every gaming device that is  
3 offered for play within New Mexico by a gaming operator licensee.

4                   G. The board may inspect all associated equipment  
5 that is manufactured and sold for use in New Mexico or  
6 manufactured in New Mexico for use outside of New Mexico.

7                   H. In addition to all other fees and charges imposed  
8 pursuant to the Gaming Control Act, the board may determine,  
9 charge and collect from each manufacturer an inspection fee,  
10 which shall not exceed the actual cost of inspection and  
11 investigation.

12                   I. The board may prohibit the use of a gaming device  
13 by a gaming operator licensee if it finds that the gaming device  
14 does not meet the requirements of this section.

15                   Section 32. [NEW MATERIAL] LICENSING OF DISTRIBUTORS OF  
16 GAMING DEVICES. --

17                   A. It is unlawful for any person to operate, carry  
18 on, conduct or maintain any form of distribution of any gaming  
19 device for use or play in New Mexico without first obtaining and  
20 maintaining a distributor's or manufacturer's license.

21                   B. If the board revokes a distributor's license:

22                   (1) no new gaming device distributed by the  
23 person may be approved;

24                   (2) any previously approved gaming device  
25 distributed by the distributor is subject to revocation of

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1 approval if the reasons for the revocation of the license also  
2 apply to that gaming device;

3 (3) no new gaming device or associated equipment  
4 distributed by the distributor may be distributed, sold,  
5 transferred or offered for use or play in New Mexico; and

6 (4) any association or agreement between the  
7 distributor and a gaming operator licensee shall be terminated.

8 An agreement between a distributor licensee and a gaming operator  
9 licensee shall be deemed to include a provision for its  
10 termination without liability on the part of either party upon a  
11 finding by the board that the other party is unsuitable. Failure  
12 to include that condition in the agreement is not a defense in  
13 any action brought pursuant to this section to terminate the  
14 agreement.

15 C. The board may inspect every gaming device that is  
16 distributed for use in New Mexico.

17 D. In addition to all other fees and charges imposed  
18 by the Gaming Control Act, the board may determine, charge and  
19 collect from each distributor an inspection fee, which shall not  
20 exceed the actual cost of inspection and investigation.

21 Section 33. [NEW MATERIAL] SUITABILITY OF CERTAIN PERSONS  
22 FURNISHING SERVICES OR PROPERTY OR DOING BUSINESS WITH GAMING  
23 OPERATORS-- TERMINATION OF ASSOCIATION. --

24 A. The board may determine the suitability of any  
25 person who furnishes services or property to a gaming operator

1 licensee under any arrangement pursuant to which the person  
2 receives compensation based on earnings, profits or receipts from  
3 gaming. The board may require the person to comply with the  
4 requirements of the Gaming Control Act and with the regulations  
5 of the board. If the board determines that the person is  
6 unsuitable, it may require the arrangement to be terminated.

7 B. The board may require a person to apply for a  
8 finding of suitability to be associated with a gaming operator  
9 licensee if the person:

10 (1) does business on the premises of a gaming  
11 establishment; or

12 (2) provides any goods or services to a gaming  
13 operator licensee for compensation that the board finds to be  
14 grossly disproportionate to the value of the goods or services.

15 C. If the board determines that a person is  
16 unsuitable to be associated with a gaming operator licensee, the  
17 association shall be terminated. Any agreement that entitles a  
18 business other than gaming to be conducted on the premises of a  
19 gaming establishment, or entitles a person other than a licensee  
20 to conduct business with the gaming operator licensee, is subject  
21 to termination upon a finding of unsuitability of the person  
22 seeking association with a gaming operator licensee. Every  
23 agreement shall be deemed to include a provision for its  
24 termination without liability on the part of the gaming operator  
25 licensee upon a finding by the board of the unsuitability of the

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1 person seeking or having an association with the gaming operator  
2 licensee. Failure to include that condition in the agreement is  
3 not a defense in any action brought pursuant to this section to  
4 terminate the agreement. If the application is not presented to  
5 the board within thirty days following demand or the unsuitable  
6 association is not terminated, the board may pursue any remedy or  
7 combination of remedies provided in the Gaming Control Act.

8 Section 34. [NEW MATERIAL] REASONS FOR INVESTIGATIONS BY  
9 BOARD-- COMPLAINT BY BOARD-- BOARD TO APPOINT HEARING EXAMINER--  
10 REVIEW BY BOARD-- ORDER OF BOARD. --

11 A. The board shall make appropriate investigations  
12 to:

13 (1) determine whether there has been any  
14 violation of the Gaming Control Act or of any regulations adopted  
15 pursuant to that act;

16 (2) determine any facts, conditions, practices  
17 or matters that it deems necessary or proper to aid in the  
18 enforcement of the Gaming Control Act or regulations adopted  
19 pursuant to that act;

20 (3) aid in adopting regulations;

21 (4) secure information as a basis for  
22 recommending legislation relating to the Gaming Control Act; or

23 (5) determine whether a licensee is able to meet  
24 its financial obligations, including all financial obligations  
25 imposed by the Gaming Control Act, as they become due.

1           B. If after an investigation the board is satisfied  
2 that a license, registration, finding of suitability or prior  
3 approval by the board of any transaction for which approval was  
4 required by the provisions of the Gaming Control Act should be  
5 limited, conditioned, suspended or revoked, or that a fine should  
6 be levied, the board shall initiate a hearing by filing a  
7 complaint and transmitting a copy of it to the licensee, together  
8 with a summary of evidence in its possession bearing on the  
9 matter and the transcript of testimony at any investigative  
10 hearing conducted by or on behalf of the board. The complaint  
11 shall be a written statement of charges that sets forth in  
12 ordinary and concise language the acts or omissions with which  
13 the respondent is charged. It shall specify the statutes or  
14 regulations that the respondent is alleged to have violated but  
15 shall not consist merely of charges raised in the language of the  
16 statutes or regulations. The summary of the evidence shall be  
17 confidential and made available only to the respondent until such  
18 time as it is offered into evidence at any public hearing on the  
19 matter.

20           C. The respondent shall file an answer within thirty  
21 days after service of the complaint.

22           D. Upon filing the complaint the board shall appoint  
23 a hearing examiner to conduct further proceedings.

24           E. The hearing examiner shall conduct proceedings in  
25 accordance with the Gaming Control Act and the regulations

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1 adopted by the board. At the conclusion of the proceedings, the  
2 hearing examiner may recommend that the board take any  
3 appropriate action, including revocation, suspension, limitation  
4 or conditioning of a license or imposition of a fine not to  
5 exceed fifty thousand dollars (\$50,000) for each violation or any  
6 combination or all of the foregoing actions.

7 F. The hearing examiner shall prepare a written  
8 decision containing his recommendation to the board and shall  
9 serve it on all parties. Any respondent who disagrees with the  
10 hearing examiner's recommendation may request the board, within  
11 ten days of service of the recommendation, to review the  
12 recommendation.

13 G. Upon proper request, the board shall review the  
14 recommendation. The board may remand the case to the hearing  
15 examiner for the presentation of additional evidence upon a  
16 showing of good cause why such evidence could not have been  
17 presented at the previous hearing.

18 H. The board shall by a majority vote accept, reject  
19 or modify the recommendation.

20 I. If the board limits, conditions, suspends or  
21 revokes any license or imposes a fine or limits, conditions,  
22 suspends or revokes any registration, finding of suitability or  
23 prior approval, it shall issue a written order specifying its  
24 action.

25 J. The board's order is effective unless and until

1 reversed upon judicial review, except that the board may stay its  
 2 order pending a rehearing or judicial review upon such terms and  
 3 conditions as it deems proper.

4 Section 35. [NEW MATERIAL] EMERGENCY ORDERS OF BOARD. --

5 The board may issue an emergency order for suspension, limitation  
 6 or conditioning of a license, registration, finding of  
 7 suitability or work permit or may issue an emergency order  
 8 requiring a gaming operator licensee to exclude an individual  
 9 licensee from the premises of the gaming operator licensee's  
 10 gaming establishment or not to pay an individual licensee any  
 11 remuneration for services or any profits, income or accruals on  
 12 his investment in the licensed gaming establishment in the  
 13 following manner:

14 A. an emergency order may be issued only when the  
 15 board believes that:

16 (1) a licensee has willfully failed to report,  
 17 pay or truthfully account for and pay over any fee imposed by the  
 18 provisions of the Gaming Control Act or willfully attempted in  
 19 any manner to evade or defeat any fee or payment thereof;

20 (2) a licensee or gaming employee has cheated at  
 21 a game; or

22 (3) the emergency order is necessary for the  
 23 immediate preservation of the public peace, health, safety,  
 24 morals, good order or general welfare;

25 B. the emergency order shall set forth the grounds

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1 upon which it is issued, including a statement of facts  
2 constituting the alleged emergency necessitating such action;

3 C. the emergency order is effective immediately upon  
4 issuance and service upon the licensee or resident agent of the  
5 licensee or gaming employee or, in cases involving registration  
6 or findings of suitability, upon issuance and service upon the  
7 person or entity involved or resident agent of the entity  
8 involved; the emergency order may suspend, limit, condition or  
9 take other action in relation to the license of one or more  
10 persons in an operation without affecting other individual  
11 licenses or the gaming operator licensee. The emergency order  
12 remains effective until further order of the board or final  
13 disposition of the case; and

14 D. within five days after issuance of an emergency  
15 order, the board shall cause a complaint to be filed and served  
16 upon the person or entity involved; thereafter, the person or  
17 entity against whom the emergency order has been issued and  
18 served is entitled to a hearing before the board and to judicial  
19 review of the decision and order of the board in accordance with  
20 the provisions of the board's regulations.

21 Section 36. [NEW MATERIAL] EXCLUSION OR EJECTION OF  
22 CERTAIN PERSONS FROM GAMING ESTABLISHMENTS-- PERSONS INCLUDED. --

23 A. The board shall by regulation provide for the  
24 establishment of a list of persons who are to be excluded or  
25 ejected from a gaming establishment. The list may include any

1 person whose presence in the gaming establishment is determined  
2 by the board to pose a threat to the public interest or licensed  
3 gaming activities.

4 B. In making the determination in Subsection A of  
5 this section, the board may consider a:

6 (1) prior conviction for a crime that is a  
7 felony under state or federal law, a crime involving moral  
8 turpitude or a violation of the gaming laws of any jurisdiction;

9 (2) violation or conspiracy to violate the  
10 provisions of the Gaming Control Act relating to:

11 (a) the failure to disclose an interest in a  
12 gaming activity for which the person must obtain a license; or

13 (b) willful evasion of fees or taxes;

14 (3) notorious or unsavory reputation that would  
15 adversely affect public confidence and trust that the gaming  
16 industry is free from criminal or corruptive influences; or

17 (4) written order of any other governmental  
18 agency in this state or any other state that authorizes the  
19 exclusion or ejection of the person from an establishment at  
20 which gaming is conducted.

21 C. A gaming operator licensee has the right, without  
22 a list established by the board, to exclude or eject a person  
23 from its gaming establishment who poses a threat to the public  
24 interest or for any business reason.

25 D. Race, color, creed, national origin or ancestry,

1 age, disability or sex shall not be grounds for placing the name  
2 of a person on the list or for exclusion or ejection under  
3 Subsection A or C of this section.

4 Section 37. [NEW MATERIAL] INTERNAL CONTROL SYSTEMS. --

5 A. Each gaming operator licensee shall adopt  
6 internal control systems that shall include provisions for:

7 (1) safeguarding its assets and revenues,  
8 especially the recording of cash and evidences of  
9 indebtedness;

10 (2) making and maintaining reliable records,  
11 accounts and reports of transactions, operations and events,  
12 including reports to the board; and

13 (3) a system by which the amount wagered on  
14 each gaming machine and the amount paid out by each gaming  
15 machine is recorded on a daily basis, which results may be  
16 obtained by the board by appropriate means as described in  
17 regulations adopted by the board; all manufacturers are  
18 required to have such a system available for gaming operators  
19 for the gaming machines that it supplies for use in New  
20 Mexico, and all distributors shall make such a system  
21 available to gaming operators.

22 B. The internal control system shall be designed  
23 to reasonably ensure that:

24 (1) assets are safeguarded;

25 (2) financial records are accurate and

1 reliable;

2 (3) transactions are performed only in  
 3 accordance with management's general or specific  
 4 authorization;

5 (4) transactions are recorded adequately to  
 6 permit proper reporting of gaming revenue and of fees and  
 7 taxes and to maintain accountability of assets;

8 (5) access to assets is allowed only in  
 9 accordance with management's specific authorization;

10 (6) recorded accountability for assets is  
 11 compared with actual assets at reasonable intervals and  
 12 appropriate action is taken with respect to any discrepancies;  
 13 and

14 (7) functions, duties and responsibilities are  
 15 appropriately segregated and performed in accordance with  
 16 sound accounting and management practices by competent,  
 17 qualified personnel.

18 C. A gaming operator licensee and an applicant for  
 19 a gaming operator's license shall describe, in the manner the  
 20 board may approve or require, its administrative and  
 21 accounting procedures in detail in a written system of  
 22 internal control. A gaming operator licensee and an applicant  
 23 for a gaming operator's license shall submit a copy of its  
 24 written system to the board. Each written system shall  
 25 include:

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1 (1) an organizational chart depicting  
2 appropriate segregation of functions and responsibilities;

3 (2) a description of the duties and  
4 responsibilities of each position shown on the organizational  
5 chart;

6 (3) a detailed, narrative description of the  
7 administrative and accounting procedures designed to satisfy  
8 the requirements of Subsection A of this section;

9 (4) a written statement signed by the  
10 licensee's chief financial officer and either the licensee's  
11 chief executive officer or a licensed owner attesting that the  
12 system satisfies the requirements of this section;

13 (5) if the written system is submitted by an  
14 applicant, a letter from an independent certified public  
15 accountant stating that the applicant's written system has  
16 been reviewed by the accountant and complies with the  
17 requirements of this section; and

18 (6) other items as the board may require.

19 D. The board shall adopt and publish minimum  
20 standards for internal control procedures.

21 Section 38. [NEW MATERIAL] GAMING EMPLOYEES--ISSUANCE  
22 OF WORK PERMITS--REVOCATION OF WORK PERMITS.--

23 A. A person shall not be employed as a gaming  
24 employee unless the person holds a valid work permit issued by  
25 the board.

1 B. A work permit shall be issued and may be  
2 revoked by the board as provided in regulations adopted by the  
3 board.

4 C. Any person whose work permit has been denied or  
5 revoked may seek judicial review.

6 Section 39. [NEW MATERIAL] AGE REQUIREMENT FOR PATRONS  
7 AND GAMING EMPLOYEES. --A person under the age of twenty-one  
8 years shall not:

9 A. play, be allowed to play, place wagers on or  
10 collect winnings from, whether personally or through an agent,  
11 any game authorized or offered to play pursuant to the Gaming  
12 Control Act; or

13 B. be employed as a gaming employee.

14 Section 40. [NEW MATERIAL] CALCULATION OF NET TAKE--  
15 CERTAIN EXPENSES NOT DEDUCTIBLE. --In calculating net take from  
16 gaming machines, the actual cost to the licensee of any  
17 personal property distributed to a patron as the result of a  
18 legitimate wager may be deducted as a loss, except for travel  
19 expenses, food, refreshments, lodging or services. For the  
20 purposes of this section, "as the result of a legitimate  
21 wager" means that the patron must make a wager prior to  
22 receiving the personal property, regardless of whether the  
23 receipt of the personal property is dependent on the outcome  
24 of the wager.

25 Section 41. [NEW MATERIAL] LIMITATIONS ON TAXES AND

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1 LICENSE FEES. -- A political subdivision of the state shall not  
2 impose a license fee or tax on any licensee licensed pursuant  
3 to the Gaming Control Act except for the imposition of  
4 property taxes.

5 Section 42. [NEW MATERIAL] USE OF CHIPS, TOKENS OR  
6 LEGAL TENDER REQUIRED FOR ALL GAMING. -- All gaming shall be  
7 conducted with chips, tokens or other similar objects approved  
8 by the board or with the legal currency of the United States.

9 Section 43. [NEW MATERIAL] COMMUNICATION OR DOCUMENT  
10 OF APPLICANT OR LICENSEE ABSOLUTELY PRIVILEGED-- PRIVILEGE NOT  
11 WAIVED-- DISCLOSURE OF PRIVILEGED INFORMATION PROHIBITED. --

12 A. Any communication or document of an applicant  
13 or licensee is absolutely privileged and does not impose  
14 liability for defamation or constitute a ground for recovery  
15 in any civil action if it is required by:

16 (1) law or the regulations of the board; or

17 (2) a subpoena issued by the board to be made  
18 or transmitted to the board.

19 B. The privilege created pursuant to Subsection A  
20 of this section is not waived or lost because the document or  
21 communication is disclosed to the board.

22 C. Notwithstanding the powers granted to the board  
23 by the Gaming Control Act, the board:

24 (1) may release or disclose any privileged  
25 information, documents or communications provided by an

1 applicant or licensee only with the prior written consent of  
 2 the applicant or licensee or pursuant to a lawful court order  
 3 after timely notice of the proceedings has been given to the  
 4 applicant or licensee;

5 (2) shall maintain all privileged information,  
 6 documents and communications in a secure place accessible only  
 7 to members of the board; and

8 (3) shall adopt procedures and regulations to  
 9 protect the privileged nature of information, documents and  
 10 communications provided by an applicant or licensee.

11 Section 44. [NEW MATERIAL] MOTION FOR RELEASE OF  
 12 PRIVILEGED INFORMATION. --An application to a court for an  
 13 order requiring the board to release any information declared  
 14 by law to be confidential shall be made only by petition in  
 15 district court. A hearing shall be held on the petition not  
 16 less than ten days and not more than twenty days after the  
 17 date of service of the petition on the board, the attorney  
 18 general and all persons who may be affected by the entry of  
 19 that order. A copy of the petition, all papers filed in  
 20 support of it and a notice of hearing shall be served.

21 Section 45. [NEW MATERIAL] GAMING MACHINE CENTRAL  
 22 SYSTEM --The board shall develop and operate a central system  
 23 into which all licensed gaming machines are connected. The  
 24 central system shall be capable of:

25 A. monitoring continuously, retrieving and

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1 auditing the operations, financial data and program  
2 information of the network;

3 B. disabling from operation or play any gaming  
4 machine in the network that does not comply with the  
5 provisions of the Gaming Control Act or the regulations of the  
6 board;

7 C. communicating, through program modifications or  
8 other means equally effective, with all gaming machines  
9 licensed by the board;

10 D. interacting, reading, communicating and linking  
11 with gaming machines from a broad spectrum of manufacturers  
12 and associated equipment; and

13 E. providing linkage to each gaming machine in the  
14 network at a reasonable and affordable cost to the state and  
15 the gaming operator licensee and allowing for program  
16 modifications and system updating at a reasonable cost.

17 Section 46. [NEW MATERIAL] MACHINE SPECIFICATIONS. -- To  
18 be eligible for licensure, each gaming machine shall meet all  
19 specifications established by regulations of the board and:

20 A. be unable to be manipulated in a manner that  
21 affects the random probability of winning plays or in any  
22 other manner determined by the board to be undesirable;

23 B. have at least one mechanism that accepts coins  
24 or currency, but does not accept bills of denominations  
25 greater than twenty dollars (\$20.00);

1           C. be capable of having play suspended through the  
2 central system by the executive director until he resets the  
3 gaming machine;

4           D. house nonresettable mechanical and electronic  
5 meters within a readily accessible locked area of the gaming  
6 machine that maintain a permanent record of all money inserted  
7 into the machine, all cash payouts of winnings, all refunds of  
8 winnings, all credits played for additional games and all  
9 credits won by players;

10          E. have a printing mechanism capable of printing  
11 out, at the request of an the executive director, readings on  
12 the electronic meters of the machine;

13          F. be capable of printing a ticket voucher stating  
14 the value of a cash prize won by the player at the completion  
15 of each game, the date and time of day the game was played in  
16 a twenty-four-hour format showing hours and minutes, the  
17 machine serial number, the sequential number of the ticket  
18 voucher and an encrypted validation number for determining the  
19 validity of a winning ticket voucher;

20          G. be capable of being linked to the board's  
21 central system for the purpose of being monitored continuously  
22 as required by the board;

23          H. provide for a payback value for each credit  
24 wagered, determined over time, of not less than eighty percent  
25 or more than ninety-six percent;

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1 I. offer only games authorized and examined by the  
2 board; and

3 J. display the gaming machine license issued for  
4 that machine in an easily accessible place, before and during  
5 the time that a machine is available for use.

6 Section 47. [NEW MATERIAL] POSTING OF GAMING MACHINE  
7 ODDS. --The odds of winning on each gaming machine shall be  
8 posted on or near each gaming machine. The board shall  
9 provide the manner in which the odds shall be determined and  
10 posted by regulation.

11 Section 48. [NEW MATERIAL] EXAMINATION OF GAMING  
12 DEVICES-- COST ALLOCATION. --

13 A. The board shall examine prototypes of gaming  
14 devices of manufacturers seeking a license as required.

15 B. The board by regulation shall require a  
16 manufacturer to pay the anticipated actual costs of the  
17 examination of a gaming device in advance and, after the  
18 completion of the examination, shall refund overpayments or  
19 charge and collect amounts sufficient to reimburse the board  
20 for underpayment of actual costs.

21 C. The board may contract for the examination of  
22 gaming devices to meet the requirements of this section.

23 Section 49. [NEW MATERIAL] GAMING TAX--IMPOSITION--  
24 ADMINISTRATION. --

25 A. An excise tax is imposed on the privilege of

1 engaging in gaming activities in the state. This tax shall be  
2 known as the "gaming tax".

3 B. The gaming tax is an amount equal to ten  
4 percent of the gross receipts of manufacturer licensees from  
5 the sale or other transfer of gaming devices in or into the  
6 state; ten percent of the gross receipts of distributor  
7 licensees from the distribution of gaming devices in the  
8 state; and twenty-five percent of the net take of every gaming  
9 operator licensee.

10 C. The gaming tax imposed on a licensee is in lieu  
11 of all state and local gross receipts taxes on that portion of  
12 the licensee's gross receipts attributable to gaming  
13 activities.

14 D. The gaming tax shall be administered and  
15 collected by the taxation and revenue department in  
16 cooperation with the board. The provisions of the Tax  
17 Administration Act apply to the collection and administration  
18 of the tax.

19 E. In addition to the gaming tax, a gaming  
20 operator licensee that is a racetrack shall pay twenty percent  
21 of the net take to purses to be distributed in accordance with  
22 regulations adopted by the state racing commission. A  
23 racetrack gaming operator licensee shall spend no less than  
24 one-fourth of one percent of the net take of its gaming  
25 machines to fund or support programs for the treatment and

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1 assistance of compulsive gamblers.

2 Section 50. [NEW MATERIAL] CIVIL ACTIONS TO RESTRAIN  
3 VIOLATIONS OF GAMING CONTROL ACT. --

4 A. The attorney general, at the request of the  
5 board, may institute a civil action in any court of this state  
6 against any person to enjoin a violation of a prohibitory  
7 provision of the Gaming Control Act.

8 B. An action brought against a person pursuant to  
9 this section shall not preclude a criminal action or  
10 administrative proceeding against that person.

11 Section 51. [NEW MATERIAL] TESTIMONIAL IMMUNITY. --

12 A. The board may order a person to answer a  
13 question or produce evidence and confer immunity pursuant to  
14 this section. If, in the course of an investigation or  
15 hearing conducted pursuant to the Gaming Control Act, a person  
16 refuses to answer a question or produce evidence on the ground  
17 that he will be exposed to criminal prosecution by doing so,  
18 then the board may by approval of three members, after the  
19 written approval of the attorney general, issue an order to  
20 answer or to produce evidence with immunity.

21 B. If a person complies with an order issued  
22 pursuant to Subsection A of this section, he shall be immune  
23 from having a responsive answer given or responsive evidence  
24 produced, or evidence derived from either, used to expose him  
25 to criminal prosecution, except that the person may be

1 prosecuted for any perjury committed in the answer or  
 2 production of evidence and may also be prosecuted for contempt  
 3 for failing to act in accordance with the order of the board.  
 4 An answer given or evidence produced pursuant to the grant of  
 5 immunity authorized by this section may be used against the  
 6 person granted immunity in a prosecution of the person for  
 7 perjury or a proceeding against him for contempt.

8 Section 52. [NEW MATERIAL] CRIME--MANIPULATION OF GAMING  
 9 DEVICE WITH INTENT TO CHEAT.--A person who manipulates, with the  
 10 intent to cheat, any component of a gaming device in a manner  
 11 contrary to the designed and normal operational purpose of the  
 12 component, including varying the pull of the handle of a slot  
 13 machine with knowledge that the manipulation affects the outcome  
 14 of the game or with knowledge of any event that affects the  
 15 outcome of the game, is guilty of a fourth degree felony and  
 16 shall be sentenced pursuant to the provisions of Section 31-18-15  
 17 NMSA 1978.

18 Section 53. [NEW MATERIAL] CRIME--USE OF COUNTERFEIT OR  
 19 UNAPPROVED TOKENS, CURRENCY OR DEVICES--POSSESSION OF CERTAIN  
 20 DEVICES, EQUIPMENT, PRODUCTS OR MATERIALS.--

21 A. A person who, in playing any game designed to be  
 22 played with, to receive or to be operated by tokens approved by  
 23 the board or by lawful currency of the United States, knowingly  
 24 uses tokens other than those approved by the board, uses currency  
 25 that is not lawful currency of the United States or uses currency

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1 not of the same denomination as the currency intended to be used  
2 in that game is guilty of a third degree felony and shall be  
3 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
4 1978.

5 B. A person who knowingly has on his person or in his  
6 possession within a gaming establishment any device intended to  
7 be used by him to violate the provisions of the Gaming Control  
8 Act is guilty of a third degree felony and shall be sentenced  
9 pursuant to the provisions of Section 31-18-15 NMSA 1978.

10 C. A person, other than a duly authorized employee of  
11 a gaming operator acting in furtherance of his employment within  
12 a gaming establishment, who knowingly has on his person or in his  
13 possession within a gaming establishment any key or device known  
14 by him to have been designed for the purpose of and suitable for  
15 opening, entering or affecting the operation of any game, dropbox  
16 or any electronic or mechanical device connected to the game or  
17 dropbox or for removing money or other contents from them is  
18 guilty of a third degree felony and shall be sentenced pursuant  
19 to the provisions of Section 31-18-15 NMSA 1978.

20 D. A person who knowingly and with intent to use them  
21 for cheating has on his person or in his possession any  
22 paraphernalia for manufacturing slugs is guilty of a third degree  
23 felony and shall be sentenced pursuant to the provisions of  
24 Section 31-18-15 NMSA 1978. As used in this subsection,  
25 "paraphernalia for manufacturing slugs" means the equipment,

1 products and materials that are intended for use or designed for  
 2 use in manufacturing, producing, fabricating, preparing, testing,  
 3 analyzing, packaging, storing or concealing a counterfeit  
 4 facsimile of tokens approved by the board or a lawful coin of the  
 5 United States, the use of which is unlawful pursuant to the  
 6 Gaming Control Act. The term includes:

- 7 (1) lead or lead alloy;
- 8 (2) molds, forms or similar equipment capable of  
 9 producing a likeness of a gaming token or coin;
- 10 (3) melting pots or other receptacles;
- 11 (4) torches; and
- 12 (5) tongs, trimming tools or other similar  
 13 equipment.

14 E. Possession of more than two items of the  
 15 equipment, products or material described in Subsection D of this  
 16 section permits a rebuttable inference that the possessor  
 17 intended to use them for cheating.

18 Section 54. [NEW MATERIAL] CRIME--CHEATING. -- A person who  
 19 knowingly cheats at any game is guilty of a fourth degree felony  
 20 and upon conviction shall be sentenced pursuant to the provisions  
 21 of Section 31-18-15 NMSA 1978.

22 Section 55. [NEW MATERIAL] CRIME--POSSESSION OF GAMING  
 23 DEVICE MANUFACTURED, SOLD OR DISTRIBUTED IN VIOLATION OF LAW. -- A  
 24 person who knowingly possesses any gaming device that has been  
 25 manufactured, sold or distributed in violation of the Gaming

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1 Control Act is guilty of a fourth degree felony and shall be  
2 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
3 1978.

4 Section 56. [NEW MATERIAL] CRIME--REPORTING AND RECORD  
5 VIOLATIONS--PENALTY. --A person who, in an application, book or  
6 record required to be maintained by the Gaming Control Act or by  
7 a regulation adopted under that act or in a report required to be  
8 submitted by that act or a regulation adopted under that act,  
9 knowingly makes a statement or entry that is false or misleading  
10 or fails to maintain or make an entry the person knows is  
11 required to be maintained or made is guilty of a fourth degree  
12 felony and shall be sentenced pursuant to the provisions of  
13 Section 31-18-15 NMSA 1978.

14 Section 57. [NEW MATERIAL] CRIME--UNLAWFUL MANUFACTURE,  
15 SALE, DISTRIBUTION, MARKING, ALTERING OR MODIFICATION OF DEVICES  
16 ASSOCIATED WITH GAMING--UNLAWFUL INSTRUCTION--PENALTY. --

17 A. A person who manufactures, sells or distributes a  
18 device that is intended by him to be used to violate any  
19 provision of the Gaming Control Act is guilty of a fourth degree  
20 felony and shall be sentenced pursuant to the provisions of  
21 Section 31-18-15 NMSA 1978.

22 B. A person who marks, alters or otherwise modifies  
23 any gaming device in a manner that affects the result of a wager  
24 by determining win or loss or alters the normal criteria of  
25 random selection that affects the operation of a game or that

1 determines the outcome of a game is guilty of a fourth degree  
2 felony and shall be sentenced pursuant to the provisions of  
3 Section 31-18-15 NMSA 1978.

4 Section 58. [NEW MATERIAL] UNDERAGE GAMING--PENALTY FOR  
5 PERMITTING OR PARTICIPATION. --

6 A. A person who knowingly permits an individual who  
7 the person knows is younger than twenty-one years of age to  
8 participate in gaming is guilty of a misdemeanor and shall be  
9 sentenced pursuant to the provisions of Section 31-19-1 NMSA  
10 1978.

11 B. An individual who participates in gaming when he  
12 is younger than twenty-one years of age at the time of  
13 participation is guilty of a misdemeanor and shall be sentenced  
14 pursuant to the provisions of Section 31-19-1 NMSA 1978.

15 Section 59. [NEW MATERIAL] CRIME--GENERAL PENALTIES FOR  
16 VIOLATION OF ACT.--A person who willfully violates, attempts to  
17 violate or conspires to violate any of the provisions of the  
18 Gaming Control Act specifying prohibited acts, the classification  
19 of which is not specifically stated in that act, is guilty of a  
20 misdemeanor and shall be sentenced pursuant to the provisions of  
21 Section 31-19-1 NMSA 1978.

22 Section 60. [NEW MATERIAL] DETENTION AND QUESTIONING OF A  
23 PERSON SUSPECTED OF VIOLATING ACT--LIMITATIONS ON LIABILITY--  
24 POSTING OF NOTICE. --

25 A. A gaming operator licensee or its officers,

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1 employees or agents may question a person in its gaming  
2 establishment suspected of violating any of the provisions of the  
3 Gaming Control Act. No gaming operator licensee or any of its  
4 officers, employees or agents is criminally or civilly liable:

5 (1) on account of any such questioning; or

6 (2) for reporting to the board or law

7 enforcement authorities the person suspected of the violation.

8 B. A gaming operator licensee or any of its officers,  
9 employees or agents who has reasonable cause for believing that  
10 there has been a violation of the Gaming Control Act in the  
11 gaming establishment by a person may detain that person in the  
12 gaming establishment in a reasonable manner and for a reasonable  
13 length of time. Such a detention does not render the gaming  
14 operator licensee or his officers, employees or agents criminally  
15 or civilly liable unless it is established by clear and  
16 convincing evidence detention was unreasonable under the  
17 circumstances.

18 C. No gaming operator licensee or its officers,  
19 employees or agents are entitled to the immunity from liability  
20 provided for in Subsection B of this section unless there is  
21 displayed in a conspicuous place in the gaming establishment a  
22 notice in boldface type clearly legible and in substantially this  
23 form:

24 "Any gaming operator licensee or any of his officers,  
25 employees or agents who have reasonable cause for

1 believing that any person has violated any provision  
 2 of the Gaming Control Act prohibiting cheating in  
 3 gaming may detain that person in the establishment. "

4 Section 61. [NEW MATERIAL] ADMINISTRATIVE APPEAL OF BOARD  
 5 ACTION. --

6 A. Any person aggrieved by an action taken by the  
 7 board or one of its agents may request and receive a hearing for  
 8 the purpose of reviewing the action. To obtain a hearing the  
 9 aggrieved person shall file a request for hearing with the board  
 10 within thirty days after the date the action is taken. Failure  
 11 to file the request within the specified time is an irrevocable  
 12 waiver of the right to a hearing, and the action complained of  
 13 shall be final with no further right to review, either  
 14 administratively or by a court.

15 B. The board shall adopt procedural regulations to  
 16 govern the procedures to be followed in administrative hearings  
 17 pursuant to the provisions of this section. At a minimum, the  
 18 regulations shall provide:

- 19 (1) for the hearings to be public;
- 20 (2) for the appointment of a hearing officer to  
 21 conduct the hearing and make his recommendation to the board not  
 22 more than ten days after the completion of the hearing;
- 23 (3) procedures for discovery;
- 24 (4) assurance that procedural due process  
 25 requirements are satisfied;

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1 (5) for the maintenance of a record of the  
2 hearing proceedings and assessment of costs of any transcription  
3 of testimony that is required for judicial review purposes; and

4 (6) for the hearing to be held in Santa Fe for  
5 enforcement hearings and hearings on actions of statewide  
6 application, and to be held in the place or area affected for  
7 enforcement hearings and hearings on actions of limited local  
8 concern.

9 C. Actions taken by the board after a hearing  
10 pursuant to the provisions of this section shall be:

11 (1) written and shall state the reasons for the  
12 action;

13 (2) made public when taken;

14 (3) communicated to all persons who have made a  
15 written request for notification of the action taken; and

16 (4) taken not more than thirty days after the  
17 submission of the hearing officer's report to the board.

18 Section 62. [NEW MATERIAL] JUDICIAL REVIEW OF  
19 ADMINISTRATIVE ACTIONS. --

20 A. Any person adversely affected by an action taken  
21 by the board after review pursuant to the provisions of Section  
22 59 of the Gaming Control Act may appeal the action to the court  
23 of appeals. The appeal shall be on the record made at the  
24 hearing. To support his appeal, the appellant shall make  
25 arrangements with the board for a sufficient number of

1 transcripts of the record of the hearing on which the appeal is  
 2 based. The appellant shall pay for the preparation of the  
 3 transcripts.

4 B. On appeal, the court of appeals shall set aside  
 5 the administrative action only if it is found to be:

6 (1) arbitrary, capricious or an abuse of  
 7 discretion;

8 (2) not supported by substantial evidence in the  
 9 whole record; or

10 (3) otherwise not in accordance with law.

11 Section 63. [NEW MATERIAL] BOARD TO STUDY POSSIBLE  
 12 EXPANSION OF GAMING UNDER ACT--CONSIDERATION OF NONPROFIT  
 13 ORGANIZATIONS.--From the effective date of the Gaming Control Act  
 14 through December 1997, the board, in addition to its other duties  
 15 pursuant to that act, shall study the feasibility and  
 16 advisability of expanding the scope of gaming to include  
 17 nonprofit organizations as licensed gaming operators. The board  
 18 shall report the results of its study and any recommendations it  
 19 develops to the forty-third legislature by December 15, 1997. If  
 20 the board recommends expansion to include nonprofit  
 21 organizations, it shall make specific recommendations on the  
 22 imposition of conditions and requirements to be met by a  
 23 nonprofit organization gaming operator licensee.

24 Section 64. A new section of the New Mexico Finance  
 25 Authority Act is enacted to read:

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1           " [NEW MATERIAL] NATIVE AMERICAN PROJECT REVOLVING FUND--  
2 PURPOSE-- ADMINISTRATION. --

3           A. The "Native American project revolving fund" is  
4 created within the authority. The fund shall be administered by  
5 the authority as a separate account, but may consist of such  
6 subaccounts as the authority deems necessary to carry out the  
7 purposes of the fund. The authority is authorized to establish  
8 procedures required to administer the fund in accordance with the  
9 New Mexico Finance Authority Act.

10           B. Except as otherwise provided in this section,  
11 money from payments of principal of and interest on loans and  
12 payments of principal of and interest on securities held by the  
13 authority for Native American projects shall be deposited in the  
14 Native American project revolving fund. The fund shall also  
15 consist of any other money appropriated, distributed or otherwise  
16 allocated to the fund for the purpose of financing Native  
17 American projects.

18           C. Money appropriated to pay administrative costs,  
19 money available for administrative costs from other sources and  
20 money from payments of interest on loans or securities held by  
21 the authority, including payments of interest on loans and  
22 securities held by the authority for Native American projects,  
23 that represents payments for administrative costs shall not be  
24 deposited in the Native American project revolving fund but shall  
25 be deposited in a separate account of the authority and may be

1 used by the authority to meet administrative costs of the  
2 authority.

3 D. Except as otherwise provided in this section,  
4 money in the Native American project revolving fund is  
5 appropriated to the authority to make loans or grants and to  
6 purchase or sell securities to assist qualified Native American  
7 entities in financing Native American projects in accordance with  
8 the New Mexico Finance Authority Act.

9 E. Money in the Native American project revolving  
10 fund not needed for immediate disbursement, including money held  
11 in reserve, may be deposited with the state treasurer for  
12 short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or  
13 may be invested in direct and general obligations of or  
14 obligations fully and unconditionally guaranteed by the United  
15 States, obligations issued by agencies of the United States,  
16 obligations of this state or any political subdivision of the  
17 state, interest-bearing time deposits, commercial paper issued by  
18 corporations organized and operating in the United States and  
19 rated "prime" quality by a national rating service, other  
20 investments permitted by Section 6-10-10 NMSA 1978 or as  
21 otherwise provided by the trust indenture or bond resolution, if  
22 money is pledged for or secures payment of bonds issued by the  
23 authority.

24 F. The authority shall establish fiscal controls and  
25 accounting procedures that are sufficient to assure proper

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1 accounting for Native American project revolving fund payments,  
2 disbursements and balances.

3 G. As used in this section, "qualified Native  
4 American entity" means an Indian nation, tribe or pueblo located  
5 wholly or partially in New Mexico, including a political  
6 subdivision or wholly owned enterprise of an Indian nation, tribe  
7 or pueblo, and "Native American project" means any economic  
8 development, utility, community facility or other infrastructure  
9 project for a qualified Native American entity.

10 H. To implement a program to assist qualified  
11 entities in financing public projects, the authority may:

12 (1) make loans to qualified Native American  
13 entities that establish one or more dedicated sources of revenue  
14 to repay the loan from the authority;

15 (2) make, enter into and enforce all contracts  
16 necessary, convenient or desirable for the purposes of the  
17 authority or pertaining to:

18 (a) a loan to a qualified Native American  
19 entity;

20 (b) a grant to a qualified Native American  
21 entity;

22 (c) a purchase or sale of securities  
23 individually or on a pooled basis; or

24 (d) the performance of its duties and  
25 execution of any of its powers under the New Mexico Finance

1 Authority Act;

2 (3) purchase or hold securities at prices and in  
3 a manner the authority considers advisable, giving due  
4 consideration to the financial capability of the qualified Native  
5 American entity, and sell securities acquired or held by it at  
6 prices without relation to cost and in a manner the authority  
7 considers advisable;

8 (4) prescribe the form of application or  
9 procedure required of a qualified Native American entity for a  
10 loan or purchase of its securities, fix the terms and conditions  
11 of the loan or purchase and enter into agreements with qualified  
12 entities with respect to loans or purchases;

13 (5) charge for its costs and services in review  
14 or consideration of a proposed loan to a qualified Native  
15 American entity or purchase by the authority of securities,  
16 whether or not the loan is made or the securities purchased;

17 (6) fix and establish terms and provisions with  
18 respect to:

19 (a) a purchase of securities by the  
20 authority, including date and maturities of the securities;

21 (b) redemption or payment before maturity;

22 and

23 (c) any other matters that in connection  
24 with the purchase are necessary, desirable or advisable in the  
25 judgment of the authority;

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1                   (7) to the extent permitted under its contracts  
2 with the holders of bonds of the authority, consent to  
3 modification of the rate of interest, time and payment of  
4 installment of principal or interest, security or any other term  
5 of a bond, contract or agreement of any kind to which the  
6 authority is a party;

7                   (8) in connection with the purchase of any  
8 securities, consider the ability of the qualified Native American  
9 entity to secure financing from other sources and the costs of  
10 that financing and the particular public project or purpose to be  
11 financed or refinanced with the proceeds of the securities to be  
12 purchased by the authority;

13                   (9) acquire and hold title to or leasehold  
14 interest in real and personal property and to sell, convey or  
15 lease that property for the purpose of satisfying a default or  
16 enforcing the provisions of a loan agreement; and

17                   (10) in the event of default by a qualified  
18 entity, enforce its rights by suit or mandamus or may use all  
19 other available remedies under state law.

20                   I. The authority may issue and sell bonds in  
21 principal amounts it considers necessary to provide sufficient  
22 funds for any purpose of this section, including:

- 23                   (1) purchase of securities;
- 24                   (2) making loans through the purchase of  
25 securities;

1 (3) making grants for Native American projects;

2 (4) the construction of Native American  
3 projects;

4 (5) the payment, funding or refunding of the  
5 principal of or interest or redemption premiums on bonds issued  
6 by the authority, whether the bonds or interest to be paid,  
7 funded or refunded have or have not become due;

8 (6) the establishment or increase of reserves or  
9 sinking funds to secure or to pay principal, premium, if any, or  
10 interest on bonds; and

11 (7) all other costs or expenses of the authority  
12 incident to and necessary or convenient to carry out the  
13 provisions of this section.

14 J. Except as otherwise provided in this section, all  
15 bonds or other obligations issued by the authority shall be  
16 obligations of the authority payable solely from the revenues,  
17 income, fees, charges or funds of the authority that may,  
18 pursuant to the provisions of the New Mexico Finance Authority  
19 Act, be pledged to the payment of such obligations, and the bonds  
20 or other obligations shall not create an obligation, debt or  
21 liability of the state. No breach of any pledge, obligation or  
22 agreement of the authority shall impose a pecuniary liability or  
23 a charge upon the general credit or taxing power of the state or  
24 any political subdivision of the state.

25 K. As security for the payment of the principal,

1 interest or premium, if any, on bonds issued by the authority,  
2 the authority is authorized to pledge, transfer and assign:

3 (1) any obligation of a qualified Native  
4 American entity that is payable to the authority;

5 (2) the security for the qualified Native  
6 American entity's obligations;

7 (3) money in the Native American project  
8 revolving fund;

9 (4) any grant, subsidy or contribution from the  
10 United States or any of its agencies or instrumentalities; or

11 (5) any income, revenues, funds or other money  
12 of the authority from any other source authorized for such  
13 pledge, transfer or assignment.

14 L. Bonds issued by the authority pursuant to this  
15 section may be issued in accordance with the New Mexico Finance  
16 Authority Act. "

17 Section 65. A new section of the Tax Administration Act is  
18 enacted to read:

19 "[NEW MATERIAL] DISTRIBUTION OF REVENUE RECEIVED PURSUANT  
20 TO INDIAN GAMING REVENUE-SHARING AGREEMENT. --

21 A. A distribution of thirty-three and one-third  
22 percent of the net receipts attributable to amounts received by  
23 the state pursuant to the provisions of any Indian gaming  
24 revenue-sharing agreement shall be made to the Native American  
25 project revolving fund administered by the New Mexico finance

1 authority.

2 B. The state pledges to and agrees with the holders  
 3 of any bonds or notes issued by the New Mexico finance authority  
 4 and payable from the revenue source specified in Subsection A of  
 5 this section that it will not limit, reduce or alter the  
 6 distribution of the specified net receipts until the bonds or  
 7 notes with any interest are fully met and discharged. The New  
 8 Mexico finance authority is authorized to include this pledge and  
 9 agreement of the state in any agreement with the holders of the  
 10 bonds or notes. "

11 Section 66. Section 7-1-2 NMSA 1978 (being Laws 1965,  
 12 Chapter 248, Section 2, as amended) is amended to read:

13 "7-1-2. APPLICABILITY. -- The Tax Administration Act applies  
 14 to and governs:

15 A. the administration and enforcement of the  
 16 following taxes or tax acts as they now exist or may hereafter be  
 17 amended:

- 18 (1) Income Tax Act;
- 19 (2) Withholding Tax Act;
- 20 (3) Gross Receipts and Compensating Tax Act and
- 21 any state gross receipts tax;
- 22 (4) Liquor Excise Tax Act;
- 23 (5) Local Liquor Excise Tax Act;
- 24 [~~(6) Banking and Financial Corporations Tax Act;~~
- 25 ~~(7)] (6) any municipal local option gross~~

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1 receipts tax;

2                   ~~[(8)]~~ (7) any county local option gross receipts  
3 tax;

4                   ~~[(9)]~~ (8) Special Fuels Supplier Tax Act;

5                   ~~[(10)]~~ (9) Gasoline Tax Act;

6                   ~~[(11)]~~ (10) petroleum products loading fee,  
7 which fee shall be considered a tax for the purpose of the Tax  
8 Administration Act;

9                   ~~[(12)]~~ (11) Alternative Fuel Tax Act;

10                   ~~[(13)]~~ (12) Cigarette Tax Act;

11                   ~~[(14)]~~ (13) Estate Tax Act;

12                   ~~[(15)]~~ (14) Railroad Car Company Tax Act;

13                   ~~[(16)]~~ (15) Investment Credit Act;

14                   ~~[(17)]~~ (16) Corporate Income and Franchise Tax  
15 Act;

16                   ~~[(18)]~~ (17) Uniform Division of Income for Tax  
17 Purposes Act;

18                   ~~[(19)]~~ (18) Multistate Tax Compact;

19                   ~~[(20)]~~ (19) Tobacco Products Tax Act;

20                   ~~[(21)]~~ (20) Filmmaker's Credit Act; and

21                   ~~[(22)]~~ (21) the telecommunications relay service  
22 surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge  
23 shall be considered a tax for the purposes of the Tax  
24 Administration Act;

25                   B. the administration and enforcement of the

1 following taxes, surtaxes, advanced payments or tax acts as they  
 2 now exist or may hereafter be amended:

- 3 (1) Resources Excise Tax Act;
- 4 (2) Severance Tax Act;
- 5 (3) any severance surtax;
- 6 (4) Oil and Gas Severance Tax Act;
- 7 (5) Oil and Gas Conservation Tax Act;
- 8 (6) Oil and Gas Emergency School Tax Act;
- 9 (7) Oil and Gas Ad Valorem Production Tax Act;
- 10 (8) Natural Gas Processors Tax Act;
- 11 (9) Oil and Gas Production Equipment Ad Valorem  
 12 Tax Act;
- 13 (10) Copper Production Ad Valorem Tax Act; and
- 14 (11) any advance payment required to be made by  
 15 any act specified in this subsection, which advance payment shall  
 16 be considered a tax for the purposes of the Tax Administration  
 17 Act;

18 C. the administration and enforcement of the  
 19 following taxes, surcharges, fees or acts as they now exist or  
 20 may hereafter be amended:

- 21 (1) Weight Distance Tax Act;
- 22 (2) Special Fuels Tax Act;
- 23 (3) the workers' compensation fee authorized by  
 24 Section 52-5-19 NMSA 1978, which fee shall be considered a tax  
 25 for purposes of the Tax Administration Act;

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Underscored material = new  
 [bracketed material] = delete

- 1 (4) Uniform Unclaimed Property Act;
- 2 (5) 911 emergency surcharge and the network and
- 3 database surcharge, which surcharges shall be considered taxes
- 4 for purposes of the Tax Administration Act;
- 5 (6) the solid waste assessment fee authorized by
- 6 the Solid Waste Act, which fee shall be considered a tax for
- 7 purposes of the Tax Administration Act; ~~and~~
- 8 (7) the water conservation fee imposed by
- 9 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
- 10 for the purposes of the Tax Administration Act; and
- 11 (8) the gaming tax imposed pursuant to the
- 12 Gaming Control Act; and

13 D. the administration and enforcement of all other  
14 laws, with respect to which the department is charged with  
15 responsibilities pursuant to the Tax Administration Act, but only  
16 to the extent that the other laws do not conflict with the Tax  
17 Administration Act. "

18 Section 67. Section 10-15-1 NMSA 1978 (being Laws 1974,  
19 Chapter 91, Section 1, as amended) is amended to read:

20 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN  
21 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

22 A. In recognition of the fact that a representative  
23 government is dependent upon an informed electorate, it is  
24 declared to be public policy of this state that all persons are  
25 entitled to the greatest possible information regarding the

1 affairs of government and the official acts of those officers and  
2 employees who represent them. The formation of public policy or  
3 the conduct of business by vote shall not be conducted in closed  
4 meeting. All meetings of any public body except the legislature  
5 and the courts shall be public meetings, and all persons so  
6 desiring shall be permitted to attend and listen to the  
7 deliberations and proceedings. Reasonable efforts shall be made  
8 to accommodate the use of audio and video recording devices.

9 B. All meetings of a quorum of members of any board,  
10 commission, administrative adjudicatory body or other  
11 policymaking body of any state agency, any agency or authority of  
12 any county, municipality, district or any political subdivision,  
13 held for the purpose of formulating public policy, including the  
14 development of personnel policy, rules, regulations or  
15 ordinances, discussing public business or for the purpose of  
16 taking any action within the authority of or the delegated  
17 authority of any board, commission or other policymaking body are  
18 declared to be public meetings open to the public at all times,  
19 except as otherwise provided in the constitution of New Mexico or  
20 the Open Meetings Act. No public meeting once convened that is  
21 otherwise required to be open pursuant to the Open Meetings Act  
22 shall be closed or dissolved into small groups or committees for  
23 the purpose of permitting the closing of the meeting.

24 C. If otherwise allowed by law or rule of the public  
25 body, a member of a public body may participate in a meeting of

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1 the public body by means of a conference telephone or other  
2 similar communications equipment when it is otherwise difficult  
3 or impossible for the member to attend the meeting in person,  
4 provided that each member participating by conference telephone  
5 can be identified when speaking, all participants are able to  
6 hear each other at the same time and members of the public  
7 attending the meeting are able to hear any member of the public  
8 body who speaks during the meeting.

9 D. Any meetings at which the discussion or adoption  
10 of any proposed resolution, rule, regulation or formal action  
11 occurs and at which a majority or quorum of the body is in  
12 attendance, and any closed meetings, shall be held only after  
13 reasonable notice to the public. The affected body shall  
14 determine at least annually in a public meeting what notice for a  
15 public meeting is reasonable when applied to that body. That  
16 notice shall include broadcast stations licensed by the federal  
17 communications commission and newspapers of general circulation  
18 that have provided a written request for such notice.

19 E. A public body may recess and reconvene a meeting  
20 to a day subsequent to that stated in the meeting notice if,  
21 prior to recessing, the public body specifies the date, time and  
22 place for continuation of the meeting, and, immediately following  
23 the recessed meeting, posts notice of the date, time and place  
24 for the reconvened meeting on or near the door of the place where  
25 the original meeting was held and in at least one other location

1 appropriate to provide public notice of the continuation of the  
2 meeting. Only matters appearing on the agenda of the original  
3 meeting may be discussed at the reconvened meeting.

4 F. Meeting notices shall include an agenda containing  
5 a list of specific items of business to be discussed or  
6 transacted at the meeting or information on how the public may  
7 obtain a copy of such an agenda. Except in the case of an  
8 emergency, the agenda shall be available to the public at least  
9 twenty-four hours prior to the meeting. Except for emergency  
10 matters, a public body shall take action only on items appearing  
11 on the agenda. For purposes of this subsection, an "emergency"  
12 refers to unforeseen circumstances that, if not addressed  
13 immediately by the public body, will likely result in injury or  
14 damage to persons or property or substantial financial loss to  
15 the public body.

16 G. The board, commission or other policymaking body  
17 shall keep written minutes of all its meetings. The minutes  
18 shall include at a minimum the date, time and place of the  
19 meeting, the names of members in attendance and those absent, the  
20 substance of the proposals considered and a record of any  
21 decisions and votes taken that show how each member voted. All  
22 minutes are open to public inspection. Draft minutes shall be  
23 prepared within ten working days after the meeting and shall be  
24 approved, amended or disapproved at the next meeting where a  
25 quorum is present. Minutes shall not become official until

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1 approved by the policymaking body.

2 H. The provisions of Subsections A, B and G of this  
3 section do not apply to:

4 (1) meetings pertaining to issuance, suspension,  
5 renewal or revocation of a license, except that a hearing at  
6 which evidence is offered or rebutted shall be open. All final  
7 actions on the issuance, suspension, renewal or revocation of a  
8 license shall be taken at an open meeting;

9 (2) limited personnel matters; provided that for  
10 purposes of the Open Meetings Act, "limited personnel matters"  
11 means the discussion of hiring, promotion, demotion, dismissal,  
12 assignment or resignation of or the investigation or  
13 consideration of complaints or charges against any individual  
14 public employee; provided further that this subsection is not to  
15 be construed as to exempt final actions on personnel from being  
16 taken at open public meetings, nor does it preclude an aggrieved  
17 public employee from demanding a public hearing. Judicial  
18 candidates interviewed by any commission shall have the right to  
19 demand an open interview;

20 (3) deliberations by a public body in connection  
21 with an administrative adjudicatory proceeding. For purposes of  
22 this paragraph, an "administrative adjudicatory proceeding" means  
23 a proceeding brought by or against a person before a public body  
24 in which individual legal rights, duties or privileges are  
25 required by law to be determined by the public body after an

1 opportunity for a trial-type hearing. Except as otherwise  
2 provided in this section, the actual administrative adjudicatory  
3 proceeding at which evidence is offered or rebutted and any final  
4 action taken as a result of the proceeding shall occur in an open  
5 meeting;

6 (4) the discussion of personally identifiable  
7 information about any individual student, unless the student, his  
8 parent or guardian requests otherwise;

9 (5) meetings for the discussion of bargaining  
10 strategy preliminary to collective bargaining negotiations  
11 between the policymaking body and a bargaining unit representing  
12 the employees of that policymaking body and collective bargaining  
13 sessions at which the policymaking body and the representatives  
14 of the collective bargaining unit are present;

15 (6) that portion of meetings at which a decision  
16 concerning purchases in an amount exceeding two thousand five  
17 hundred dollars (\$2,500) that can be made only from one source  
18 and that portion of meetings at which the contents of competitive  
19 sealed proposals solicited pursuant to the Procurement Code are  
20 discussed during the contract negotiation process. The actual  
21 approval of purchase of the item or final action regarding the  
22 selection of a contractor shall be made in an open meeting;

23 (7) meetings subject to the attorney-client  
24 privilege pertaining to threatened or pending litigation in which  
25 the public body is or may become a participant;

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1 (8) meetings for the discussion of the purchase,  
2 acquisition or disposal of real property or water rights by the  
3 public body; ~~and~~

4 (9) those portions of meetings of committees or  
5 boards of public hospitals that receive less than fifty percent  
6 of their operating budget from direct public funds and  
7 appropriations where strategic and long-range business plans are  
8 discussed; and

9 (10) that portion of a meeting of the gaming  
10 control board dealing with information made confidential pursuant  
11 to the provisions of the Gaming Control Act.

12 I. If any meeting is closed pursuant to the  
13 exclusions contained in Subsection H of this section, the  
14 closure:

15 (1) if ~~made~~ in an open meeting, shall be  
16 approved by a majority vote of a quorum of the policymaking body;  
17 the authority for the closure and the subject to be discussed  
18 shall be stated with reasonable specificity in the motion calling  
19 for the vote on a closed meeting; the vote shall be taken in an  
20 open meeting; and the vote of each individual member shall be  
21 recorded in the minutes. Only those subjects announced or voted  
22 upon prior to closure by the policymaking body may be discussed  
23 in a closed meeting; and

24 (2) if called for when the policymaking body is  
25 not in an open meeting, shall not be held until public notice,

1 appropriate under the circumstances, stating the specific  
 2 provision of the law authorizing the closed meeting and stating  
 3 with reasonable specificity the subject to be discussed is given  
 4 to the members and to the general public.

5 J. Following completion of any closed meeting, the  
 6 minutes of the open meeting that was closed or the minutes of the  
 7 next open meeting if the closed meeting was separately scheduled  
 8 shall state that the matters discussed in the closed meeting were  
 9 limited only to those specified in the motion for closure or in  
 10 the notice of the separate closed meeting. This statement shall  
 11 be approved by the public body under Subsection G of this section  
 12 as part of the minutes. "

13 Section 68. Section 30-19-1 NMSA 1978 (being Laws 1963,  
 14 Chapter 303, Section 19-1, as amended) is amended to read:

15 "30-19-1. DEFINITIONS RELATING TO GAMBLING. --As used in  
 16 Chapter 30, Article 19 NMSA 1978:

17 A. "antique gambling device" means a gambling device  
 18 twenty-five years of age or older and substantially in original  
 19 condition that is not used for gambling or commercial gambling or  
 20 located in a gambling place;

21 B. "bet" means a bargain in which the parties agree  
 22 that, dependent upon chance, even though accompanied by some  
 23 skill, one stands to win or lose anything of value specified in  
 24 the agreement. A bet does not include:

25 (1) bona fide business transactions that are

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1 valid under the law of contracts, including ~~[without limitation]~~:

2 (a) contracts for the purchase or sale, at a  
3 future date, of securities or other commodities; and

4 (b) agreements to compensate for loss caused  
5 by the happening of the chance, including ~~[without limitation]~~  
6 contracts for indemnity or guaranty and life or health and  
7 accident insurance;

8 (2) offers of purses, prizes or premiums to the  
9 actual contestants in any bona fide contest for the determination  
10 of skill, speed, strength or endurance or to the bona fide owners  
11 of animals or vehicles entered in such contest;

12 (3) a lottery as defined in this section; or

13 (4) betting otherwise permitted by law;

14 ~~[C. "lottery" means an enterprise other than the New  
15 Mexico state lottery established and operated pursuant to the New  
16 Mexico Lottery Act wherein, for a consideration, the participants  
17 are given an opportunity to win a prize, the award of which is  
18 determined by chance, even though accompanied by some skill. As  
19 used in this subsection, "consideration" means anything of  
20 pecuniary value required to be paid to the promoter in order to  
21 participate in such enterprise;~~

22 ~~D.]~~ C. "gambling device" means a contrivance other  
23 than an antique gambling device that is not licensed for use  
24 pursuant to the Gaming Control Act and that, for a consideration,  
25 affords the player an opportunity to obtain anything of value,

1 the award of which is determined by chance, even though  
 2 accompanied by some skill, [~~and~~] whether or not the prize is  
 3 automatically paid by the device; [~~and~~]

4 ~~[E.]~~ D. "gambling place" means [~~any~~] a building or  
 5 tent, [~~any~~] a vehicle, whether self-propelled or not, or [~~any~~] a  
 6 room within any of them that is not within the premises of a  
 7 person licensed as a lottery retailer or that is not licensed  
 8 pursuant to the Gaming Control Act, one of whose principal uses  
 9 is:

- 10 (1) making and settling of bets;
- 11 (2) receiving, holding, recording or forwarding
- 12 bets or offers to bet;
- 13 (3) conducting lotteries; or
- 14 (4) playing gambling devices; and

15 E. "lottery" means an enterprise wherein, for a  
 16 consideration, the participants are given an opportunity to win a  
 17 prize, the award of which is determined by chance, even though  
 18 accompanied by some skill. "Lottery" does not include the New  
 19 Mexico state lottery established and operated pursuant to the New  
 20 Mexico Lottery Act or gaming that is licensed and operated  
 21 pursuant to the Gaming Control Act. As used in this subsection,  
 22 "consideration" means anything of pecuniary value required to be  
 23 paid to the promoter in order to participate in a gambling or  
 24 gaming enterprise. "

25 Section 69. Section 30-19-6 NMSA 1978 (being Laws 1963,

1 Chapter 303, Section 19-6, as amended) is amended to read:

2 "30-19-6. [~~PERMISSIVE LOTTERY~~] CHARITABLE LOTTERIES--  
3 PERMITTED GAMBLING--CONDITIONS --

4 A. Nothing in [~~Article 19~~] Chapter 30, Article 19  
5 NMSA 1978 [~~shall be construed to apply to any~~] prohibits a sale  
6 or drawing of [~~any~~] a prize at [~~any~~] a fair held in this state  
7 for the benefit of [~~any~~] a church, public library or religious  
8 society [~~situate or being~~] located in this state, or for  
9 charitable purposes when all the proceeds of [~~such~~] the fair  
10 [~~shall be~~] are expended in this state for the benefit of [~~such~~]  
11 the church, public library, religious society or charitable  
12 purposes. A [~~lottery shall be operated~~] sale or drawing  
13 conducted pursuant to this subsection is for the benefit of the  
14 organization or charitable purpose only [~~when~~] if the entire  
15 proceeds of the [~~lottery~~] sale or drawing go to the organization  
16 or charitable purpose and no part of such proceeds go to any  
17 individual member or employee [~~thereof~~] of the organization.

18 B. Nothing in [~~Article 19~~] Chapter 30, Article 19  
19 NMSA 1978 [~~shall be held to prohibit any~~] prohibits a bona fide  
20 motion picture [~~theatre~~] theater from offering prizes of cash or  
21 merchandise for advertising purposes, in connection with [~~such~~]  
22 the business of the theater or for the purpose of stimulating  
23 business, whether or not [~~any~~] consideration other than a  
24 monetary consideration in excess of the regular price of  
25 admission is [~~exacted~~] charged for participation in drawings for

1 prizes.

2 C. Nothing in ~~[Article 19]~~ Chapter 30, Article 19  
 3 NMSA 1978 ~~[shall be held to apply to any]~~ prohibits a bona fide  
 4 county fair, including ~~[fairs]~~ a fair for more than one county,  
 5 ~~[which shall have]~~ that has been held annually at the same  
 6 location for at least two years, ~~[and which shall offer]~~ from  
 7 offering prizes of livestock or poultry in connection with ~~[such]~~  
 8 the fair ~~[when]~~ if the proceeds of ~~[such]~~ the drawings ~~[shall be]~~  
 9 are used for the benefit of ~~[said]~~ the fair.

10 ~~[D. Nothing in Article 19, Chapter 30 NMSA 1978 shall~~  
 11 ~~be construed to apply to any lottery operated by an organization~~  
 12 ~~exempt from the state income tax pursuant to Subsection C of~~  
 13 ~~Section 7-2-4 NMSA 1978 and not subject to the provisions of~~  
 14 ~~Subsection A of this section; provided that:~~

15 (1) ~~no more than two lotteries shall be operated~~  
 16 ~~in any year by such an organization;~~

17 (2) ~~all the gross proceeds less the reasonable~~  
 18 ~~cost of prizes of any lottery operated by such an organization~~  
 19 ~~shall be expended in the state for the benefit of the~~  
 20 ~~organization or public purposes; and~~

21 (3) ~~no part of the proceeds of any lottery shall~~  
 22 ~~go to any individual member or employee of any organization~~  
 23 ~~except as payment for the purchase of prizes at no more than the~~  
 24 ~~reasonable retail price.]~~

25 D. Nothing in Chapter 30, Article 19 NMSA 1978

Underscored material = new  
 [bracketed material] = delete

1 prohibits an organization that is exempt from state income tax  
2 pursuant to Section 7-2-4 NMSA 1978 from conducting bingo games,  
3 raffles, lotteries or table games, including poker, craps,  
4 blackjack, roulette and the like, at a fundraising event if:

5 (1) the fundraising event is conducted no more  
6 than twice in a calendar year by the qualifying organization;

7 (2) the only persons authorized to participate  
8 in the operation or management of the fundraising event are:

9 (a) bona fide members of the qualifying  
10 organization who are not paid for their services in the operation  
11 or management of the event; or

12 (b) persons who provide goods or services  
13 for the fundraising event for a flat fee or an hourly fee  
14 pursuant to a written contract with the qualifying organization;

15 (3) no person receives any part of the proceeds  
16 of the fundraising event except:

17 (a) as payment for prizes purchased at no  
18 more than the reasonable retail prices for the prizes; or

19 (b) pursuant to a contract described in  
20 Subparagraph (b) of Paragraph (2) of this subsection;

21 (4) the net proceeds of the fundraising event  
22 are expended in the state for the benefit of the qualifying  
23 organization or purposes for which it was formed;

24 (5) gross revenue, expenses, prizes paid and the  
25 date, time and location of the fundraising event are reported to

1 the alcohol and gaming division of the regulation and licensing  
2 department within thirty days after the event;

3 (6) the qualifying organization conducting the  
4 fundraising event maintains records for a period of one year  
5 after the date of the event that accurately show the gross  
6 revenue generated by the event, details of the expenses of  
7 conducting the event and details of how the gross revenue is  
8 used, and the qualifying organization makes the records available  
9 for review by the director of the alcohol and gaming division of  
10 the regulation and licensing department or the attorney general,  
11 or both, at their request;

12 (7) no more than four gambling devices are  
13 operated during the fundraising event, two of which may be video  
14 gaming machines or slot machines and shall be played with tokens  
15 or chips, but not United States coins or currency, provided by  
16 the qualifying organization;

17 (8) no person less than the age of twenty-one is  
18 allowed to participate in the operation or management of the  
19 fundraising event or to play any game at the event; and

20 (9) the fundraising event is conducted pursuant  
21 to regulations and a permit issued by the alcohol and gaming  
22 division of the regulation and licensing department.

23 E. The provisions of the Gaming Control Act, the  
24 Bingo and Raffle Act and the New Mexico Lottery Act do not apply  
25 to the activities described in Subsection D of this section."

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1           Section 70. Section 60-7A-19 NMSA 1978 (being Laws 1981,  
2 Chapter 39, Section 96) is amended to read:

3           "60-7A-19. COMMERCIAL GAMBLING ON LICENSED PREMISES. --

4           A. It is a violation of the Liquor Control Act for a  
5 licensee to knowingly allow commercial gambling on the licensed  
6 premises.

7           B. In addition to any criminal penalties, any person  
8 who violates Subsection A of this section may have his license  
9 suspended or revoked or a fine imposed, or both, pursuant to the  
10 Liquor Control Act.

11           C. [~~For purposes of~~] As used in this section:

12           (1) "commercial gambling" means:

13           [~~(1)~~] (a) participating in the earnings of  
14 or operating a gambling place;

15           [~~(2)~~] (b) receiving, recording or forwarding  
16 bets or offers to bet;

17           [~~(3)~~] (c) possessing facilities with the  
18 intent to receive, record or forward bets or offers to bet;

19           [~~(4)~~] (d) for gain, becoming a custodian of  
20 anything of value bet or offered to be bet;

21           [~~(5)~~] (e) conducting a lottery where both  
22 the consideration and the prize are money, or whoever with intent  
23 to conduct a lottery possesses facilities to do so; or

24           [~~(6)~~] (f) setting up for use for the purpose  
25 of gambling, or collecting the proceeds of, any gambling device

1 or game; and

2 (2) "commercial gambling" does not mean:

3 (a) activities authorized pursuant to the  
4 New Mexico Lottery Act;

5 (b) the conduct of activities pursuant to  
6 Subsection D of Section 30-19-6 NMSA 1978; and

7 (c) gaming authorized pursuant to the Gaming  
8 Control Act on the premises of a gaming operator licensee  
9 licensed pursuant to that act."

10 Section 71. SEVERABILITY.--If any part or application of  
11 the Gaming Control Act is held invalid, the remainder of its  
12 application to other situations or persons shall not be affected.

13 Section 72. DELAYED EFFECTIVE DATE.--The effective date of  
14 the provisions of Section 30 of this act is July 1, 1998.

15 Section 73. EMERGENCY.--It is necessary for the public  
16 peace, health and safety that this act take effect immediately.

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**State of New Mexico  
House of Representatives**

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 3, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred  
HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE  
FOR HOUSE BILL 399

has had it under consideration and reports same with  
recommendation that it DO NOT PASS, but that

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HOUSE  
BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 399

be reported WITHOUT RECOMMENDATION, and thence  
referred to TAXATION AND REVENUE COMMITTEE.

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Respectfully submitted,

\_\_\_\_\_  
Thomas P. Foy, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

\_\_\_\_\_  
(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 3 Against

Yes: 9

No: Alwin, King, Stewart

Excused: Rios

Absent: None

M \H0399

1 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
2 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
3 HOUSE BILL 399  
4 43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997  
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9 AN ACT

10 RELATING TO GAMING; ENACTING THE INDIAN GAMING COMPACT;  
11 ENACTING A REVENUE-SHARING AGREEMENT TO PROVIDE FOR REVENUE  
12 SHARING BETWEEN THE STATE AND AN INDIAN NATION, TRIBE OR  
13 PUEBLO CONDUCTING GAMING PURSUANT TO THE COMPACT; ENACTING THE  
14 GAMING CONTROL ACT TO PERMIT CERTAIN NONTRIBAL GAMING;  
15 PROVIDING PENALTIES; IMPOSING A GAMING TAX AND FEES; AMENDING  
16 AND ENACTING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS;  
17 DECLARING AN EMERGENCY.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 Section 1. [NEW MATERIAL] INDIAN GAMING COMPACT  
20 ENTERED INTO. -- The Indian Gaming Compact is enacted into law  
21 and entered into with all Indian nations, tribes and pueblos  
22 in the state legally joining in it by enactment of a  
23 resolution pursuant to the requirements of applicable tribal  
24 and federal law. The compact is enacted and entered into in  
25 the form substantially as follows:

"INDIAN GAMING COMPACT

.118111.1

1 INTRODUCTION

2 The State is a sovereign State of the United States of  
3 America, having been admitted to the Union pursuant to the Act  
4 of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and  
5 is authorized by its constitution to enter into contracts and  
6 agreements, including this Compact, with the Tribe;

7 The Tribe is a sovereign federally recognized Indian  
8 tribe and its governing body has authorized the officials of  
9 the Tribe to enter into contracts and agreements of every  
10 description, including this Compact, with the State;

11 The Congress of the United States has enacted the Indian  
12 Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701-2721  
13 (hereinafter "IGRA"), which permits Indian tribes to conduct  
14 Class III Gaming on Indian Lands pursuant to a tribal-state  
15 compact entered into for that purpose;

16 The Tribe owns or controls Indian Lands and by Ordinance  
17 has adopted rules and regulations governing Class III games  
18 played and related activities at any Gaming Facility;

19 The State and the Tribe, in recognition of the sovereign  
20 rights of each party and in a spirit of cooperation to promote  
21 the best interests of the citizens of the State and the  
22 members of the Tribe, have engaged in good faith negotiations  
23 recognizing and respecting the interests of each party and  
24 have agreed to this Compact.

25 NOW, THEREFORE, the State and the Tribe agree as

1 follows:

2 TERMS AND CONDITIONS

3 SECTION 1. Purpose and Objectives.

4 The purpose and objectives of the State and the Tribe in  
5 making this Compact are as follows:

6 A. To evidence the good will and cooperative spirit  
7 between the State and the Tribe;

8 B. To continue the development of an effective government-  
9 to-government relationship between the State and the Tribe;

10 C. To provide for the regulation of Class III Gaming on  
11 Indian Lands as required by the IGRA;

12 D. To fulfill the purpose and intent of the IGRA by  
13 providing for tribal gaming as a means of generating tribal  
14 revenues, thereby promoting tribal economic development, tribal  
15 self-sufficiency, and strong tribal government;

16 E. To provide revenues to fund tribal government  
17 operations or programs, to provide for the general welfare of the  
18 tribal members and for other purposes allowed under the IGRA;

19 F. To provide for the effective regulation of Class III  
20 Gaming in which the Tribe shall have the sole proprietary  
21 interest and be the primary beneficiary; and

22 G. To address the State's interest in the establishment,  
23 by the Tribe, of rules and procedures for ensuring that Class III  
24 Gaming is conducted fairly and honestly by the owners, operators,  
25 employees and patrons of any Class III Gaming enterprise on

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1 Indian Lands.

2 SECTION 2. Definitions.

3 For purposes of this Compact, the following definitions  
4 pertain:

5 A. "Class III Gaming" means all forms of gaming as defined  
6 in 25 U. S. C. § 2703(8), and 25 C. F. R. § 502. 4.

7 B. "Compact" means this compact between the State and the  
8 Tribe.

9 C. "Gaming Enterprise" means the tribal entity created and  
10 designated by the Tribe as having authority to conduct Class III  
11 Gaming pursuant to this Compact.

12 D. "Gaming Facility" means the buildings or structures in  
13 which Class III Gaming is conducted on Indian Lands.

14 E. "Indian Lands" means:

15 1. all lands within the exterior boundaries of the  
16 Tribe's reservation and its confirmed grants from prior  
17 sovereigns; or

18 2. any other lands title to which is either held in  
19 trust by the United States for the exclusive benefit of the Tribe  
20 or a member thereof or is held by the Tribe or a member thereof  
21 subject to restrictions against alienation imposed by the United  
22 States, and over which the Tribe exercises jurisdiction and  
23 governmental authority except for land located within the  
24 boundaries of a municipality having a population of more than two  
25 hundred thousand (200,000) persons.



1 F. "Key Employee" means that term as defined in 25 CFR  
2 Section 502.14.

3 G. "Management Contract" means a contract within the  
4 meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

5 H. "Management Contractor" means any person or entity that  
6 has entered into a Management Contract with the Tribe.

7 I. "Ordinance" means the gaming ordinance and any  
8 amendments thereto adopted by the Tribal Council of the Tribe.

9 J. "Primary Management Official" means that term as  
10 defined in 25 CFR Section 502.19.

11 K. "State" means the State of New Mexico.

12 L. "State Gaming Representative" means that person  
13 designated by the Governor of the State who will be responsible  
14 for actions of the State set out in the Compact. The  
15 representative will be the single contact with the Tribe and may  
16 be relied upon as such by the Tribe. If the State Legislature  
17 enacts legislation to establish an agency of the State, such  
18 agency may assume the duties of the State Gaming Representative.

19 M. "Tribal Gaming Agency" means the tribal governmental  
20 agency which will be identified to the State Gaming  
21 Representative as the agency responsible for actions of the Tribe  
22 set out in the Compact. It will be the single contact with the  
23 State and may be relied upon as such by the State.

24 N. "Tribe" means any Indian Tribe or Pueblo located  
25 within the State of New Mexico entering into this Compact as

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1 provided for herein.

2 SECTION 3. Authorized Class III Gaming.

3 The Tribe may conduct, only on Indian Lands, subject to all  
4 of the terms and conditions of this Compact, any or all forms of  
5 casino-style gaming, including but not limited to slot machines  
6 and other forms of electronic gaming devices; all forms of poker,  
7 blackjack and other casino-style card games, both banked and  
8 unbanked; roulette; craps; keno; wheel of fortune; pai gow; and  
9 other games played in casino settings, and any form of a lottery.

10 Subject to the foregoing, the Tribe shall establish, in its  
11 discretion, by tribal law, such limitations as it deems  
12 appropriate on the number and type of Class III Gaming conducted,  
13 the location of Class III Gaming on Indian Lands, the hours and  
14 days of operation, and betting and pot limits, applicable to such  
15 gaming.

16 SECTION 4. Regulation of Class III Gaming.

17 A. Tribal Gaming Agency. The Tribal Gaming Agency will  
18 assure that the Tribe will:

- 19 1. operate all Class III Gaming pursuant to this  
20 Compact, tribal law, the IGRA and other applicable  
21 Federal law;
- 22 2. provide for the physical safety of patrons in any  
23 Gaming Facility;
- 24 3. provide for the physical safety of personnel  
25 employed by the gaming enterprise;

- 1           4. provide for the physical safeguarding of assets
- 2           transported to and from the Gaming Facility and
- 3           cashier's cage department;
- 4           5. provide for the protection of the property of the
- 5           patrons and the gaming enterprise from illegal
- 6           activity;
- 7           6. participate in licensing of primary management
- 8           officials and key employees of a Class III Gaming
- 9           enterprise;
- 10          7. detain persons who may be involved in illegal acts
- 11          for the purpose of notifying law enforcement
- 12          authorities; and
- 13          8. record and investigate any and all unusual
- 14          occurrences related to Class III Gaming within the
- 15          Gaming Facility.

16           B. Regulations. Without affecting the generality of the  
17           foregoing, the Tribe shall adopt laws:

- 18           1. prohibiting participation in any Class III Gaming
- 19           by any person under the age of twenty-one (21);
- 20           2. prohibiting the employment of any person as a key
- 21           employee or primary management official in a
- 22           position that is directly involved in Class III
- 23           Gaming activities who is under the age of twenty-
- 24           one (21) or who has not been licensed in
- 25           accordance with Section 5, herein;

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- 3. requiring the Tribe to take all necessary action to impose on its gaming operation standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and any other federal laws relating to wages, hours of work and conditions of work, and the regulations issued thereunder;
- 4. requiring that on any construction project involving any Gaming Facility or related structure that is funded in whole or in part by federal funds, all workers will be paid wages meeting or exceeding the standards established for New Mexico under the federal Davis-Bacon Act;
- 5. providing to all employees of a gaming establishment employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave, medical and dental insurance as well as providing unemployment insurance and workers' compensation insurance through participation in the state programs offering those benefits;
- 6. providing a grievance process for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for

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- 1 appeals to persons of greater authority than the  
2 immediate supervisor of the employee;
- 3 7. prohibiting a gaming enterprise from cashing any  
4 paycheck or any type of government assistance  
5 check, including Social Security, AFDC, pension  
6 and other such checks, for any patron;
- 7 8. requiring that, if feasible, automatic teller  
8 machines on Gaming Facility premises be programmed  
9 so that the machines will not accept cards issued  
10 by the State to AFDC recipients for access to AFDC  
11 benefits;
- 12 9. providing that each electronic or  
13 electromechanical gaming device in use at the  
14 Gaming Facility must pay out a mathematically  
15 demonstrable percentage of all amounts wagered,  
16 which must not be less than eighty percent (80%);
- 17 10. providing that no later than July 1, 1997, all  
18 gaming machines on the premises of the Gaming  
19 Facility will be connected to a central  
20 computerized reporting and auditing system on the  
21 Gaming Facility premises, which shall collect on a  
22 continual basis the activity of each gaming  
23 machine in use at the Gaming Facility, and that  
24 such data shall be electronically accessible to  
25 the State Gaming Representative upon entry of

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- appropriate security codes;
- 11. enacting provisions that:
  - (a) prohibit an employee of the Gaming Facility from selling, serving, giving or delivering an alcoholic beverage to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the Gaming Facility;
  - (b) require Gaming Facility employees that dispense, sell, serve or deliver alcoholic beverages to attend Alcohol Server Education Classes similar to those classes provided for in the New Mexico Liquor Control Act; and
  - (c) purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million dollars (\$1,000,000) per incident and two million dollars (\$2,000,000) aggregate per policy year;
- 12. prohibiting alcoholic beverages from being sold, served, delivered or consumed in that part of a Gaming Facility where gaming is allowed;
- 13. requiring the gaming enterprise to spend an amount that is no less than one-quarter of one percent (.25%) of its net win as that term is defined

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1           herein annually to fund or support programs for  
2           the treatment and assistance of compulsive  
3           gamblers and for the prevention of compulsive  
4           gambling;

5           14. governing any Management Contract regarding its  
6           Class III Gaming activity such that it conforms to  
7           the requirements of tribal law and the IGRA and  
8           the regulations issued thereunder;

9           15. prohibiting the operation of any Class III Gaming  
10          for at least four (4) consecutive hours daily,  
11          Mondays through Thursdays (except federal  
12          holidays);

13          16. prohibiting a Tribal Gaming Enterprise and the  
14          Tribe from providing, allowing, contracting to  
15          provide or arranging to provide alcoholic  
16          beverages, food or lodging for no charge or at  
17          reduced prices at a Gaming Facility or lodging  
18          facility as an incentive or enticement for patrons  
19          to game; and

20          17. prohibiting the Tribe, the Tribal Gaming Agency or  
21          a Management Contractor from contributing  
22          directly, or through an agent, representative or  
23          employee, revenue from a Gaming Enterprise owned  
24          by the Tribe, or anything of value acquired with  
25          that revenue, to a candidate, political committee

1 or person holding an office elected or to be  
2 elected at an election covered by the State's  
3 Campaign Reporting Act.

4 The Tribal Gaming Agency will provide true copies of all  
5 tribal laws and regulations affecting Class III Gaming conducted  
6 under the provisions of this Compact to the State Gaming  
7 Representative within thirty (30) days after the effective date  
8 of this Compact, and will provide true copies of any amendments  
9 thereto or additional laws or regulations affecting gaming within  
10 thirty (30) days after their enactment (or approval, if any).

11 C. Audit and Financial Statements. The Tribal Gaming  
12 Agency shall require all books and records relating to Class III  
13 Gaming to be maintained in accordance with generally accepted  
14 accounting principles. All such books and records shall be  
15 retained for a period of at least six (6) years from the date of  
16 creation. Not less than annually, the Tribal Gaming Agency shall  
17 require an audit and a certified financial statement covering all  
18 financial activities of the gaming enterprise by an independent  
19 certified public accountant licensed by the State. The financial  
20 statement shall be prepared in accordance with generally accepted  
21 accounting principles and shall be submitted to the Tribal Gaming  
22 Agency within one hundred twenty (120) days of the close of the  
23 Tribe's fiscal year. The Tribe will maintain the following  
24 records for not less than six (6) years:

- 25 1. revenues, expenses, assets, liabilities and equity



- 1 for each Gaming Facility;
- 2 2. daily cash transactions for each Class III Gaming
- 3 activity at each Gaming Facility, including but
- 4 not limited to transactions relating to each
- 5 gaming table bank, game drop box and gaming room
- 6 bank;
- 7 3. all markers, IOUs, returned checks, hold check or
- 8 other similar credit instruments;
- 9 4. individual and statistical game records (except
- 10 card games) to reflect statistical drop and
- 11 statistical win; for electronic, computer, or
- 12 other technologically assisted games, analytic
- 13 reports which show the total amount of cash
- 14 wagered and the total amount of prizes won;
- 15 5. contracts, correspondence and other transaction
- 16 documents relating to all vendors and contractors;
- 17 6. records of all tribal gaming enforcement
- 18 activities;
- 19 7. audits prepared by or on behalf of the Tribe; and
- 20 8. personnel information on all Class III Gaming
- 21 employees or agents, including rotation sheets,
- 22 hours worked, employee profiles and background
- 23 checks.

24 D. Violations. The agents of the Tribal Gaming Agency

25 shall have unrestricted access to the Gaming Facility during all

1 hours of Class III Gaming activity, and shall have immediate and  
2 unrestricted access to any and all areas of the Gaming Facility  
3 for the purpose of ensuring compliance with the provisions of  
4 this Compact and the Ordinance. The agents shall report  
5 immediately to the Tribal Gaming Agency any suspected violation  
6 of this Compact, the Ordinance, or regulations of the Tribal  
7 Gaming Agency by the gaming enterprise, Management Contractor, or  
8 any person, whether or not associated with Class III Gaming.

9 E. State Gaming Representative.

- 10 1. Upon written request by the State to the Tribe,  
11 the Tribe will provide information on primary  
12 management officials, key employees and suppliers,  
13 sufficient to allow the State to conduct its own  
14 background investigations, as it may deem  
15 necessary, so that it may make an independent  
16 determination as to the suitability of such  
17 individuals, consistent with the standards set  
18 forth in Section 5, hereinafter. The Tribe shall  
19 consider any information or recommendations  
20 provided to it by the State as to any such person  
21 or entity, but the Tribe shall have the final say  
22 with respect to the hiring or licensing of any  
23 such person or entity.
- 24 2. Notwithstanding that the Tribe has the primary  
25 responsibility to administer and enforce the

1 regulatory requirements, the State Gaming  
2 Representative authorized in writing by the  
3 Governor of the State or by legislation duly  
4 enacted by the State Legislature shall have the  
5 right to inspect a Gaming Facility, Class III  
6 Gaming activity, and all records relating to Class  
7 III Gaming (including those set forth in Section  
8 5, hereinafter) of the Tribe, subject to the  
9 following conditions:

- 10 (a) with respect to public areas of a Gaming  
11 Facility, at any time without prior notice  
12 during normal business hours;
- 13 (b) with respect to private areas of a Gaming  
14 Facility not accessible to the public, at any  
15 time during normal Gaming Facility business  
16 hours, immediately after notifying the Tribal  
17 Gaming Agency and Gaming Facility of his or  
18 her presence on the premises and presenting  
19 proper identification, and requesting access  
20 to the non-public areas of the Gaming  
21 Facility. The Tribe, in its sole discretion,  
22 may require an employee of the Gaming  
23 Facility or the Tribal Gaming Agency to  
24 accompany the State Gaming Representative at  
25 all times that the State Gaming

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Representative is on the premises of a Gaming Facility, but if the Tribe imposes such a requirement, the Tribe shall require such an employee of the Gaming Facility or the Tribal Gaming Agency to be available at all times for such purposes;

(c) with respect to inspection and copying of all management records relating to Class III Gaming, with forty-eight (48) hours prior written notice, not including weekends. The reasonable costs of copying will be borne by the State; and

(d) whenever the State Gaming Representative, or his designee, enters the premises of the Gaming Facility for any such inspection, such Representative, or designee, shall identify himself to security or supervisory personnel of the Gaming Facility.

3. Gaming Enterprise and gaming operations information shall be considered public information and subject to the Inspection of Public Records Act. Trade secrets and proprietary information regarding the gaming enterprise of the Tribe, Class III Gaming conducted by the Tribe, or the operation thereof, shall not be deemed public

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1 records as a matter of state law, and shall not be  
 2 disclosed to any member of the public, without the  
 3 prior written approval of a duly authorized  
 4 representative of the Tribe. These prohibitions  
 5 shall not be construed to prohibit:

- 6 (a) the furnishing of any information to a law  
 7 enforcement or regulatory agency of the  
 8 Federal Government;
- 9 (b) the State from making known the names of  
 10 persons, firms, or corporations conducting  
 11 Class III Gaming pursuant to the terms of  
 12 this Compact, locations at which such  
 13 activities are conducted, or the dates on  
 14 which such activities are conducted;
- 15 (c) publishing the terms of this Compact;
- 16 (d) disclosing information as necessary to audit,  
 17 investigate, prosecute or arbitrate  
 18 violations of this Compact or other  
 19 applicable laws or to defend suits against  
 20 the State; and
- 21 (e) complying with subpoenas or court orders  
 22 issued by courts of competent jurisdiction.

23 4. To the fullest extent allowed by State law, the  
 24 Tribe shall have the right to inspect State  
 25 records concerning all Class III Gaming conducted

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by the Tribe; the Tribe shall have the right to copy such State records, with the Tribe bearing the reasonable cost of copying.

5. For every year or part thereof in which the Tribe is actually engaged in Class III Gaming hereunder, the Tribe shall reimburse the State for the actual costs the State incurs in carrying out any functions authorized by the terms of this Compact. All calculations of amounts due shall be based upon a fiscal year beginning October 1, and ending September 30, unless the parties select a different fiscal year. Payments due the State shall be made no later than sixty (60) days after the beginning of each fiscal year. Payments due the State during any partial fiscal year this Compact is in effect shall be adjusted to reflect only that portion of the fiscal year. Within sixty (60) days after each fiscal year in which this Compact is in effect, the State shall submit to the Tribe an accounting of actual costs incurred in carrying out any functions authorized by the terms of this Compact. Any amount not expended by the State on said actual costs shall be returned to the Tribe by the State within sixty (60) days after the fiscal year or treated as a

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1           prepayment of the Tribe's obligation during the  
2           subsequent fiscal year.

3           6. In the event the State believes that the Tribe is  
4           not administering and enforcing the regulatory  
5           requirements set forth herein, it may invoke the  
6           procedures set forth in Section 7 of this Compact.

7           F. The Tribe shall comply with all applicable provisions  
8           of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C.  
9           §§ 5311-5314, and all reporting requirements of the Internal  
10          Revenue Service.

11          SECTION 5. Licensing Requirements.

12          A. License Required. The Gaming Facility operator (but  
13          not including the Tribe), including its principals, primary  
14          management officials, and key employees, the Management  
15          Contractor and its principals, primary management officials, and  
16          key employees (if the Tribe hires a Management Contractor); any  
17          person, corporation, or other entity that has supplied or  
18          proposes to supply any gaming device to the Tribe or the  
19          Management Contractor; and any person, corporation or other  
20          entity providing gaming services within or without a Gaming  
21          Facility, shall apply for and receive a license from the Tribal  
22          Gaming Agency before participating in any way in the operation or  
23          conduct of any Class III Gaming on Indian Lands.

24          B. License Application. Each applicant for a license  
25          shall file with the Tribal Gaming Agency a written application in

1 the form prescribed by the Tribal Gaming Agency, along with the  
2 applicant's fingerprint card, current photograph and the fee  
3 required by the Tribal Gaming Agency.

- 4 1. The following Notice ("Privacy Act Notice") shall  
5 be placed on the application form for a principal,  
6 key employee or a primary management official  
7 before that form is filled out by an applicant:

8 "In compliance with the Privacy Act of 1974,  
9 the following information is provided:  
10 Solicitation of the information on this form  
11 is authorized by 25 U.S.C. §§ 2701-2721. The  
12 purpose of the requested information is to  
13 determine the eligibility of individuals to be  
14 employed in a gaming enterprise. The  
15 information will be used by members and staff  
16 of the Tribal Gaming Agency and the National  
17 Indian Gaming Commission who have need for the  
18 information in the performance of their  
19 official duties. The information may be  
20 disclosed to appropriate federal, tribal,  
21 state, local or foreign law enforcement and  
22 regulatory agencies when relevant to civil,  
23 criminal or regulatory investigations or  
24 prosecutions or when, pursuant to a  
25 requirement by a Tribe, or the National Indian



1           Gaming Commission, the information is relevant  
 2           to the hiring or firing of an employee, the  
 3           issuance or revocation of a gaming license or  
 4           investigations of activities while associated  
 5           with a Tribe or a gaming enterprise. Failure  
 6           to consent to the disclosures indicated in  
 7           this Notice will result in a Tribe being  
 8           unable to hire you in a primary management  
 9           official or key employee position with a  
 10          tribal gaming enterprise.

11          The disclosure of your Social Security Number  
 12          (SSN) is voluntary. However, failure to  
 13          supply an SSN may result in errors in  
 14          processing your application.".

- 15          2. Existing principals, key employees and primary  
 16          management officials shall be notified, in  
 17          writing, that they shall either:
- 18               (a) complete a new application form that contains
  - 19               a Privacy Act Notice; or
  - 20               (b) sign a statement that contains the Privacy
  - 21               Act Notice and consent to the routine uses
  - 22               described in that Notice.
- 23          3. The following Notice ("False Statement Notice")  
 24          shall be placed on the application form for a  
 25          principal, key employee or a primary management

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official before that form is filled out by an applicant:

"A false statement on any part of your application may be grounds for not hiring you or for firing you after you begin work. Also, you may be punished by fine or imprisonment. See 18 U. S. C. § 1001. "

4. The Tribal Gaming Agency shall notify, in writing, existing principals, key employees and primary management officials that they shall either:
  - (a) complete a new application form that contains a False Statement Notice; or
  - (b) sign a statement that contains the False Statement Notice.
  
5. The Tribal Gaming Agency shall request from each applicant, and from each principal, primary management official and key employee of each applicant, all of the following information:
  - (a) full name, other names used (oral or written), Social Security Number(s), birth date, place of birth, citizenship, gender and all languages spoken or written;
  - (b) currently, and for the previous ten (10) years, business and employment positions held, ownership interests in those

1 businesses, business and residence addresses  
2 and driver's license numbers; provided, that  
3 any applicant who is a principal, primary  
4 management official, key employee, Management  
5 Contractor, manufacturer or supplier of  
6 gaming devices, and/or a person providing  
7 gaming services, must provide such  
8 information currently, and from the age of  
9 eighteen (18);

10 (c) the names and current addresses of at least  
11 three (3) personal references, including one  
12 (1) personal reference who was acquainted  
13 with the applicant during each period of  
14 residence listed in Paragraph B. 5. (b) of this  
15 section;

16 (d) current business and residence telephone  
17 numbers;

18 (e) a description of any existing and previous  
19 business relationships with a Tribe,  
20 including ownership interests in those  
21 businesses, and a description of any  
22 potential or actual conflict of interests  
23 between such businesses and a Tribe;

24 (f) a description of any existing and previous  
25 business relationships in the gaming

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- industry, including, but not limited to, ownership interests in those businesses;
- (g) the name and address of any licensing or regulatory agency with which the applicant has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- (h) for each felony for which there is an ongoing prosecution or a conviction, the charge, the date of the charge, the name and address of the court involved and the disposition, if any;
- (i) for each misdemeanor for which there is an ongoing prosecution or conviction (excluding minor traffic violations), the charge, the date of the charge, the name and address of the court involved and the disposition, if any;
- (j) for each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is not otherwise listed pursuant to Paragraph B. 5. (h) or B. 5. (i) of this section, the criminal charge, the date of the charge, the name and address of the court involved and

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- the disposition, if any;
- (k) the name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, as an applicant, principal, primary management official or key employee, and whether or not such license or permit was granted;
- (l) a current photograph;
- (m) fingerprints, which shall be taken by officers of the tribal police department or by another law enforcement agency and forwarded directly to the tribal police department. Pursuant to a Memorandum of Understanding between the Tribe and the National Indian Gaming Commission ("Commission"), tribal police officers shall forward the fingerprint cards directly to the Commission;
- (n) the fee required by the Tribal Gaming Agency; and
- (o) any other information the Tribal Gaming Agency deems relevant.

C. Background Investigations.

- 1. Upon receipt of a completed application and

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required fee for licensing, the Tribal Gaming Agency shall conduct or cause to be conducted a background investigation to ensure that the applicant is qualified for licensing.

2. Background checks of applicants will be performed pursuant to the following procedures:

(a) The Tribal Gaming Agency will provide applications to potential applicants upon request and shall collect and maintain the applications.

(b) Pursuant to a Memorandum of Understanding between the Tribe and the Commission, tribal police officers will collect fingerprints from all applicants and forward the fingerprint cards directly to the Commission. The Commission will obtain a criminal history record from the Federal Bureau of Investigation on each applicant and forward such information to the Tribal Gaming Agency.

(c) The Tribal Gaming Agency shall investigate the information provided in the applications. This investigation shall include:

(1) contacting persons or entities identified in the application and verifying by written or oral communication that the

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- information contained in the application is accurate;
- (2) interviewing a sufficient number of knowledgeable people, such as former employers, partners, business associates, and others referred to in the application, to provide a basis for the Tribal Gaming Agency to make a determination concerning whether the applicant meets applicable eligibility requirements;
  - (3) reviewing relevant financial records of the applicant for the three (3) years preceding the application; and
  - (4) contacting any state, federal or other government agency that is referred to in the application.
- (d) The Tribal Gaming Agency shall document any information it obtains that calls into question whether the applicant would meet the eligibility requirements under the Ordinance. The Tribal Gaming Agency shall then document in detail the disposition of these problem areas, indicating the follow-up investigations performed on the problem areas and the result of such investigations.

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1 (e) The Tribal Gaming Agency will review the  
2 results of the investigation. This review will  
3 include a determination as to the scope of the  
4 investigation and whether sufficient  
5 information was obtained and verified. If such  
6 information is found not sufficient, the Tribal  
7 Gaming Agency will perform additional  
8 investigations.

9 (f) Once the investigation is complete, the Tribal  
10 Gaming Agency will decide whether the applicant  
11 meets the eligibility criteria under the  
12 Ordinance.

13 3. In conducting a background investigation, the  
14 Tribal Gaming Agency and its agents shall keep  
15 confidential the identity of each person  
16 interviewed in the course of the investigation.

17 4. Within twenty (20) days of the receipt of a  
18 completed application for licensing, and upon  
19 request of an applicant, the Tribal Gaming Agency  
20 may issue a temporary license to the applicant,  
21 unless the background investigation undertaken  
22 discloses that the applicant has a criminal  
23 history, or unless other grounds sufficient to  
24 disqualify the applicant are apparent on the face  
25 of the application. The temporary license shall



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become void and be of no effect upon either:  
(a) the issuance of the license;  
(b) the issuance of a notice of denial; or  
(c) ninety (90) days after the temporary license is issued, whichever occurs first.

5. The Tribal Gaming Agency shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility or suitability of an applicant, or a principal, key employee or primary management official of an applicant, for employment or involvement in a gaming enterprise. After such consultation, the Tribal Gaming Agency shall either issue a license or deny the application. If the Tribal Gaming Agency determines that employment or involvement of the applicant poses a threat to the public interest or to the effective regulation of Class III Gaming or creates or enhances dangers of unsuitable, unfair or illegal practices, methods or activities in the conduct of Class III Gaming, the Tribal Gaming Agency shall deny the application.
6. The Tribal Gaming Agency shall retain the right to conduct additional background investigations of any person required to be licensed at any time while

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1 the license is valid.

2 D. Procedure for Forwarding Applications and Reports.

3 Procedures for forwarding applications and investigative reports  
4 to the Commission and State Gaming Representative:

5 1. When a key employee or primary management official  
6 begins work at a gaming enterprise authorized by  
7 this Compact, the Tribal Gaming Agency shall  
8 forward to the Commission and the State Gaming  
9 Representative a completed application for  
10 employment.

11 2. The Tribal Gaming Agency shall forward the report  
12 referred to in Paragraph D. 4. of this section to  
13 the Commission and the State Gaming Representative  
14 within sixty (60) days after an employee begins  
15 work, or within sixty (60) days of the approval of  
16 this Compact by the Secretary of the Interior.

17 3. A key employee or primary management official who  
18 does not have a license shall not be employed after  
19 ninety (90) days.

20 4. The Tribal Gaming Agency shall prepare and forward  
21 to the Commission and the State Gaming  
22 Representative a report on each background  
23 investigation ("Investigative Report"). An  
24 Investigative Report shall include all of the  
25 following:

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- 1 (a) steps taken in conducting the background
- 2 investigation;
- 3 (b) results obtained;
- 4 (c) conclusions reached; and
- 5 (d) the basis for those conclusions.
- 6 5. The Tribal Gaming Agency shall submit with the
- 7 Investigative Report a copy of the eligibility
- 8 determination made under Paragraph C. 5. of this
- 9 section.
- 10 6. If a license is not issued to an applicant, the
- 11 Tribal Gaming Agency shall notify the Commission
- 12 and the State Gaming Representative.
- 13 7. With respect to principals, key employees and
- 14 primary management officials, the Tribal Gaming
- 15 Agency shall retain applications for employment and
- 16 Investigative Reports (if any) for no less than
- 17 three (3) years from the date of termination of
- 18 employment.
- 19 E. Granting a Gaming License.
- 20 1. If within thirty (30) days after it receives an
- 21 Investigative Report, neither the Commission nor
- 22 the State Gaming Representative has notified the
- 23 Tribal Gaming Agency that it has an objection to
- 24 the issuance of a license pursuant to a license
- 25 application filed by a principal, key employee or

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primary management official, the Tribal Gaming Agency may issue a license to such applicant.

2. The Tribal Gaming Agency shall respond to any request for additional information from the Commission or the State Gaming Representative concerning a principal, key employee or primary management official who is the subject of an Investigative Report. Such a request shall suspend the thirty-day (30-day) period under Paragraph E. 1. of this section until the Commission or the State Gaming Representative receives the additional information; however, in no event shall a request for additional information by the State Gaming Representative extend the thirty-day (30-day) period under Paragraph E. 1. of this section for a total period of more than sixty (60) days from the date the State Gaming Representative received the Investigative Report.

3. If, within the thirty-day (30-day) period described above, the Commission or the State Gaming Representative provides the Tribal Gaming Agency with a statement itemizing objections to the issuance of a license to a principal, key employee or primary management official for whom the Tribal Gaming Agency has provided an application and

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1 Investigative Report, the Tribal Gaming Agency  
2 shall reconsider the application, taking into  
3 account the objections itemized by the Commission  
4 and/or the State Gaming Representative, and make a  
5 final decision whether to issue a license to such  
6 applicant.

7 F. Management Contract.

- 8 1. If the Tribe chooses to enter into a Management  
9 Contract, the Tribal Gaming Agency shall require  
10 that all principals, primary management officials  
11 and key employees of the Management Contractor be  
12 licensed.
- 13 2. The Tribe may enter into a Management Contract only  
14 if the Management Contract:
- 15 (a) provides that all Class III Gaming covered by  
16 the Management Contract will be conducted in  
17 accordance with the IGRA, the Ordinance and  
18 this Compact;
- 19 (b) enumerates the responsibilities of each of the  
20 parties for each identifiable function,  
21 including:
- 22 (1) maintaining and improving the Gaming  
23 Facility;
- 24 (2) providing operating capital;
- 25 (3) establishing operating days and hours;

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- (4) hiring, firing, training and promoting employees;
- (5) maintaining the gaming enterprise's books and records;
- (6) preparing the gaming enterprise's financial statements and reports;
- (7) paying for the services of the independent auditor engaged pursuant to 25 C. F. R. § 571.12;
- (8) hiring and supervising security personnel;
- (9) providing fire protection services;
- (10) setting an advertising budget and placing advertising;
- (11) paying bills and expenses;
- (12) establishing and administering employment practices;
- (13) obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;
- (14) complying with all applicable provisions of the Internal Revenue Code of 1986, as amended;
- (15) paying the cost of public safety services; and
- (16) if applicable, supplying the Commission

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- with all information necessary for the Commission to comply with the National Environmental Policy Act of 1969;
- (c) provides for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:
    - (1) include an adequate system of internal controls;
    - (2) permit the preparation of financial statements in accordance with generally accepted accounting principles;
    - (3) be susceptible to audit;
    - (4) permit the calculation and payment of the Management Contractor's fee; and
    - (5) provide for the allocation of operating expenses or overhead expenses among the Tribe, the Management Contractor and any other user of a shared Gaming Facility and services;
  - (d) requires the Management Contractor to provide the Tribe, not less frequently than monthly, verifiable financial reports or all information necessary to prepare such reports;
  - (e) requires the Management Contractor to provide immediate access to the Gaming Facility,

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- including its books and records, by appropriate officials of the Tribe, who shall have:
- (1) the right to verify the daily gross revenues and income from the gaming enterprise; and
  - (2) access to any other gaming-related information the Tribe deems appropriate;
- (f) provides for a minimum guaranteed monthly payment to the Tribe in a sum certain that has preference over the retirement of development and construction costs;
- (g) provides an agreed upon maximum dollar amount for the recoupment of development and construction costs;
- (h) provides for a term not to exceed the period allowed by the IGRA;
- (i) details the method of compensating and reimbursing the Management Contractor. If a Management Contract provides for a percentage fee, such fee shall be either:
- (1) not more than thirty percent (30%) of the net revenues of the gaming enterprise if the Chairman of the Commission determines that such percentage is reasonable considering the circumstances; or

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- (2) not more than forty percent (40%) of the net revenues if the Chairman of the Commission is satisfied that the capital investment required and income projections for the gaming enterprise require the additional fee;
- (j) provides the grounds and mechanisms for modifying or terminating the Management Contract;
- (k) contains a mechanism to resolve disputes between:
  - (1) the Management Contractor and customers, consistent with the procedures in the Ordinance;
  - (2) the Management Contractor and the Tribe; and
  - (3) the Management Contractor and the gaming enterprise employees;
- (l) indicates whether and to what extent contract assignments and subcontracting are permissible;
- (m) indicates whether and to what extent changes in the ownership interest in the Management Contract require advance approval by the Tribe; and
- (n) states that the Management Contract shall not

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1 be effective unless and until it is approved by  
2 the Chairman of the Commission, date of  
3 signature of the parties notwithstanding.

4 3. The Tribe shall not enter into any Management  
5 Contract if the Tribal Gaming Agency determines  
6 that the Management Contractor or any principal,  
7 primary management official or key employee of the  
8 Management Contractor is not licensed or is  
9 ineligible to be licensed.

10 G. Confidentiality of Records. Any and all background  
11 Investigative Reports on employees or contractors, supporting  
12 documents acquired or generated in connection therewith, and any  
13 other Investigative Reports or documents acquired or generated in  
14 the course of investigations performed by the Tribe or the Tribal  
15 Gaming Agency, that are provided to the State Gaming  
16 Representative or any other agency or official of the State by  
17 the Tribal Gaming Agency or the Tribe pursuant to the provisions  
18 of this Compact, shall not be deemed public records of the State  
19 and shall not be disclosed to any member of the public without  
20 the prior express written authorization of an authorized  
21 representative of the Tribe; provided, that nothing herein shall  
22 preclude any State agency or official from providing information  
23 to a federal agency or official having responsibility relative to  
24 Indian Gaming or from compliance with any valid order of a court  
25 having jurisdiction.

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1 SECTION 6. Providers of Class III Gaming Equipment or Devices or  
2 Supplies.

3 A. Within thirty (30) days after the effective date of  
4 this Compact, if it has not already done so, the Tribal Gaming  
5 Agency will adopt standards for any and all Class III Gaming  
6 equipment, devices or supplies to be purchased, leased or  
7 otherwise acquired by the Tribe after the effective date of this  
8 Compact for use in any Gaming Facility, which standards shall be  
9 at least as strict as the comparable standards applicable to  
10 Class III Gaming equipment, devices or supplies within the State  
11 of Nevada. Any and all Class III Gaming equipment, devices or  
12 supplies acquired by the Tribe after the date of this Compact  
13 shall meet or exceed the standards thereby adopted, and any and  
14 all Class III Gaming equipment, devices or supplies used by the  
15 Tribe in its Gaming Facilities as of the effective date of this  
16 Compact shall be upgraded or replaced, if necessary, so as to  
17 comply with such standards, by no later than one (1) year after  
18 the effective date of this Compact.

19 B. Prior to entering into any future lease or purchase  
20 agreement for Class III Gaming equipment, devices or supplies,  
21 the Tribe shall obtain sufficient information and identification  
22 from the proposed seller or lessor and all persons holding any  
23 direct or indirect financial interest in the lessor or the  
24 lease/purchase agreement to permit the Tribe to license those  
25 persons in accordance with Section 5, hereof.

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1 C. The seller, lessor, manufacturer or distributor shall  
2 provide, assemble and install all Class III Gaming equipment,  
3 devices or supplies in a manner approved and licensed by the  
4 Tribe.

5 SECTION 7. Dispute Resolution.

6 A. In the event either party believes that the other party  
7 has failed to comply with or has otherwise breached any provision  
8 of this Compact, such party may invoke the following procedure:

9 1. The party asserting noncompliance shall serve  
10 written notice on the other party. The notice  
11 shall identify the specific Compact provision  
12 believed to have been violated and shall specify  
13 the factual and legal basis for the alleged  
14 noncompliance. The notice shall specifically  
15 identify the date, time and nature of the alleged  
16 noncompliance. Representatives of the State and  
17 Tribe shall thereafter meet within thirty (30) days  
18 in an effort to resolve the dispute.

19 2. In the event an allegation by the complaining party  
20 is not resolved to the satisfaction of such party  
21 within ninety (90) days after service of the notice  
22 set forth in Paragraph A. 1. of this section, the  
23 complaining party may serve upon the other party a  
24 notice to cease conduct of the particular game(s)  
25 or activities alleged by the complaining party to

1 be in noncompliance. Upon receipt of such notice,  
2 the responding party may elect to stop the game(s)  
3 or activities specified in the notice or invoke  
4 arbitration and continue the game(s) or activities  
5 pending the results of arbitration. The responding  
6 party shall act upon one of the foregoing options  
7 within thirty (30) days of receipt of notice from  
8 the complaining party.

- 9 3. Arbitration under this authority shall be conducted  
10 under the Commercial Arbitration Rules of the  
11 American Arbitration Association, except that the  
12 arbitrators shall be attorneys who are licensed  
13 members in good standing of the State Bar of New  
14 Mexico or of the bar of another state. The State  
15 will select one arbitrator, the Tribe a second  
16 arbitrator, and the two so chosen shall select a  
17 third arbitrator. If the third arbitrator is not  
18 chosen in this manner within ten (10) days after  
19 the second arbitrator is selected, the third  
20 arbitrator will be chosen in accordance with the  
21 rules of the American Arbitration Association.
- 22 4. All parties shall bear their own costs of  
23 arbitration and attorney fees.
- 24 5. The results of arbitration shall be enforceable by  
25 an action for injunctive or mandatory injunctive

1 relief against the State and the Tribe in any court  
2 of competent jurisdiction. For purposes of any  
3 such action, the State and the Tribe acknowledge  
4 that any action or failure to act on the part of  
5 any agent or employee of the State or the Tribe,  
6 contrary to a decision of the arbitrators in an  
7 arbitration proceeding conducted under the  
8 provisions of this section, occurring after such  
9 decision, shall be wholly unauthorized and ultra  
10 vires acts, not protected by the sovereign immunity  
11 of the State or the Tribe.

12 B. Nothing in Subsection 7A. shall be construed to waive,  
13 limit or restrict any remedy that is otherwise available to  
14 either party to enforce or resolve disputes concerning the  
15 provisions of this Compact. Nothing in this Compact shall be  
16 deemed a waiver of the Tribe's sovereign immunity. Nothing in  
17 this Compact shall be deemed a waiver of the State's sovereign  
18 immunity.

19 SECTION 8. Protection of Patrons.

20 A. Liability to Patrons. To ensure the personal safety  
21 and protection of patrons and other invitees of a Tribe's Gaming  
22 Facility operated under the provisions of this Compact, the Tribe  
23 shall at all times maintain in effect a policy of public  
24 liability insurance, insuring the Tribe, its agents and employees  
25 against any claims, demands or liability that may arise as a

1 result of personal injury to any person (other than an employee  
2 of the gaming establishment) occurring anywhere on the premises  
3 of any gaming establishment operated by the Tribe under the  
4 provisions of this Compact, or as a result of any act or omission  
5 of any agent or employee of such gaming establishment while in  
6 the course of his or her employment, which policy shall provide  
7 personal injury coverage of no less than one million dollars  
8 (\$1,000,000) per injured person and ten million dollars  
9 (\$10,000,000) aggregate per policy year.

10 The Tribe agrees that it will require that the insurance  
11 contract provide that in the event of any claim made against it  
12 or its gaming enterprise, or any agent or employee thereof,  
13 arising out of any personal injury as described above, neither  
14 the Tribe nor its insurer will assert any defense of immunity  
15 from suit as to such claim for compensatory damages up to the  
16 amount of one million dollars (\$1,000,000) per injured person, in  
17 any claim pursued as provided in this subsection; provided,  
18 however, that this agreement not to assert such defense shall be  
19 strictly limited as provided herein, and shall not apply to any  
20 claim for punitive damages, or to any claim for any loss or  
21 damage other than that arising from actual bodily injury or  
22 death, or to any claim for damages in excess of the amount set  
23 forth herein. Nothing herein shall be construed as stating or  
24 implying that the Tribe has waived or agreed not to assert its  
25 immunity from suit for any other purpose or in any other

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1 circumstance other than the limited purposes and circumstances  
2 expressly set forth herein, and nothing herein shall be construed  
3 as an admission of liability as to any claim for damages or as an  
4 agreement or indication of willingness to pay any amount as  
5 damages absent a determination of fault, and the Tribe or its  
6 insurer, or both, shall in every instance have the right to  
7 defend any such claim fully on the merits.

8 Any person wishing to prosecute a claim for personal injury  
9 against the Gaming Enterprise as provided in this subsection, and  
10 who is unable to arrive at a satisfactory settlement of such  
11 claim, may proceed, by no later than three (3) years after the  
12 date of the incident giving rise to the claim, either by filing  
13 suit in the tribal court of the Tribe, or by demanding binding  
14 arbitration as provided herein. The Tribe agrees that it will  
15 provide a tribal court that is competent to hear such claims, and  
16 that it will permit its Gaming Enterprise, and the employees  
17 thereof, to be sued in such courts on such claims, subject to the  
18 conditions set forth in this subsection. A claimant who wishes  
19 to proceed by binding arbitration shall submit a written demand  
20 therefor to the Gaming Enterprise, by certified mail, return  
21 receipt requested. The claimant and the Gaming Enterprise shall  
22 each designate an arbitrator within thirty (30) days of the date  
23 of receipt of such demand, and the two arbitrators shall select a  
24 third arbitrator. The arbitration panel shall permit the parties  
25 to engage in reasonable discovery, and shall establish other

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1 procedures so as to assure a full, fair and expeditious hearing  
 2 on the claim. The award of the arbitration panel shall be final  
 3 and binding (except that any such award of damages to the  
 4 claimant shall in no event exceed the limits of liability set  
 5 forth in this subsection). The Tribe's insurer shall be subject  
 6 to suit in any court of competent jurisdiction for enforcement of  
 7 the arbitration award.

8 The Tribe shall provide to the State Gaming Representative  
 9 annually a certificate of insurance showing that its gaming  
 10 enterprise and its agents and employees engaged therein are  
 11 insured to the extent and in the circumstances required by this  
 12 section. If the State Gaming Representative so requests in  
 13 writing, the certificate of insurance may be furnished directly  
 14 to the State Gaming Representative from the insurance carrier or  
 15 the insuring agency for the insured Tribe.

16 The Tribe's failure to comply with any awards by an  
 17 arbitration panel or judgment of a tribal court in any action  
 18 brought under the provisions of this section shall be deemed a  
 19 violation of the Compact and may be enforced by the State under  
 20 the provisions of Section 7.

21 B. Public Health and Safety. The Tribe shall establish  
 22 for its Gaming Facility health, safety and construction standards  
 23 that are at least as stringent as the current editions of the  
 24 National Electrical Code, the Uniform Building Code, the Uniform  
 25 Mechanical Code, the Uniform Fire Code and the Uniform Plumbing

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1 Code, and any and all Gaming Facilities or additions thereto  
2 constructed by the Tribe hereafter shall be constructed and all  
3 facilities shall be maintained so as to comply with such  
4 standards. Inspections will be conducted with respect to these  
5 standards at least annually. If the State Gaming Representative  
6 requests sufficiently in advance of an annual inspection, the  
7 State Gaming Representative may be present during such  
8 inspection. The Tribe agrees to correct any deficiencies noted  
9 in such inspections within a reasonable period of time. The  
10 Tribal Gaming Agency will provide copies of such inspection  
11 reports to the State Gaming Representative, if requested to do so  
12 in writing.

13 SECTION 9. Effective Date. This Compact shall be effective  
14 immediately upon the occurrence of the last of the following:

- 15 A. execution by the Tribe's Governor after approval of the  
16 Tribal Council;
- 17 B. execution by the Governor of the State;
- 18 C. approval by the Secretary of the Interior; and
- 19 D. publication in the Federal Register.

20 The Governor is authorized to execute compacts with an  
21 individual Tribe that has also entered into revenue-sharing  
22 agreements and has passed resolutions described herein, in  
23 substantially the same form as set forth herein. Upon signature  
24 by the Governor and the Tribe, the Compact shall be transmitted  
25 to the Secretary of the Interior for approval.

1 SECTION 10. Criminal Jurisdiction.

2 A. The Tribe and the State acknowledge that under the  
3 provisions of § 23 of the IGRA, especially that portion codified  
4 at 18 U. S. C. § 1166(d), jurisdiction to prosecute violations of  
5 State gambling laws made applicable by that section to Indian  
6 country is vested exclusively within the United States, unless  
7 the Tribe and the State agree in a compact entered into the IGRA  
8 to transfer such jurisdiction to the State.

9 B. The Tribe and the State hereby agree that, in the event  
10 of any violation of any State gambling law on Indian Lands or any  
11 other crime against the Gaming Enterprise or any employee thereof  
12 or that occurs on the premises of the Tribal Gaming Facility,  
13 that is committed by any person who is not a member of the Tribe,  
14 the State shall have and may exercise jurisdiction, concurrent  
15 with that of the United States, to prosecute such person, under  
16 its laws and in its courts.

17 C. Immediately upon becoming aware of any such suspected  
18 crime by a nonmember of the Tribe, the Gaming Enterprise or the  
19 Tribal Gaming Agency shall notify the state attorney general and  
20 the district attorney for the district in which the Gaming  
21 Facility is located, supplying all particulars available to the  
22 tribal entity at the time. The Tribe agrees that its law  
23 enforcement and gaming agencies shall perform such additional  
24 investigation or take such other steps in furtherance of the  
25 investigation and prosecution of the violation as the district

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1 attorney may reasonably request, and otherwise cooperate fully  
2 with the district attorney and any state law enforcement agencies  
3 with respect to the matter, but once notice of a suspected  
4 violation has been given to the district attorney, the matter  
5 shall be deemed to be under the jurisdiction of the State (except  
6 that in the event of emergency circumstances involving a possible  
7 violation, the Tribe and its constituent agencies shall have the  
8 discretion to act as they see fit, and to call upon such other  
9 agencies or entities as they deem reasonable or necessary, in  
10 order to protect against any immediate threat to lives or  
11 property). The State may, in its discretion, refer the matter to  
12 federal authorities, but it shall notify the Tribal Gaming Agency  
13 upon doing so.

14 D. The State agrees that no less frequently than annually  
15 it will provide the Tribal Gaming Agency with a written report of  
16 the status and disposition of each matter referred to it under  
17 the provisions of this section that is still pending. In the  
18 event the district attorney to whom a matter is referred under  
19 the provisions of this section decides not to prosecute such  
20 matter, the district attorney shall promptly notify the Tribal  
21 Gaming Agency of such decision in writing, setting forth the  
22 specific reasons therefor. The Tribal Gaming Agency may in that  
23 event ask the attorney general of the state to pursue the matter.

24 E. The district attorney for the district in which the  
25

1 Gaming Facility is situated may decline to accept referrals of  
 2 cases under the provisions of this section unless and until the  
 3 Tribe has entered into a Memorandum of Understanding with the  
 4 office of the district attorney to which Memorandum of  
 5 Understanding the United States Attorney for the District of New  
 6 Mexico may also be a party addressing such matters as the  
 7 specific procedures by which cases are to be referred,  
 8 participation of the Tribal Gaming Agency and tribal law  
 9 enforcement personnel in the investigation and prosecution of any  
 10 such case, payments by the Tribe to the office of the district  
 11 attorney to defray the costs of handling cases referred under the  
 12 provisions of this section, and related matters.

13 SECTION 11. Binding Effect and Duration.

14 A. This Compact shall be binding upon the State and Tribe  
 15 for a term of eight (8) years from the date it becomes effective  
 16 and may renew for an additional four-year (4-year) period.

17 B. Before the date that is one (1) year prior to the  
 18 expiration of the eight-year (8-year) initial term, and/or before  
 19 the date that is one (1) year prior to the expiration of the  
 20 four-year (4-year) renewal period, either party may serve written  
 21 notice on the other of its desire to renegotiate this Compact.

22 C. In the event that either party gives written notice to  
 23 the other of its desire to renegotiate this Compact pursuant to  
 24 Subsection B. of this section, the Tribe may, pursuant to the  
 25 procedures of the IGRA, request the State to enter into

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1 negotiations for a new compact governing the conduct of Class III  
2 Gaming. If the parties are unable to conclude a successor  
3 compact, this Compact shall terminate.

4 D. Notwithstanding the foregoing, at any time while this  
5 Compact remains in effect, either party may, by written notice to  
6 the other party, request reopening of negotiations with respect  
7 to any provision of this Compact, or with respect to any issue  
8 not addressed in the Compact, specifying such provision or issue  
9 in such notice. No such request shall be unreasonably refused,  
10 but neither party shall be required to agree to any change in the  
11 Compact, and no agreement to supplement or amend this Compact in  
12 any respect shall have any validity until the same shall have  
13 been approved in writing by the Tribe, the State and the  
14 Secretary of the Interior and notice of such approval published  
15 in the Federal Register.

16 E. The Tribe may operate Class III Gaming only while this  
17 Compact or any renegotiated compact is in effect.

18 SECTION 12. Notice to Parties.

19 Unless otherwise indicated, all notices, payments,  
20 requests, reports, information or demand that any party hereto  
21 may desire or may be required to give to the other party hereto,  
22 shall be in writing and shall be personally delivered or sent by  
23 first-class mail sent to the other party at the address provided  
24 in writing by the other party. Every notice, payment, request,  
25 report, information or demand so given shall be deemed effective

1 upon receipt or, if mailed, upon receipt or the expiration of the  
 2 third day following the day of mailing, whichever occurs first,  
 3 except that any notice of change of address shall be effective  
 4 only upon receipt by the party to whom said notice is addressed.

5 SECTION 13. Entire Agreement.

6 This Compact is the entire agreement between the parties  
 7 and supersedes all prior agreements, whether written or oral,  
 8 with respect to the subject matter hereof. Neither this Compact  
 9 nor any provision herein may be changed, waived, discharged or  
 10 terminated orally, but only by an instrument, in writing, signed  
 11 by the Tribe and the State and approved by the Secretary of the  
 12 Interior.

13 SECTION 14. Filing of Compact with State Records Center.

14 Upon the effective date of this Compact, a copy shall be  
 15 filed by the Governor with the New Mexico Records Center. Any  
 16 subsequent amendment or modification of this Compact shall be  
 17 filed with the New Mexico Records Center.

18 SECTION 15. Counterparts.

19 This Compact may be executed by the parties in any number  
 20 of separate counterparts with the same effect as if the  
 21 signatures were upon the same instrument. All such counterparts  
 22 shall together constitute one and the same document. "

23 Section 2. [NEW MATERIAL] REVENUE SHARING OF TRIBAL  
 24 GAMING REVENUE. --The governor is authorized to execute a revenue-  
 25 sharing agreement in the form substantially set forth in this

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1 section with any New Mexico Indian nation, tribe or pueblo that  
2 has also entered into an Indian gaming compact as provided by  
3 law. Execution of an Indian gaming compact is conditioned upon  
4 execution of a revenue-sharing agreement. The consideration for  
5 the Indian entity entering into the revenue-sharing agreement is  
6 the condition of the agreement providing limited exclusivity of  
7 gaming activities to the tribal entity. The revenue-sharing  
8 agreement shall be in substantially the following form and is  
9 effective when executed by the governor on behalf of the state  
10 and the appropriate official of the Indian entity:

11 "REVENUE-SHARING AGREEMENT

12 1. Summary and consideration. The Tribe shall agree to  
13 contribute certain of its Class III Gaming revenues, as described  
14 below.

15 2. Revenue to State. The parties agree that, after the  
16 effective date hereof, the Tribe shall make semi-annual payments  
17 to the General Fund of the State ("State General Fund").

18 3. Calculation of Revenue to State.

19 A. The parties agree that, as used herein, "net win"  
20 is defined as the total amount wagered at each Gaming Facility on  
21 Class III Gaming, which is protected by the limitations in  
22 Paragraph 5, below, and elsewhere herein, minus the total amount  
23 paid as prizes (including noncash prizes) and winning wagers at  
24 said games, and minus all tribal regulatory fees and expenses,  
25 supported by reasonable, adequate documentation, not to exceed

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1 two hundred fifty thousand dollars (\$250,000) per year and minus  
2 federal and State regulatory fees and expenses, and taxes.

3 B. The tribe shall pay the state fifteen percent of  
4 the net win of each Gaming Facility.

5 C. For purposes of these payments, all calculations of  
6 amounts due shall be based upon a calendar year beginning January  
7 1 and ending December 31, unless the parties agree on a different  
8 fiscal year. The semiannual payments due to the State pursuant  
9 to these terms shall be paid no later than twenty-five (25) days  
10 after December 31 and June 30 of each year (or commensurate dates  
11 if the fiscal year agreed upon is different from the calendar  
12 year). Any payments due and owing from the Tribe in the year the  
13 Compact is approved, or the final year the Compact is in force,  
14 shall reflect the net win, but only for the portion of the year  
15 the Compact is in effect.

16 4. Limitations. The Tribe's obligation to make the  
17 payments provided for in Paragraphs 2 and 3 of this section shall  
18 apply and continue only so long as there is a binding Indian  
19 Gaming Compact in effect between the Tribe and the State, which  
20 Compact provides for the play of Class III Gaming, but shall  
21 terminate in the event of any of the following conditions:

22 A. If the State passes, amends, or repeals any law, or  
23 takes any other action, which would directly or indirectly  
24 attempt to restrict, or has the effect of restricting, the scope  
25 of Indian gaming.

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1           B. If the State permits any expansion of nontribal  
2 Class III Gaming in the State. Notwithstanding this general  
3 prohibition against permitted expansion of gaming activities, the  
4 State may permit: (1) the enactment of a State lottery, (2) any  
5 fraternal, veterans or other nonprofit membership organization to  
6 operate such electronic gaming devices lawfully, but only for the  
7 benefit of such organization's members, (3) limited fundraising  
8 activities conducted by nonprofit tax exempt organizations  
9 pursuant to Section 30-19-6 NMSA 1978, and (4) any horse  
10 racetracks to operate electronic gaming devices on days on which  
11 live or simulcast horse racing occurs.

12           5. Effect of Variance.

13           A. In the event the acts or omissions of the State  
14 cause the Tribe's obligation to make payments under Paragraph 3  
15 of this section to terminate under the provisions of Paragraph 4  
16 of this section, such cessation of obligation to pay will not  
17 adversely affect the validity of the Compact, but the maximum  
18 amount that the Tribe agrees to reimburse the State for actual  
19 documented regulatory costs under the Compact shall automatically  
20 increase to one hundred thousand dollars (\$100,000) per year.

21           B. In the event a Tribe's revenue-sharing payment to  
22 the State is less than one hundred thousand dollars (\$100,000)  
23 per year, the maximum amount that the Tribe agrees to reimburse  
24 the State for actual documented regulatory costs under the  
25

1 Compact shall automatically increase to one hundred thousand  
2 dollars (\$100,000) per year less the amount of the revenue-  
3 sharing payment. 6. Third-Party Beneficiaries. This  
4 Agreement is not intended to create any third-party beneficiaries  
5 and is entered into solely for the benefit of the Tribe and the  
6 State."

7 Section 3. [NEW MATERIAL] SHORT TITLE. --Sections 3  
8 through 62 of this act may be cited as the "Gaming Control Act".

9 Section 4. [NEW MATERIAL] POLICY. --It is the state's  
10 policy on gaming that:

11 A. limited gaming activities should be allowed in the  
12 state if those activities are strictly regulated to ensure honest  
13 and competitive gaming that is free from criminal and corruptive  
14 elements and influences; and

15 B. the holder of any license issued by the state in  
16 connection with the regulation of gaming activities has a  
17 revocable privilege only and has no property right or vested  
18 interest in the license.

19 Section 5. [NEW MATERIAL] DEFINITIONS. --As used in the  
20 Gaming Control Act:

21 A. "affiliate" means a person who, directly or  
22 indirectly through one or more intermediaries, controls, is  
23 controlled by or is under common control with a specified person;

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

25 (1) controls, is controlled by or is under

1 common control with a company licensee; and

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

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

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

14 E. "associated equipment" means equipment or a  
15 mechanical, electromechanical or electronic contrivance,  
16 component or machine used in connection with gaming;

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

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

20 H. "certified technician" means a person certified by  
21 a manufacturer licensee to repair and service gaming devices, but  
22 who is prohibited from programming gaming devices;

23 I. "company" means a corporation, partnership,  
24 limited partnership, trust, association, joint stock company,  
25 joint venture, limited liability company or other form of

1 business organization that is not a natural person;

2 J. "distributor" means a person who supplies gaming  
3 devices to a gaming operator but does not manufacture gaming  
4 devices;

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

7 (1) voting stock or similar security;

8 (2) a security convertible into voting stock or  
9 similar security, with or without consideration, or a security  
10 carrying a warrant or right to subscribe to or purchase voting  
11 stock or similar security;

12 (3) a warrant or right to subscribe to or  
13 purchase voting stock or similar security; or

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

16 L. "executive director" means the chief  
17 administrative officer appointed by the board pursuant to Section  
18 9 of the Gaming Control Act;

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

23 N. "game" means an activity in which, upon payment of  
24 consideration, a player receives a prize or other thing of value,  
25 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 for  
3 operating the activity except through winnings as a player;

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

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

8 Q. "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; "gaming device" does not include a system or device that  
13 affects a game solely by stopping its operation so that the  
14 outcome remains undetermined;

15 R. "gaming employee" means a person connected  
16 directly with a gaming activity; "gaming employee" does not  
17 include:

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

20 (2) secretarial or janitorial personnel;

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

22 (4) other nongaming personnel;

23 S. "gaming establishment" means the premises on or in  
24 which gaming is conducted;

25 T. "gaming machine" means a mechanical,

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

6 U. "gaming operator" means a person who conducts  
7 gaming;

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

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

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

22 Y. "institutional investor" means a state or federal  
23 government pension plan or a person that meets the requirements  
24 of a qualified institutional buyer as defined in Rule 144A of the  
25 federal Securities Act of 1933, and is:

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

3 (2) an insurance company as defined in Section  
4 2(a)(17) of the federal Investment Company Act of 1940;

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

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

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

11 (6) an employee benefit plan or pension fund  
12 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 (7) a group comprised entirely of persons  
17 specified in Paragraphs (1) through (6) of this subsection;

18 Z. "intermediary company" means a company that:

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

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

23 AA. "key executive" means an executive of a licensee  
24 or other person having the power to exercise significant  
25 influence over decisions concerning any part of the licensed



1 operations of the licensee or whose compensation exceeds an  
2 amount established by the board in a regulation;

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

5 CC. "licensee" means a person to whom a valid license  
6 has been issued;

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

12 EE. "net take" means the total of the following, less  
13 the total of all cash paid out as losses to winning patrons and  
14 those amounts paid to purchase annuities to fund losses paid to  
15 winning patrons over several years by independent administrators:

16 (1) cash received from patrons for playing a  
17 game;

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

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

22 FF. "nonprofit organization" means:

23 (1) a fraternal organization that is described  
24 in Section 501(c)(8) or (10) of the federal Internal Revenue Code  
25 of 1986 and that is exempt from federal income taxation pursuant

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1 to Section 501(a) of that code; or

2 (2) a veterans' organization that is described  
3 in Section 501(c)(19) or (23) of the federal Internal Revenue  
4 Code of 1986 and that is exempt from federal income taxation  
5 pursuant to Section 501(a) of that code;

6 GG. "person" means a legal entity;

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

10 II. "progressive jackpot" means a prize that  
11 increases over time or as gaming machines that are linked to a  
12 progressive system are played and upon conditions established by  
13 the board may be paid by an annuity;

14 JJ. "progressive system" means one or more gaming  
15 machines linked to one or more common progressive jackpots;

16 KK. "publicly traded corporation" means a corporation  
17 that:

18 (1) has one or more classes of securities  
19 registered pursuant to the securities laws of the United States  
20 or New Mexico;

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

23 (3) has one or more classes of securities  
24 registered or is an issuer pursuant to applicable foreign laws  
25 that the board finds provide protection for institutional

1 investors that is comparable to or greater than the stricter of  
2 the securities laws of the United States or New Mexico;

3 LL. "registration" means a board action that  
4 authorizes a company to be a holding company with respect to a  
5 company that holds or applies for a license or that relates to  
6 other persons required to be registered pursuant to the Gaming  
7 Control Act;

8 MM "subsidiary" means a company, all or a part of  
9 whose outstanding equity securities are owned, subject to a power  
10 or right of control or held, with power to vote, by a holding  
11 company or intermediary company; and

12 NN. "work permit" means a card, certificate or permit  
13 issued by the board, whether denominated as a work permit,  
14 registration card or otherwise, authorizing the employment of the  
15 holder as a gaming employee.

16 Section 6. [NEW MATERIAL] LIMITED GAMING ACTIVITY  
17 PERMITTED. -- Gaming activity is permitted in New Mexico only if it  
18 is conducted in compliance with and pursuant to:

19 A. the Gaming Control Act; or  
20 B. a state or federal law other than the Gaming  
21 Control Act that expressly permits the activity or exempts it  
22 from the application of the state criminal law, or both.

23 Section 7. [NEW MATERIAL] GAMING CONTROL BOARD CREATED. --

24 A. The "gaming control board" is created and consists  
25 of five members. Three members are appointed by the governor

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1 with the advice and consent of the senate, and two members are ex  
2 officio: the chairman of the state racing commission and the  
3 chairman of the board of the New Mexico lottery authority. All  
4 members of the board shall be residents of New Mexico and  
5 citizens of the United States. One appointed member of the board  
6 shall have a minimum of five years of previous employment in a  
7 supervisory and administrative position in a law enforcement  
8 agency; one appointed member of the board shall be a certified  
9 public accountant in New Mexico who has had at least five years  
10 of experience in public accountancy; and one appointed member of  
11 the board shall be an attorney who has been admitted to practice  
12 before the supreme court of New Mexico.

13 B. The appointed members of the board shall be  
14 appointed for terms of five years, except, of the members who are  
15 first appointed, the member with law enforcement experience shall  
16 be appointed for a term of five years; the member who is a  
17 certified public accountant shall be appointed for a term of four  
18 years; and the member who is an attorney shall be appointed for  
19 a term of three years. Thereafter, all members shall be  
20 appointed for terms of five years. No person shall serve as a  
21 board member for more than two consecutive terms or ten years  
22 total.

23 C. No person appointed to the board may be employed  
24 in any other capacity or shall in any manner receive compensation  
25 for services rendered to any person or entity other than the

1 board while a member of the board.

2 D. A vacancy on the board of an appointed member  
3 shall be filled within thirty days by the governor with the  
4 advice and consent of the senate for the unexpired portion of the  
5 term in which the vacancy occurs. A person appointed to fill a  
6 vacancy shall meet all qualification requirements of the office  
7 established in this section.

8 E. The governor shall choose a chairman annually from  
9 the board's appointed membership.

10 F. No more than three members of the board shall be  
11 from the same political party.

12 G. The appointed members of the board shall be full-  
13 time state officials and shall receive a salary set by the  
14 governor.

15 H. The department of public safety shall conduct  
16 background investigations of all members of the board prior to  
17 confirmation by the senate. To assist the department in the  
18 background investigation, a prospective board member shall  
19 furnish a disclosure statement to the department on a form  
20 provided by the department containing that information deemed by  
21 the department as necessary for completion of a detailed and  
22 thorough background investigation. The required information  
23 shall include at least:

24 (1) a full set of fingerprints made by a law  
25 enforcement agency on forms supplied by the department;

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1                   (2) complete information and details with  
2 respect to the prospective board member's antecedents, habits,  
3 immediate family, character, criminal record, business  
4 activities, financial affairs and business associates covering at  
5 least a ten-year period immediately preceding the date of  
6 submitting the disclosure statement;

7                   (3) complete disclosure of any equity interest  
8 held by the prospective board member or a member of his immediate  
9 family in a business connected with gaming; and

10                   (4) the names and addresses of members of the  
11 immediate family of the prospective board member.

12                   I. No person may be appointed or confirmed as a  
13 member of the board if that person or member of his immediate  
14 family holds an equity interest in a business connected with  
15 gaming.

16                   J. A prospective board member shall provide  
17 assistance and information requested by the department of public  
18 safety or the governor and shall cooperate in any inquiry or  
19 investigation of the prospective board member's fitness or  
20 qualifications to hold the office to which he is appointed. The  
21 senate shall not confirm a prospective board member if it has  
22 reasonable cause to believe that the prospective board member  
23 has:

24                   (1) knowingly misrepresented or omitted a  
25 material fact required in a disclosure statement;

1           (2) been convicted of a felony, a gaming related  
2 offense or a crime involving fraud, theft or moral turpitude  
3 within ten years immediately preceding the date of submitting a  
4 disclosure statement required pursuant to the provisions of  
5 Subsection H of this section;

6           (3) exhibited a history of willful disregard for  
7 the gaming laws of this or any other state or the United States;  
8 or

9           (4) had a permit or license issued pursuant to  
10 the gaming laws of this or any other state or the United States  
11 permanently suspended or revoked for cause.

12           K. The senate may in its discretion not confirm a  
13 prospective board member.

14           L. At the time of taking office, each board member  
15 shall file with the secretary of state a sworn statement that he  
16 is not disqualified under the provisions of Subsection I of this  
17 section.

18           Section 8. [NEW MATERIAL] BOARD- - MEETINGS- - QUORUM -  
19 RECORDS. - -

20           A. A majority of the qualified membership of the  
21 board then in office constitutes a quorum. No action may be  
22 taken by the board unless at least three members concur.

23           B. Written notice of the time and place of each board  
24 meeting shall be given to each member of the board at least ten  
25 days prior to the meeting.

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1           C. Meetings of the board shall be open and public in  
2 accordance with the Open Meetings Act, except that the board may  
3 close a meeting to hear confidential security and investigative  
4 information and other information made confidential by the  
5 provisions of the Gaming Control Act.

6           D. All proceedings of the board shall be recorded by  
7 audiotape or other equivalent verbatim audio recording device.

8           E. The chairman of the board, the executive director  
9 or a majority of the members of the board then in office may call  
10 a special meeting of the board upon at least five days' prior  
11 written notice to all members of the board and the executive  
12 director.

13           Section 9. [NEW MATERIAL] BOARD'S POWERS AND DUTIES. --

14           A. The board shall implement the state's policy on  
15 gaming consistent with the provisions of the Gaming Control Act.  
16 It has the duty to fulfill all responsibilities assigned to it  
17 pursuant to that act, and it has all authority necessary to carry  
18 out those responsibilities. It may delegate authority to the  
19 executive director, but it retains accountability. The board is  
20 an adjunct agency.

21           B. The board shall:

- 22                   (1) employ the executive director;
- 23                   (2) make the final decision on issuance, denial,  
24 suspension and revocation of all licenses pursuant to and  
25 consistent with the provisions of the Gaming Control Act;



1 (3) develop, adopt and promulgate all  
2 regulations necessary to implement and administer the provisions  
3 of the Gaming Control Act;

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

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

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

15 C. The board may:

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

22 (2) conduct investigations;

23 (3) subpoena persons and documents to compel  
24 access to or the production of documents and records, including  
25 books and memoranda, in the custody or control of any licensee;

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1                   (4) compel the appearance of employees of a  
2 licensee or persons for the purpose of ascertaining compliance  
3 with provisions of the Gaming Control Act or a regulation adopted  
4 pursuant to its provisions;

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

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

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

13                   (8) conduct audits of applicants, licensees and  
14 persons affiliated with licensees;

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

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

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

1 (12) summarily seize, remove and impound from  
2 places inspected any gaming devices, property connected with  
3 gaming, documents or records for the purpose of examination or  
4 inspection;

5 (13) inspect, examine, photocopy and audit all  
6 documents and records of any affiliate of an applicant or  
7 licensee who the board knows or reasonably suspects is involved  
8 in the 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 or  
11 its agent when practicable; and

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

16 Section 10. [NEW MATERIAL] BOARD REGULATIONS--  
17 DISCRETIONARY REGULATIONS-- PROCEDURE-- REQUIRED PROVISIONS. --

18 A. The board may adopt any regulation:

19 (1) consistent with the provisions of the Gaming  
20 Control Act; and

21 (2) it decides is necessary to implement the  
22 provisions of the Gaming Control Act.

23 B. No regulation shall be adopted, amended or  
24 repealed without a public hearing on the proposed action before  
25 the board or a hearing officer designated by it. The public

Underscored material = new  
[bracketed material] = delete

1 hearing shall be held in Santa Fe. Notice of the subject matter  
2 of the regulation, the action proposed to be taken, the time and  
3 place of the hearing, the manner in which interested persons may  
4 present their views and the method by which copies of the  
5 proposed regulation, amendment or repeal may be obtained shall be  
6 published once at least thirty days prior to the hearing date in  
7 a newspaper of general circulation and mailed at least thirty  
8 days prior to the hearing date to all persons who have made a  
9 written request for advance notice of hearing. All regulations  
10 and actions taken on regulations shall be filed in accordance  
11 with the State Rules Act.

12 C. The board shall adopt regulations:

13 (1) prescribing the method and form of  
14 application to be followed by an applicant;

15 (2) prescribing the information to be furnished  
16 by an applicant or licensee concerning his antecedents, immediate  
17 family, habits, character, associates, criminal record, business  
18 activities and financial affairs, past or present;

19 (3) prescribing the manner and procedure of all  
20 hearings conducted by the board or a hearing officer;

21 (4) prescribing the manner and method of  
22 collection and payment of fees;

23 (5) prescribing the manner and method of the  
24 issuance of licenses, permits, registrations, certificates and  
25 other actions of the board not elsewhere prescribed in the Gaming

1 Control Act;

2 (6) defining the area, games and gaming devices  
3 allowed and the methods of operation of the games and gaming  
4 devices for authorized gaming;

5 (7) prescribing under what conditions the  
6 nonpayment of winnings is grounds for suspension or revocation of  
7 a license of a gaming operator;

8 (8) governing the manufacture, sale,  
9 distribution, repair and servicing of gaming devices;

10 (9) prescribing accounting procedures, security,  
11 collection and verification procedures required of licensees and  
12 matters regarding financial responsibility of licensees;

13 (10) prescribing what shall be considered to be  
14 an unsuitable method of operating gaming activities;

15 (11) restricting access to confidential  
16 information obtained pursuant to the provisions of the Gaming  
17 Control Act and ensuring that the confidentiality of that  
18 information is maintained and protected;

19 (12) prescribing financial reporting and  
20 internal control requirements for licensees;

21 (13) prescribing the manner in which winnings,  
22 compensation from gaming activities and net take shall be  
23 computed and reported by a gaming operator licensee;

24 (14) prescribing the frequency of and the  
25 matters to be contained in audits of and periodic financial

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Underscored material = new  
[bracketed material] = delete

1 reports from a gaming operator licensee consistent with standards  
2 prescribed by the board;

3 (15) prescribing the procedures to be followed  
4 by a gaming operator licensee for the exclusion of persons from  
5 gaming establishments;

6 (16) establishing criteria and conditions for  
7 the operation of progressive systems;

8 (17) establishing criteria and conditions for  
9 approval of procurement by the board of personal property valued  
10 in excess of twenty thousand dollars (\$20,000), including  
11 background investigation requirements for a person submitting a  
12 bid or proposal; and

13 (18) establishing an applicant fee schedule for  
14 processing applications that is based on costs of the application  
15 review incurred by the board whether directly or through payment  
16 by the board for costs charged for investigations of applicants  
17 by state departments and agencies other than the board, which  
18 regulation shall set a maximum fee of one hundred thousand  
19 dollars (\$100,000).

20 Section 11. [NEW MATERIAL] EXECUTIVE DIRECTOR--  
21 EMPLOYMENT-- QUALIFICATIONS. --

22 A. The executive director shall be employed by,  
23 report directly to and serve at the pleasure of the board.

24 B. The executive director shall have had at least  
25 five years of responsible supervisory administrative experience

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1 in a governmental gaming regulatory agency.

2 C. The executive director shall receive an annual  
3 salary to be set by the board, but not to exceed eighty-five  
4 thousand dollars (\$85,000) per year.

5 Section 12. [NEW MATERIAL] EXECUTIVE DIRECTOR-- POWERS--  
6 DUTIES.--

7 A. The executive director shall implement the  
8 policies of the board.

9 B. The executive director shall employ all personnel  
10 who work for the board. The employees shall be covered employees  
11 pursuant to the provisions of the Personnel Act. Among those  
12 personnel he shall employ and designate an appropriate number of  
13 individuals as law enforcement officers subject to proper  
14 certification pursuant to the Law Enforcement Training Act.

15 C. The executive director shall establish  
16 organizational units he determines are appropriate to administer  
17 the provisions of the Gaming Control Act.

18 D. The executive director:

19 (1) may delegate authority to subordinates as he  
20 deems necessary and appropriate, clearly delineating the  
21 delegated authority and the limitations on it, if any;

22 (2) shall take administrative action by issuing  
23 orders and instructions consistent with the Gaming Control Act  
24 and regulations of the board to assure implementation of and  
25 compliance with the provisions of that act and those regulations;

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1                   (3) may conduct research and studies that will  
2 improve the operations of the board and the provision of services  
3 to the citizens of the state;

4                   (4) may provide courses of instruction and  
5 practical training for employees of the board and other persons  
6 involved in the activities regulated by the board with the  
7 objectives of improving operations of the board and achieving  
8 compliance with the law and regulations;

9                   (5) shall prepare an annual budget for the board  
10 and submit it to the board for approval; and

11                   (6) shall make recommendations to the board of  
12 proposed regulations and any legislative changes needed to  
13 provide better administration of the Gaming Control Act and fair  
14 and efficient regulation of gaming activities in the state.

15                   Section 13. [NEW MATERIAL] INVESTIGATION OF EXECUTIVE  
16 DIRECTOR CANDIDATES AND EMPLOYEES. --

17                   A. A person who is under consideration in the final  
18 selection process for appointment as the executive director shall  
19 file a disclosure statement pursuant to the requirements of this  
20 section, and the board shall not make an appointment of a person  
21 as executive director until a background investigation is  
22 completed by the department of public safety and a report is made  
23 to the board.

24                   B. A person who has reached the final selection  
25 process for employment by the executive director shall file a



1 disclosure statement pursuant to the requirements of this section  
2 if the executive director or the board has directed the person do  
3 so. The person shall not be further considered for employment  
4 until a background investigation is completed by the department  
5 of public safety and a report is made to the executive director.

6 C. Forms for the disclosure statements required by  
7 this section shall be developed by the board in cooperation with  
8 the department of public safety. At least the following  
9 information shall be required of a person submitting a statement:

10 (1) a full set of fingerprints made by a law  
11 enforcement agency on forms supplied by the board;

12 (2) complete information and details with  
13 respect to the person's antecedents, habits, immediate family,  
14 character, criminal record, business activities and business  
15 associates, covering at least a ten-year period immediately  
16 preceding the date of submitting the disclosure statement; and

17 (3) a complete description of any equity  
18 interest held in a business connected with the gaming industry.

19 D. In preparing an investigative report, the  
20 department of public safety may request and receive criminal  
21 history information from the federal bureau of investigation or  
22 any other law enforcement agency or organization. The department  
23 of public safety shall maintain confidentiality regarding  
24 information received from a law enforcement agency that may be  
25 imposed by the agency as a condition for providing the

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1 information to the department.

2 E. A person required to file a disclosure statement  
3 shall provide any assistance or information requested by the  
4 department of public safety or the board and shall cooperate in  
5 any inquiry or investigation.

6 F. If information required to be included in a  
7 disclosure statement changes or if information is added after  
8 the statement is filed, the person required to file it shall  
9 provide that information in writing to the person requesting the  
10 investigation. The supplemental information shall be provided  
11 within thirty days after the change or addition.

12 G. The board shall not appoint a person as executive  
13 director, and the executive director shall not employ a person,  
14 if the board or the executive director has reasonable cause to  
15 believe that the person has:

16 (1) knowingly misrepresented or omitted a  
17 material fact required in a disclosure statement;

18 (2) been convicted of a felony, a gaming related  
19 offense or a crime involving fraud, theft or moral turpitude  
20 within ten years immediately preceding the date of submitting a  
21 disclosure statement required pursuant to this section;

22 (3) exhibited a history of willful disregard for  
23 the gaming laws of this or any other state or the United States;  
24 or

25 (4) had a permit or license issued pursuant to

1 the gaming laws of this or any other state or the United States  
2 permanently suspended or revoked for cause.

3 H. Both the board and the executive director may  
4 exercise absolute discretion in exercising their respective  
5 appointing and employing powers.

6 Section 14. [NEW MATERIAL] CONFLICTS OF INTEREST-- BOARD--  
7 EXECUTIVE DIRECTOR. --

8 A. In addition to all other provisions of New Mexico  
9 law regarding conflicts of interest of state officials and  
10 employees, a member of the board, the executive director, or a  
11 person in the immediate family of or residing in the household of  
12 any of the foregoing persons, shall not:

13 (1) directly or indirectly, as a proprietor or  
14 as a member, stockholder, director or officer of a company, have  
15 an interest in a business engaged in gaming activities in this or  
16 another jurisdiction; or

17 (2) accept or agree to accept any economic  
18 opportunity, gift, loan, gratuity, special discount, favor,  
19 hospitality or service having an aggregate value of one hundred  
20 dollars (\$100) or more in any calendar year from a licensee or  
21 applicant.

22 B. If a member of the board, the executive director  
23 or a person in the immediate family of or residing in the  
24 household of a member of the board or the executive director  
25 violates a provision of this section, the member of the board or

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1 executive director shall be removed from office. A board member  
2 shall be removed by the governor, and the executive director  
3 shall be removed from his position by the board.

4 Section 15. [NEW MATERIAL] ACTIVITIES REQUIRING  
5 LICENSING. --

6 A. A person shall not conduct gaming unless he is  
7 licensed as a gaming operator.

8 B. A person shall not sell, supply or distribute any  
9 gaming device or associated equipment for use or play in this  
10 state or for use or play outside of this state from a location  
11 within this state unless he is licensed as a distributor or  
12 manufacturer, but a gaming operator licensee may sell or trade in  
13 a gaming device or associated equipment to a gaming operator  
14 licensee, distributor licensee or manufacturer licensee.

15 C. A person shall not manufacture, fabricate,  
16 assemble, program or make modifications to a gaming device or  
17 associated equipment for use or play in this state or for use or  
18 play outside of this state from any location within this state  
19 unless he is a manufacturer licensee. A manufacturer licensee  
20 may sell, supply or distribute only the gaming devices or  
21 associated equipment that he manufactures, fabricates, assembles,  
22 programs or modifies.

23 D. A gaming operator licensee or a person other than  
24 a manufacturer licensee or distributor licensee shall not possess  
25 or control a place where there is an unlicensed gaming machine.

1 Any unlicensed gaming machine, except one in the possession of a  
2 licensee while awaiting transfer to a gaming operator licensee  
3 for licensure of the machine, is subject to forfeiture and  
4 confiscation by any law enforcement agency or peace officer.

5 E. A person shall not service or repair a gaming  
6 device or associated equipment unless he is licensed as a  
7 manufacturer, is employed by a manufacturer licensee or is a  
8 technician certified by a manufacturer and employed by a  
9 distributor licensee.

10 F. A person shall not engage in any activity for  
11 which the board requires a license or permit without obtaining  
12 the license or permit.

13 G. Except as provided in Subsection B of this  
14 section, a person shall not purchase, lease or acquire possession  
15 of a gaming device or associated equipment except from a licensed  
16 distributor or manufacturer.

17 H. A distributor licensee may receive a percentage of  
18 the amount wagered, the net take or other measure related to the  
19 operation of a gaming machine as a payment pursuant to a lease or  
20 other arrangement for furnishing a gaming machine, but the board  
21 shall adopt a regulation setting the maximum allowable  
22 percentage.

23 Section 16. [NEW MATERIAL] LICENSURE- - APPLICATION. - -

24 A. The board shall establish and issue the following  
25 categories of licenses:

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- 1 (1) manufacturer;
- 2 (2) distributor;
- 3 (3) gaming operator; and
- 4 (4) gaming machine.

5 B. The board shall issue certifications of findings  
6 of suitability for key executives and other persons for whom  
7 certification is required.

8 C. The board shall issue work permits for gaming  
9 employees.

10 D. A licensee shall not be issued more than one type  
11 of license, but this provision does not prohibit a licensee from  
12 owning, leasing, acquiring or having in his possession licensed  
13 gaming machines if that activity is otherwise allowed by the  
14 provisions of the Gaming Control Act. A licensee shall not own a  
15 majority interest in, manage or otherwise control a holder of  
16 another type of license issued pursuant to the provisions of that  
17 act.

18 E. Applicants shall apply on forms provided by the  
19 board and furnish all information requested by the board.  
20 Submission of an application constitutes consent to a credit  
21 check of the applicant and all persons having a substantial  
22 interest in the applicant and any other background investigations  
23 required pursuant to the Gaming Control Act or deemed necessary  
24 by the board.

25 F. All licenses issued by the board pursuant to the

1 provisions of this section shall be reviewed for renewal annually  
2 unless revoked, suspended, canceled or terminated.

3 G. A license shall not be transferred or assigned.

4 H. The application for a license shall include:

5 (1) the name of the applicant;

6 (2) the location of the proposed operation;

7 (3) the gaming devices to be operated,  
8 manufactured, distributed or serviced;

9 (4) the names of all persons having a direct or  
10 indirect interest in the business of the applicant and the nature  
11 of such interest; and

12 (5) such other information and details as the  
13 board may require.

14 I. The board shall furnish to the applicant  
15 supplemental forms that the applicant shall complete and file  
16 with the application. Such supplemental forms shall require  
17 complete information and details with respect to the applicant's  
18 antecedents, habits, immediate family, character, criminal  
19 record, business activities, financial affairs and business  
20 associates, covering at least a ten-year period immediately  
21 preceding the date of filing of the application.

22 Section 17. [NEW MATERIAL] LICENSE, CERTIFICATION AND  
23 WORK PERMIT FEES. --

24 A. License and other fees shall be established by  
25 board regulation but shall not exceed the following amounts:

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1                   (1) manufacturer's license, twenty thousand  
2 dollars (\$20,000) for the initial license and five thousand  
3 dollars (\$5,000) for annual renewal;

4                   (2) distributor's license, ten thousand dollars  
5 (\$10,000) for the initial license and one thousand dollars  
6 (\$1,000) for annual renewal;

7                   (3) gaming operator's license for a racetrack,  
8 fifty thousand dollars (\$50,000) for the initial license and ten  
9 thousand dollars (\$10,000) for annual renewal;

10                   (4) gaming operator's license for a nonprofit  
11 organization, one thousand dollars (\$1,000) for the initial  
12 license and two hundred dollars (\$200) for annual renewal;

13                   (5) for each separate gaming machine licensed to  
14 a person holding an operator's license, five hundred dollars  
15 (\$500) for the initial license and one hundred dollars (\$100) for  
16 annual renewal; and

17                   (6) work permit, one hundred dollars (\$100)  
18 annually.

19                   B. The board shall establish the fee for  
20 certifications or other actions by regulation, but no fee  
21 established by the board shall exceed one thousand dollars  
22 (\$1,000), except for fees established pursuant to Paragraph (18)  
23 of Subsection C of Section 10 of the Gaming Control Act.

24                   C. All license, certification or work permit fees  
25 shall be paid to the board at the time and in the manner



1 established by regulations of the board.

2 Section 18. [NEW MATERIAL] ACTION BY BOARD ON  
3 APPLICATIONS. --

4 A. A person that the board determines is qualified to  
5 receive a license pursuant to the provisions of the Gaming  
6 Control Act may be issued a license. The burden of proving  
7 qualifications is on the applicant.

8 B. A license shall not be issued unless the board is  
9 satisfied that the applicant is:

10 (1) a person of good moral character, honesty  
11 and integrity;

12 (2) a person whose prior activities, criminal  
13 record, reputation, habits and associations do not pose a threat  
14 to the public interest or to the effective regulation and control  
15 of gaming or create or enhance the dangers of unsuitable, unfair  
16 or illegal practices, methods and activities in the conduct of  
17 gaming or the carrying on of the business and financial  
18 arrangements incidental thereto; and

19 (3) in all other respects qualified to be  
20 licensed consistent with the laws of this state.

21 C. A license shall not be issued unless the applicant  
22 has satisfied the board that:

23 (1) the applicant has adequate business probity,  
24 competence and experience in business and gaming;

25 (2) the proposed financing of the applicant is

1 adequate for the nature of the proposed license and from a  
2 suitable source; any lender or other source of money or credit  
3 that the board finds does not meet the standards set forth in  
4 Subsection B of this section shall be deemed unsuitable; and

5 (3) the applicant is sufficiently capitalized  
6 under standards set by the board to conduct the business covered  
7 by the license.

8 D. An application to receive a license, certification  
9 or work permit constitutes a request for a determination of the  
10 applicant's general moral character, integrity and ability to  
11 participate or engage in or be associated with gaming. Any  
12 written or oral statement made in the course of an official  
13 proceeding of the board or by a witness testifying under oath  
14 that is relevant to the purpose of the proceeding is absolutely  
15 privileged and does not impose liability for defamation or  
16 constitute a ground for recovery in any civil action.

17 E. The board shall not issue a license or  
18 certification to an applicant who has been denied a license or  
19 certification in this state or another state, who has had a  
20 certification, permit or license issued pursuant to the gaming  
21 laws of a state or the United States permanently suspended or  
22 revoked for cause or who is currently under suspension or subject  
23 to any other limiting action in this state or another state  
24 involving gaming activities or licensure for gaming activities.

25 F. The board shall investigate the qualifications of

1 each applicant before a license, certification or work permit is  
 2 issued by the board and shall continue to observe and monitor the  
 3 conduct of all licensees, work permit holders, persons certified  
 4 as being suitable and the persons having a material involvement  
 5 directly or indirectly with a licensee.

6 G. The board has the authority to deny an application  
 7 or limit, condition, restrict, revoke or suspend a license,  
 8 certification or permit for any cause.

9 H. After issuance, a license, certification or permit  
 10 shall continue in effect upon proper payment of the initial and  
 11 renewal fees, subject to the power of the board to revoke,  
 12 suspend, condition or limit licenses, certifications and permits.

13 I. The board has full and absolute power and  
 14 authority to deny an application for any cause it deems  
 15 reasonable. If an application is denied, the board shall prepare  
 16 and file its written decision on which its order denying the  
 17 application is based.

18 Section 19. [NEW MATERIAL] INVESTIGATION FOR LICENSES,  
 19 CERTIFICATIONS AND PERMITS. --The board shall initiate an  
 20 investigation of the applicant within thirty days after an  
 21 application is filed and supplemental information that the board  
 22 may require is received.

23 Section 20. [NEW MATERIAL] ELIGIBILITY REQUIREMENTS FOR  
 24 COMPANIES. --In order to be eligible to receive a license, a  
 25 company shall:

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1           A. be incorporated or otherwise organized and in good  
2 standing in this state or incorporated or otherwise organized in  
3 another state, qualified to do business in this state and in good  
4 standing in this state and in the state of incorporation;

5           B. comply with all of the requirements of the laws of  
6 this state pertaining to the company;

7           C. maintain a ledger in the principal office of the  
8 company in this state, which shall:

9                   (1) at all times reflect the ownership according  
10 to company records of every class of security issued by the  
11 company; and

12                   (2) be available for inspection by the board at  
13 all reasonable times without notice; and

14           D. file notice of all changes of ownership of all  
15 classes of securities issued by the company with the board within  
16 thirty days of the change.

17           Section 21. [NEW MATERIAL] REGISTRATION WITH BOARD BY  
18 COMPANY APPLICANTS--REQUIRED INFORMATION.--A company applicant  
19 shall provide the following information to the board on forms  
20 provided by the board:

21           A. the organization, financial structure and nature  
22 of the business to be operated, including the names and personal  
23 histories of all officers, directors and key executives;

24           B. the rights and privileges acquired by the holders  
25 of different classes of authorized securities;

1           C. the terms and conditions of all outstanding loans,  
2 mortgages, trust deeds, pledges or any other indebtedness or  
3 security interest evidenced by a security instrument pertaining  
4 to the proposed gaming operation or other licensed activity in  
5 this state and the name and address of the person who is  
6 servicing the loan, mortgage, trust deed, pledge or other  
7 indebtedness or security interest;

8           D. remuneration to persons, other than directors,  
9 officers and key executives, exceeding fifty thousand dollars  
10 (\$50,000) per year;

11           E. bonus and profit-sharing arrangements within the  
12 company;

13           F. management and service contracts pertaining to the  
14 proposed gaming activity in this state;

15           G. balance sheets and profit and loss statements for  
16 at least the three preceding fiscal years, or, if the company has  
17 not been in business for a period of three years, balance sheets  
18 and profit and loss statements from the time of its commencement  
19 of business operations and projected for three years from the  
20 time of its commencement of business operations. All balance  
21 sheets and profit and loss statements shall be certified by  
22 independent certified public accountants; and

23           H. any further financial data that the board deems  
24 necessary or appropriate.

25           Section 22. [NEW MATERIAL] INDIVIDUAL CERTIFICATION OF

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1 OFFICERS, DIRECTORS AND OTHER PERSONS. -- An officer, director,  
2 equity security holder of five percent or more, partner, general  
3 partner, limited partner, trustee or beneficiary of the company  
4 that holds or has applied for a license shall be certified  
5 individually, according to the provisions of the Gaming Control  
6 Act, and if in the judgment of the board the public interest is  
7 served by requiring any or all of the company's key executives to  
8 be certified, the company shall require those persons to apply  
9 for certification. A person who is required to be certified  
10 pursuant to this section shall apply for certification within  
11 thirty days after becoming an officer, director, equity security  
12 holder of five percent or more, partner, general partner, limited  
13 partner of five percent or more, trustee, beneficiary or key  
14 executive. A person who is required to be certified pursuant to  
15 a decision of the board shall apply for certification within  
16 thirty days after the board so requests.

17 Section 23. [NEW MATERIAL] REQUIREMENTS IF COMPANY IS OR  
18 BECOMES A SUBSIDIARY-- INVESTIGATIONS-- RESTRICTIONS ON UNSUITABLE  
19 PERSONS-- OTHER REQUIREMENTS. --

20 A. If the company applicant or licensee is or becomes  
21 a subsidiary, each nonpublicly traded holding company and  
22 intermediary company with respect to the subsidiary company  
23 shall:

- 24 (1) qualify to do business in New Mexico; and
- 25 (2) register with the board and furnish to the

1 board the following information:

2 (a) a complete list of all beneficial owners  
3 of five percent or more of its equity securities, which shall be  
4 updated within thirty days after any change;

5 (b) the names of all company officers and  
6 directors within thirty days of their appointment or election;

7 (c) its organization, financial structure  
8 and nature of the business it operates;

9 (d) the terms, position, rights and  
10 privileges of the different classes of its outstanding  
11 securities;

12 (e) the terms on which its securities are to  
13 be, and during the preceding three years have been, offered;

14 (f) the holder of and the terms and  
15 conditions of all outstanding loans, mortgages, trust deeds,  
16 pledges or any other indebtedness or security interest pertaining  
17 to the applicant or licensee;

18 (g) the extent of the securities holdings or  
19 other interest in the holding company or intermediary company of  
20 all officers, directors, key executives, underwriters, partners,  
21 principals, trustees or any direct or beneficial owners, and the  
22 amount of any remuneration paid them as compensation for their  
23 services in the form of salary, wages, fees or by contract  
24 pertaining to the licensee;

25 (h) remuneration to persons other than

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1 directors, officers and key executives exceeding fifty thousand  
2 dollars (\$50,000) per year;

3 (i) bonus and profit-sharing arrangements  
4 within the holding company or intermediary company;

5 (j) management and service contracts  
6 pertaining to the licensee or applicant;

7 (k) options existing or to be created in  
8 respect to the company's securities or other interests;

9 (l) balance sheets and profit and loss  
10 statements, certified by independent certified public  
11 accountants, for not more than the three preceding fiscal years,  
12 or, if the holding company or intermediary company has not been  
13 in existence more than three years, balance sheets and profit and  
14 loss statements from the time of its establishment, together with  
15 projections for three years from the time of its establishment;

16 (m) any further financial statements  
17 necessary or appropriate to assist the board in making its  
18 determinations; and

19 (n) a current annual profit and loss  
20 statement, a current annual balance sheet and a copy of the  
21 company's most recent federal income tax return within thirty  
22 days after the return is filed.

23 B. All holders of five percent or more of the equity  
24 security of a holding company or intermediary company shall apply  
25 for a finding of suitability.



1           C. The board may in its discretion perform the  
2 investigations concerning the officers, directors, key  
3 executives, underwriters, security holders, partners, principals,  
4 trustees or direct or beneficial owners of any interest in any  
5 holding company or intermediary company as it deems necessary,  
6 either at the time of initial registration or at any time  
7 thereafter.

8           D. If at any time the board finds that any person  
9 owning, controlling or holding with power to vote all or any part  
10 of any class of securities of, or any interest in, any holding  
11 company or intermediary company is unsuitable to be connected  
12 with a licensee, it shall so notify both the unsuitable person  
13 and the holding company or intermediary company. The unsuitable  
14 person shall immediately offer the securities or other interest  
15 to the issuing company for purchase. The company shall purchase  
16 the securities or interest offered upon the terms and within the  
17 time period ordered by the board.

18           E. Beginning on the date when the board serves notice  
19 that a person has been found to be unsuitable pursuant to  
20 Subsection D of this section, it is unlawful for the unsuitable  
21 person to:

22                   (1) receive any dividend or interest upon any  
23 securities held in the holding company or intermediary company,  
24 or any dividend, payment or distribution of any kind from the  
25 holding company or intermediary company;

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1                   (2) exercise, directly or indirectly or through  
2 a proxy, trustee or nominee, any voting right conferred by the  
3 securities or interest; or

4                   (3) receive remuneration in any form from the  
5 licensee, or from any holding company or intermediary company  
6 with respect to that licensee, for services rendered or  
7 otherwise.

8                   F. A holding company or intermediary company subject  
9 to the provisions of Subsection A of this section shall not make  
10 any public offering of any of its equity securities unless such  
11 public offering has been approved by the board.

12                   G. This section does not apply to a holding company  
13 or intermediary company that is a publicly traded corporation,  
14 the stock of which is traded on recognized stock exchanges, which  
15 shall instead comply with the provisions of Section 24 of the  
16 Gaming Control Act.

17                   Section 24. [NEW MATERIAL] REGISTRATION AND CERTIFICATION  
18 OF PUBLICLY TRADED CORPORATIONS. --

19                   A. If a company applicant or company licensee is or  
20 becomes a publicly traded corporation, it shall register with the  
21 board and provide the following information:

22                   (1) as of the date the company became a publicly  
23 traded corporation, and on any later date when the information  
24 changes, the names of all stockholders of record who hold five  
25 percent or more of the outstanding shares of any class of equity

1 securities issued by the publicly traded corporation;

2 (2) the names of all officers within thirty days  
3 of their respective appointments;

4 (3) the names of all directors within thirty  
5 days of their respective elections or appointments;

6 (4) the organization, financial structure and  
7 nature of the businesses the publicly traded corporation  
8 operates;

9 (5) the terms, position, rights and privileges  
10 of the different classes of securities outstanding as of the date  
11 the company became a publicly traded corporation;

12 (6) the terms on which the company's securities  
13 were issued during the three years preceding the date on which  
14 the company became a publicly traded corporation and the terms on  
15 which the publicly traded corporation's securities are to be  
16 offered to the public as of the date the company became a  
17 publicly traded corporation;

18 (7) the terms and conditions of all outstanding  
19 indebtedness and evidence of security pertaining directly or  
20 indirectly to the publicly traded corporation;

21 (8) remuneration exceeding fifty thousand  
22 dollars (\$50,000) per year paid to persons other than directors,  
23 officers and key executives who are actively and directly engaged  
24 in the administration or supervision of the gaming activities of  
25 the publicly traded corporation;

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1                   (9) bonus and profit-sharing arrangements within  
2 the publicly traded corporation directly or indirectly relating  
3 to its gaming activities;

4                   (10) management and service contracts of the  
5 corporation pertaining to its gaming activities;

6                   (11) options existing or to be created pursuant  
7 to its equity securities;

8                   (12) balance sheets and profit and loss  
9 statements, certified by independent certified public  
10 accountants, for not less than the three fiscal years preceding  
11 the date the company became a publicly traded corporation;

12                   (13) any further financial statements deemed  
13 necessary or appropriate by the board; and

14                   (14) a description of the publicly traded  
15 corporation's affiliated companies and intermediary companies and  
16 gaming licenses, permits and approvals held by those entities.

17                   B. The board shall consider the following criteria in  
18 determining whether to certify a publicly traded corporation:

19                   (1) the business history of the publicly traded  
20 corporation, including its record of financial stability,  
21 integrity and success of its gaming operations in other  
22 jurisdictions;

23                   (2) the current business activities and  
24 interests of the applicant, as well as those of its officers,  
25 promoters, lenders and other sources of financing, or any other

1 persons associated with it;

2 (3) the current financial structure of the  
3 publicly traded corporation as well as changes that could  
4 reasonably be expected to occur to its financial structure as a  
5 consequence of its proposed action;

6 (4) the present and proposed compensation  
7 arrangements between the publicly traded corporation and its  
8 directors, officers, key executives, securities holders, lenders  
9 or other sources of financing;

10 (5) the equity investment, commitment or  
11 contribution of present or prospective directors, key executives,  
12 investors, lenders or other sources of financing; and

13 (6) the dealings and arrangements, prospective  
14 or otherwise, between the publicly traded corporation and its  
15 investment bankers, promoters, finders or lenders and other  
16 sources of financing.

17 C. The board may issue a certification upon receipt  
18 of a proper application and consideration of the criteria set  
19 forth in Subsection B of this section if it finds that the  
20 certification would not be contrary to the public interest or the  
21 policy set forth in the Gaming Control Act.

22 Section 25. [NEW MATERIAL] FINDING OF SUITABILITY  
23 REQUIRED FOR DIRECTORS, OFFICERS AND KEY EXECUTIVES-- REMOVAL FROM  
24 POSITION IF FOUND UNSUITABLE-- SUSPENSION OF SUITABILITY BY  
25 BOARD. --

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1           A. Each officer, director and key executive of a  
2 holding company, intermediary company or publicly traded  
3 corporation that the board determines is or is to become actively  
4 and directly engaged in the administration or supervision of, or  
5 any other significant involvement with, the activities of the  
6 subsidiary licensee or applicant shall apply for a finding of  
7 suitability.

8           B. If any officer, director or key executive of a  
9 holding company, intermediary company or publicly traded  
10 corporation required to be found suitable pursuant to Subsection  
11 A of this section fails to apply for a finding of suitability  
12 within thirty days after being requested to do so by the board,  
13 or is not found suitable by the board, or if his finding of  
14 suitability is revoked after appropriate findings by the board,  
15 the holding company, intermediary company or publicly traded  
16 corporation shall immediately remove that officer, director or  
17 key executive from any office or position in which the person is  
18 engaged in the administration or supervision of, or any other  
19 involvement with, the activities of the certified subsidiary  
20 until the person is thereafter found to be suitable. If the  
21 board suspends the finding of suitability of any officer,  
22 director or key executive, the holding company, intermediary  
23 company or publicly traded corporation shall immediately and for  
24 the duration of the suspension suspend that officer, director or  
25 key executive from performance of any duties in which he is

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1 actively and directly engaged in the administration or  
 2 supervision of, or any other involvement with, the activities of  
 3 the subsidiary licensee.

4 Section 26. [NEW MATERIAL] SUITABILITY OF INDIVIDUALS  
 5 ACQUIRING BENEFICIAL OWNERSHIP OF VOTING SECURITY IN PUBLICLY  
 6 TRADED CORPORATION--REPORT OF ACQUISITION--APPLICATION--  
 7 PROHIBITION.--

8 A. Each person who, individually or in association  
 9 with others, acquires, directly or indirectly, beneficial  
 10 ownership of five percent or more of any voting securities in a  
 11 publicly traded corporation registered with the board may be  
 12 required to be found suitable if the board has reason to believe  
 13 that the acquisition of the ownership would otherwise be  
 14 inconsistent with the declared policy of this state.

15 B. Each person who, individually or in association  
 16 with others, acquires, directly or indirectly, beneficial  
 17 ownership of five percent or more of any class of voting  
 18 securities of a publicly traded corporation certified by the  
 19 board shall notify the board within ten days after acquiring such  
 20 interest.

21 C. Each person who, individually or in association  
 22 with others, acquires, directly or indirectly, the beneficial  
 23 ownership of more than ten percent of any class of voting  
 24 securities of a publicly traded corporation certified by the  
 25 board shall apply to the board for a finding of suitability

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1 within thirty days after acquiring such interest.

2 D. Institutional investors that have been exempted  
3 from or have received a waiver of suitability requirements  
4 pursuant to regulations adopted by the board are not required to  
5 comply with this section.

6 E. Any person required by the board or by the  
7 provisions of this section to be found suitable shall apply for a  
8 finding of suitability within thirty days after the board  
9 requests that he do so.

10 F. Any person required by the board or the provisions  
11 of this section to be found suitable who subsequently is found  
12 unsuitable by the board shall not hold directly or indirectly the  
13 beneficial ownership of any security of a publicly traded  
14 corporation that is registered with the board beyond that period  
15 of time prescribed by the board.

16 G. The board may, but is not required to, deem a  
17 person qualified to hold a license or be found suitable as  
18 required by this section if the person currently holds a valid  
19 license issued by, or has been found suitable by, gaming  
20 regulatory authorities in another jurisdiction, provided that the  
21 board finds that the other jurisdiction has conducted a thorough  
22 investigation of the applicant and has criteria substantially  
23 similar to those of the board to determine when a person is to be  
24 found suitable or to obtain a license.

25 Section 27. [NEW MATERIAL] REPORT OF PROPOSED ISSUANCE OR



1 TRANSFER OF SECURITIES-- REPORT OF CHANGE IN CORPORATE OFFICERS  
2 AND DIRECTORS-- APPROVAL OF BOARD. --

3 A. Before a company licensee, other than a publicly  
4 traded corporation, may issue or transfer five percent or more of  
5 its securities to any person, it shall file a report of its  
6 proposed action with the board, which report shall request the  
7 approval of the board. The board shall have ninety days within  
8 which to approve or deny the request. If the board fails to act  
9 in ninety days, the request is deemed approved. If the board  
10 denies the request, the company shall not issue or transfer five  
11 percent or more of its securities to the person about whom the  
12 request was made.

13 B. A company licensee shall file a report of each  
14 change of the corporate officers and directors with the board  
15 within thirty days of the change. The board shall have ninety  
16 days from the date the report is filed within which to approve or  
17 disapprove such change. During the ninety-day period and  
18 thereafter, if the board does not disapprove the change, an  
19 officer or director is be entitled to exercise all powers of the  
20 office to which he was elected or appointed.

21 C. A company licensee shall report to the board in  
22 writing any change in company personnel who have been designated  
23 as key executives. The report shall be made no later than thirty  
24 days after the change.

25 D. The board may require that a company licensee

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1 furnish the board with a copy of its federal income tax return  
2 within thirty days after the return is filed.

3 Section 28. [NEW MATERIAL] GAMING OPERATOR LICENSEES--  
4 GENERAL PROVISIONS-- BUSINESS PLAN-- PLAYER AGE LIMIT--  
5 RESTRICTIONS. --

6 A. An applicant for licensure as a gaming operator  
7 shall submit with the application a plan for assisting in the  
8 prevention, education and treatment of compulsive gambling. The  
9 plan shall include regular educational training sessions for  
10 employees. Plan approval is a condition of issuance of the  
11 license.

12 B. An applicant for licensure as a gaming operator  
13 shall submit with the application a proposed business plan. The  
14 plan shall include at least:

- 15 (1) a floor plan of the area to be used for  
16 gaming machine operations;
- 17 (2) an advertising and marketing plan;
- 18 (3) the proposed placement and number of gaming  
19 machines;
- 20 (4) a financial control plan;
- 21 (5) a security plan;
- 22 (6) a staffing plan for gaming machine  
23 operations; and
- 24 (7) details of any proposed progressive systems.

25 C. A gaming operator licensee shall be granted a

1 license to operate a specific number of machines at a gaming  
2 establishment identified in the license application and shall be  
3 granted a license for each gaming machine.

4 D. A gaming operator licensee who desires to change  
5 the number of machines in operation at a gaming establishment  
6 shall apply to the board for an amendment to his license  
7 authorizing a change in the number of machines.

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

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

19 G. A gaming operator licensee shall not have  
20 automated teller machines on the premises.

21 H. A gaming operator licensee shall not provide,  
22 allow, contract or arrange to provide alcohol or food for no  
23 charge or at reduced prices as an incentive or enticement for  
24 patrons to game.

25 I. Only a racetrack licensed by the state racing

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1 commission or a nonprofit organization may apply for or be issued  
2 a gaming operator's license. No other persons are qualified to  
3 apply for or be issued a gaming operator's license pursuant to  
4 the Gaming Control Act.

5 Section 29. [NEW MATERIAL] GAMING OPERATOR LICENSEES--  
6 SPECIAL CONDITIONS FOR RACETRACKS--NUMBER OF GAMING MACHINES--  
7 DAYS AND HOURS OF OPERATIONS.--

8 A. A racetrack licensed by the state racing  
9 commission pursuant to the Horse Racing Act to conduct live horse  
10 races or simulcast races may be issued a gaming operator's  
11 license to operate gaming machines on its premises where live  
12 racing is conducted.

13 B. A racetrack's gaming operator's license shall  
14 automatically become void if:

15 (1) the racetrack no longer holds an active  
16 license to conduct pari-mutuel wagering; or

17 (2) the racetrack fails to maintain a minimum of  
18 three live race days a week with at least nine live races on each  
19 race day during its licensed race meet in the 1997 calendar year  
20 and four live race days a week thereafter.

21 C. A gaming operator licensee that is a racetrack may  
22 have not more than three hundred licensed gaming machines, but  
23 the number of gaming machines to be located on the licensee's  
24 premises shall be specified in the gaming operator's license.

25 D. Gaming machines on a racetrack gaming operator

1 licensee's premises may be played only on days when the racetrack  
2 is either conducting live horse races or simulcasting horse race  
3 meets and during times established by regulation of the board,  
4 but the regulations shall provide for a maximum of twelve hours a  
5 day.

6 E. Alcoholic beverages shall not be sold, served,  
7 delivered or consumed in the area where gaming machines are  
8 installed and operated on the premises of a racetrack gaming  
9 operator licensee.

10 Section 30. [NEW MATERIAL] GAMING OPERATOR LICENSEES- -  
11 SPECIAL CONDITIONS FOR NONPROFIT ORGANIZATIONS-- NUMBER OF GAMING  
12 MACHINES-- DAYS AND HOURS OF OPERATIONS. --

13 A. A nonprofit organization may be issued a gaming  
14 operator's license to operate licensed gaming machines on its  
15 premises to be played only by active and auxiliary members.

16 B. No more than fifteen gaming machines may be  
17 offered for play on the premises of a nonprofit organization  
18 gaming operator licensee.

19 C. No gaming machine on the premises of a nonprofit  
20 organization gaming operator licensee may award a prize that  
21 exceeds four thousand dollars (\$4,000).

22 D. Gaming machines may be played on the premises of a  
23 nonprofit organization gaming operator licensee from 12:00 noon  
24 until 12:00 midnight every day.

25 E. Alcoholic beverages shall not be sold, served,

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1 delivered or consumed in the area where gaming machines are  
2 installed and operated on the premises of a nonprofit  
3 organization gaming operator licensee.

4 Section 31. [NEW MATERIAL] LICENSING OF MANUFACTURERS OF  
5 GAMING DEVICES--EXCEPTION--DISPOSITION OF GAMING DEVICES.--

6 A. It is unlawful for any person to operate, carry  
7 on, conduct or maintain any form of manufacturing of any gaming  
8 device or associated equipment for use or play in New Mexico or  
9 any form of manufacturing of any gaming device or associated  
10 equipment in New Mexico for use or play outside of New Mexico  
11 without first obtaining and maintaining a manufacturer's license.

12 B. If the board revokes a manufacturer's license:

13 (1) no new gaming device manufactured by the  
14 manufacturer may be approved for use in this state;

15 (2) any previously approved gaming device  
16 manufactured by the manufacturer is subject to revocation of  
17 approval if the reasons for the revocation of the license also  
18 apply to that gaming device;

19 (3) no new gaming device or associated equipment  
20 made by the manufacturer may be distributed, sold, transferred or  
21 offered for use or play in New Mexico; and

22 (4) any association or agreement between the  
23 manufacturer and a distributor licensee or gaming operator  
24 licensee in New Mexico shall be terminated.

25 C. An agreement between a manufacturer licensee and a

1 distributor licensee or a gaming operator licensee in New Mexico  
2 shall be deemed to include a provision for its termination  
3 without liability for the termination on the part of either party  
4 upon a finding by the board that either party is unsuitable.  
5 Failure to include that condition in the agreement is not a  
6 defense in any action brought pursuant to this section to  
7 terminate the agreement.

8 D. A gaming device shall not be used and offered for  
9 play by a gaming operator licensee unless it is identical in all  
10 material aspects to a model that has been specifically tested and  
11 approved by:

- 12 (1) the board;
- 13 (2) a laboratory selected by the board; or
- 14 (3) gaming officials in Nevada or New Jersey

15 after January 1, 1990.

16 E. The board may inspect every gaming device that is  
17 manufactured:

- 18 (1) for use in New Mexico; or
- 19 (2) in New Mexico for use outside of New Mexico.

20 F. The board may inspect every gaming device that is  
21 offered for play within New Mexico by a gaming operator licensee.

22 G. The board may inspect all associated equipment  
23 that is manufactured and sold for use in New Mexico or  
24 manufactured in New Mexico for use outside of New Mexico.

25 H. In addition to all other fees and charges imposed

1 pursuant to the Gaming Control Act, the board may determine,  
2 charge and collect from each manufacturer an inspection fee,  
3 which shall not exceed the actual cost of inspection and  
4 investigation.

5 I. The board may prohibit the use of a gaming device  
6 by a gaming operator licensee if it finds that the gaming device  
7 does not meet the requirements of this section.

8 Section 32. [NEW MATERIAL] LICENSING OF DISTRIBUTORS OF  
9 GAMING DEVICES. --

10 A. It is unlawful for any person to operate, carry  
11 on, conduct or maintain any form of distribution of any gaming  
12 device for use or play in New Mexico without first obtaining and  
13 maintaining a distributor's or manufacturer's license.

14 B. If the board revokes a distributor's license:

15 (1) no new gaming device distributed by the  
16 person may be approved;

17 (2) any previously approved gaming device  
18 distributed by the distributor is subject to revocation of  
19 approval if the reasons for the revocation of the license also  
20 apply to that gaming device;

21 (3) no new gaming device or associated equipment  
22 distributed by the distributor may be distributed, sold,  
23 transferred or offered for use or play in New Mexico; and

24 (4) any association or agreement between the  
25 distributor and a gaming operator licensee shall be terminated.



1 An agreement between a distributor licensee and a gaming operator  
 2 licensee shall be deemed to include a provision for its  
 3 termination without liability on the part of either party upon a  
 4 finding by the board that the other party is unsuitable. Failure  
 5 to include that condition in the agreement is not a defense in  
 6 any action brought pursuant to this section to terminate the  
 7 agreement.

8 C. The board may inspect every gaming device that is  
 9 distributed for use in New Mexico.

10 D. In addition to all other fees and charges imposed  
 11 by the Gaming Control Act, the board may determine, charge and  
 12 collect from each distributor an inspection fee, which shall not  
 13 exceed the actual cost of inspection and investigation.

14 Section 33. [NEW MATERIAL] SUITABILITY OF CERTAIN PERSONS  
 15 FURNISHING SERVICES OR PROPERTY OR DOING BUSINESS WITH GAMING  
 16 OPERATORS-- TERMINATION OF ASSOCIATION. --

17 A. The board may determine the suitability of any  
 18 person who furnishes services or property to a gaming operator  
 19 licensee under any arrangement pursuant to which the person  
 20 receives compensation based on earnings, profits or receipts from  
 21 gaming. The board may require the person to comply with the  
 22 requirements of the Gaming Control Act and with the regulations  
 23 of the board. If the board determines that the person is  
 24 unsuitable, it may require the arrangement to be terminated.

25 B. The board may require a person to apply for a

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1 finding of suitability to be associated with a gaming operator  
2 licensee if the person:

3 (1) does business on the premises of a gaming  
4 establishment; or

5 (2) provides any goods or services to a gaming  
6 operator licensee for compensation that the board finds to be  
7 grossly disproportionate to the value of the goods or services.

8 C. If the board determines that a person is  
9 unsuitable to be associated with a gaming operator licensee, the  
10 association shall be terminated. Any agreement that entitles a  
11 business other than gaming to be conducted on the premises of a  
12 gaming establishment, or entitles a person other than a licensee  
13 to conduct business with the gaming operator licensee, is subject  
14 to termination upon a finding of unsuitability of the person  
15 seeking association with a gaming operator licensee. Every  
16 agreement shall be deemed to include a provision for its  
17 termination without liability on the part of the gaming operator  
18 licensee upon a finding by the board of the unsuitability of the  
19 person seeking or having an association with the gaming operator  
20 licensee. Failure to include that condition in the agreement is  
21 not a defense in any action brought pursuant to this section to  
22 terminate the agreement. If the application is not presented to  
23 the board within thirty days following demand or the unsuitable  
24 association is not terminated, the board may pursue any remedy or  
25 combination of remedies provided in the Gaming Control Act.

1           Section 34.   ~~[NEW MATERIAL]~~   REASONS FOR INVESTIGATIONS BY  
2   BOARD-- COMPLAINT BY BOARD-- BOARD TO APPOINT HEARING EXAMINER--  
3   REVIEW BY BOARD-- ORDER OF BOARD. --

4           A.   The board shall make appropriate investigations  
5   to:

6                   (1)   determine whether there has been any  
7   violation of the Gaming Control Act or of any regulations adopted  
8   pursuant to that act;

9                   (2)   determine any facts, conditions, practices  
10   or matters that it deems necessary or proper to aid in the  
11   enforcement of the Gaming Control Act or regulations adopted  
12   pursuant to that act;

13                   (3)   aid in adopting regulations;

14                   (4)   secure information as a basis for  
15   recommending legislation relating to the Gaming Control Act; or

16                   (5)   determine whether a licensee is able to meet  
17   its financial obligations, including all financial obligations  
18   imposed by the Gaming Control Act, as they become due.

19           B.   If after an investigation the board is satisfied  
20   that a license, registration, finding of suitability or prior  
21   approval by the board of any transaction for which approval was  
22   required by the provisions of the Gaming Control Act should be  
23   limited, conditioned, suspended or revoked, or that a fine should  
24   be levied, the board shall initiate a hearing by filing a  
25   complaint and transmitting a copy of it to the licensee, together

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1 with a summary of evidence in its possession bearing on the  
2 matter and the transcript of testimony at any investigative  
3 hearing conducted by or on behalf of the board. The complaint  
4 shall be a written statement of charges that sets forth in  
5 ordinary and concise language the acts or omissions with which  
6 the respondent is charged. It shall specify the statutes or  
7 regulations that the respondent is alleged to have violated but  
8 shall not consist merely of charges raised in the language of the  
9 statutes or regulations. The summary of the evidence shall be  
10 confidential and made available only to the respondent until such  
11 time as it is offered into evidence at any public hearing on the  
12 matter.

13 C. The respondent shall file an answer within thirty  
14 days after service of the complaint.

15 D. Upon filing the complaint the board shall appoint  
16 a hearing examiner to conduct further proceedings.

17 E. The hearing examiner shall conduct proceedings in  
18 accordance with the Gaming Control Act and the regulations  
19 adopted by the board. At the conclusion of the proceedings, the  
20 hearing examiner may recommend that the board take any  
21 appropriate action, including revocation, suspension, limitation  
22 or conditioning of a license or imposition of a fine not to  
23 exceed fifty thousand dollars (\$50,000) for each violation or any  
24 combination or all of the foregoing actions.

25 F. The hearing examiner shall prepare a written

1 decision containing his recommendation to the board and shall  
 2 serve it on all parties. Any respondent who disagrees with the  
 3 hearing examiner's recommendation may request the board, within  
 4 ten days of service of the recommendation, to review the  
 5 recommendation.

6 G. Upon proper request, the board shall review the  
 7 recommendation. The board may remand the case to the hearing  
 8 examiner for the presentation of additional evidence upon a  
 9 showing of good cause why such evidence could not have been  
 10 presented at the previous hearing.

11 H. The board shall by a majority vote accept, reject  
 12 or modify the recommendation.

13 I. If the board limits, conditions, suspends or  
 14 revokes any license or imposes a fine or limits, conditions,  
 15 suspends or revokes any registration, finding of suitability or  
 16 prior approval, it shall issue a written order specifying its  
 17 action.

18 J. The board's order is effective unless and until  
 19 reversed upon judicial review, except that the board may stay its  
 20 order pending a rehearing or judicial review upon such terms and  
 21 conditions as it deems proper.

22 Section 35. [NEW MATERIAL] EMERGENCY ORDERS OF BOARD. --  
 23 The board may issue an emergency order for suspension, limitation  
 24 or conditioning of a license, registration, finding of  
 25 suitability or work permit or may issue an emergency order

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1 requiring a gaming operator licensee to exclude an individual  
2 licensee from the premises of the gaming operator licensee's  
3 gaming establishment or not to pay an individual licensee any  
4 remuneration for services or any profits, income or accruals on  
5 his investment in the licensed gaming establishment in the  
6 following manner:

7 A. an emergency order may be issued only when the  
8 board believes that:

9 (1) a licensee has willfully failed to report,  
10 pay or truthfully account for and pay over any fee imposed by the  
11 provisions of the Gaming Control Act or willfully attempted in  
12 any manner to evade or defeat any fee or payment thereof;

13 (2) a licensee or gaming employee has cheated at  
14 a game; or

15 (3) the emergency order is necessary for the  
16 immediate preservation of the public peace, health, safety,  
17 morals, good order or general welfare;

18 B. the emergency order shall set forth the grounds  
19 upon which it is issued, including a statement of facts  
20 constituting the alleged emergency necessitating such action;

21 C. the emergency order is effective immediately upon  
22 issuance and service upon the licensee or resident agent of the  
23 licensee or gaming employee or, in cases involving registration  
24 or findings of suitability, upon issuance and service upon the  
25 person or entity involved or resident agent of the entity

1 involved; the emergency order may suspend, limit, condition or  
 2 take other action in relation to the license of one or more  
 3 persons in an operation without affecting other individual  
 4 licensees or the gaming operator licensee. The emergency order  
 5 remains effective until further order of the board or final  
 6 disposition of the case; and

7 D. within five days after issuance of an emergency  
 8 order, the board shall cause a complaint to be filed and served  
 9 upon the person or entity involved; thereafter, the person or  
 10 entity against whom the emergency order has been issued and  
 11 served is entitled to a hearing before the board and to judicial  
 12 review of the decision and order of the board in accordance with  
 13 the provisions of the board's regulations.

14 Section 36. [NEW MATERIAL] EXCLUSION OR EJECTION OF  
 15 CERTAIN PERSONS FROM GAMING ESTABLISHMENTS-- PERSONS INCLUDED. --

16 A. The board shall by regulation provide for the  
 17 establishment of a list of persons who are to be excluded or  
 18 ejected from a gaming establishment. The list may include any  
 19 person whose presence in the gaming establishment is determined  
 20 by the board to pose a threat to the public interest or licensed  
 21 gaming activities.

22 B. In making the determination in Subsection A of  
 23 this section, the board may consider a:

24 (1) prior conviction for a crime that is a  
 25 felony under state or federal law, a crime involving moral

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1 turpitude or a violation of the gaming laws of any jurisdiction;

2 (2) violation or conspiracy to violate the  
3 provisions of the Gaming Control Act relating to:

4 (a) the failure to disclose an interest in a  
5 gaming activity for which the person must obtain a license; or

6 (b) willful evasion of fees or taxes;

7 (3) notorious or unsavory reputation that would  
8 adversely affect public confidence and trust that the gaming  
9 industry is free from criminal or corruptive influences; or

10 (4) written order of any other governmental  
11 agency in this state or any other state that authorizes the  
12 exclusion or ejection of the person from an establishment at  
13 which gaming is conducted.

14 C. A gaming operator licensee has the right, without  
15 a list established by the board, to exclude or eject a person  
16 from its gaming establishment who poses a threat to the public  
17 interest or for any business reason.

18 D. Race, color, creed, national origin or ancestry,  
19 age, disability or sex shall not be grounds for placing the name  
20 of a person on the list or for exclusion or ejection under  
21 Subsection A or C of this section.

22 Section 37. [NEW MATERIAL] INTERNAL CONTROL SYSTEMS. --

23 A. Each gaming operator licensee shall adopt internal  
24 control systems that shall include provisions for:

25 (1) safeguarding its assets and revenues,



1 especially the recording of cash and evidences of indebtedness;

2 (2) making and maintaining reliable records,  
3 accounts and reports of transactions, operations and events,  
4 including reports to the board; and

5 (3) a system by which the amount wagered on each  
6 gaming machine and the amount paid out by each gaming machine is  
7 recorded on a daily basis, which results may be obtained by the  
8 board by appropriate means as described in regulations adopted by  
9 the board; all manufacturers are required to have such a system  
10 available for gaming operators for the gaming machines that it  
11 supplies for use in New Mexico, and all distributors shall make  
12 such a system available to gaming operators.

13 B. The internal control system shall be designed to  
14 reasonably ensure that:

15 (1) assets are safeguarded;  
16 (2) financial records are accurate and reliable;  
17 (3) transactions are performed only in  
18 accordance with management's general or specific authorization;

19 (4) transactions are recorded adequately to  
20 permit proper reporting of gaming revenue and of fees and taxes  
21 and to maintain accountability of assets;

22 (5) access to assets is allowed only in  
23 accordance with management's specific authorization;

24 (6) recorded accountability for assets is  
25 compared with actual assets at reasonable intervals and

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1 appropriate action is taken with respect to any discrepancies;  
2 and

3 (7) functions, duties and responsibilities are  
4 appropriately segregated and performed in accordance with sound  
5 accounting and management practices by competent, qualified  
6 personnel.

7 C. A gaming operator licensee and an applicant for a  
8 gaming operator's license shall describe, in the manner the board  
9 may approve or require, its administrative and accounting  
10 procedures in detail in a written system of internal control. A  
11 gaming operator licensee and an applicant for a gaming operator's  
12 license shall submit a copy of its written system to the board.

13 Each written system shall include:

14 (1) an organizational chart depicting  
15 appropriate segregation of functions and responsibilities;

16 (2) a description of the duties and  
17 responsibilities of each position shown on the organizational  
18 chart;

19 (3) a detailed, narrative description of the  
20 administrative and accounting procedures designed to satisfy the  
21 requirements of Subsection A of this section;

22 (4) a written statement signed by the licensee's  
23 chief financial officer and either the licensee's chief executive  
24 officer or a licensed owner attesting that the system satisfies  
25 the requirements of this section;

1 (5) if the written system is submitted by an  
2 applicant, a letter from an independent certified public  
3 accountant stating that the applicant's written system has been  
4 reviewed by the accountant and complies with the requirements of  
5 this section; and

6 (6) other items as the board may require.

7 D. The board shall adopt and publish minimum  
8 standards for internal control procedures.

9 Section 38. [NEW MATERIAL] GAMING EMPLOYEES--ISSUANCE OF  
10 WORK PERMITS--REVOCATION OF WORK PERMITS. --

11 A. A person shall not be employed as a gaming  
12 employee unless the person holds a valid work permit issued by  
13 the board.

14 B. A work permit shall be issued and may be revoked  
15 by the board as provided in regulations adopted by the board.

16 C. Any person whose work permit has been denied or  
17 revoked may seek judicial review.

18 Section 39. [NEW MATERIAL] AGE REQUIREMENT FOR PATRONS  
19 AND GAMING EMPLOYEES. --A person under the age of twenty-one years  
20 shall not:

21 A. play, be allowed to play, place wagers on or  
22 collect winnings from, whether personally or through an agent,  
23 any game authorized or offered to play pursuant to the Gaming  
24 Control Act; or

25 B. be employed as a gaming employee.

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1           Section 40.   ~~[NEW MATERIAL]~~   CALCULATION OF NET TAKE--  
2   CERTAIN EXPENSES NOT DEDUCTIBLE. --In calculating net take from  
3   gaming machines, the actual cost to the licensee of any personal  
4   property distributed to a patron as the result of a legitimate  
5   wager may be deducted as a loss, except for travel expenses,  
6   food, refreshments, lodging or services. For the purposes of  
7   this section, "as the result of a legitimate wager" means that  
8   the patron must make a wager prior to receiving the personal  
9   property, regardless of whether the receipt of the personal  
10   property is dependent on the outcome of the wager.

11           Section 41.   ~~[NEW MATERIAL]~~   LIMITATIONS ON TAXES AND  
12   LICENSE FEES. --A political subdivision of the state shall not  
13   impose a license fee or tax on any licensee licensed pursuant to  
14   the Gaming Control Act except for the imposition of property  
15   taxes.

16           Section 42.   ~~[NEW MATERIAL]~~   USE OF CHIPS, TOKENS OR LEGAL  
17   TENDER REQUIRED FOR ALL GAMING. --All gaming shall be conducted  
18   with chips, tokens or other similar objects approved by the board  
19   or with the legal currency of the United States.

20           Section 43.   ~~[NEW MATERIAL]~~   COMMUNICATION OR DOCUMENT OF  
21   APPLICANT OR LICENSEE ABSOLUTELY CONFIDENTIAL-- CONFIDENTIALITY  
22   NOT WAIVED-- DISCLOSURE OF CONFIDENTIAL INFORMATION PROHIBITED. --

23           A. Any communication or document of an applicant or  
24   licensee is confidential and does not impose liability for  
25   defamation or constitute a ground for recovery in any civil

1 action if it is required by:

2 (1) law or the regulations of the board; or

3 (2) a subpoena issued by the board to be made or  
4 transmitted to the board.

5 B. The confidentiality created pursuant to Subsection  
6 A of this section is not waived or lost because the document or  
7 communication is disclosed to the board.

8 C. Notwithstanding the powers granted to the board by  
9 the Gaming Control Act, the board:

10 (1) may release or disclose any confidential  
11 information, documents or communications provided by an applicant  
12 or licensee only with the prior written consent of the applicant  
13 or licensee or pursuant to a lawful court order after timely  
14 notice of the proceedings has been given to the applicant or  
15 licensee;

16 (2) shall maintain all confidential information,  
17 documents and communications in a secure place accessible only to  
18 members of the board; and

19 (3) shall adopt procedures and regulations to  
20 protect the confidentiality of information, documents and  
21 communications provided by an applicant or licensee.

22 Section 44. [NEW MATERIAL] MOTION FOR RELEASE OF  
23 PRIVILEGED INFORMATION. --An application to a court for an order  
24 requiring the board to release any information declared by law to  
25 be confidential shall be made only by petition in district court.

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1 A hearing shall be held on the petition not less than ten days  
2 and not more than twenty days after the date of service of the  
3 petition on the board, the attorney general and all persons who  
4 may be affected by the entry of that order. A copy of the  
5 petition, all papers filed in support of it and a notice of  
6 hearing shall be served.

7 Section 45. [NEW MATERIAL] GAMING MACHINE CENTRAL  
8 SYSTEM --The board shall develop and operate a central system  
9 into which all licensed gaming machines are connected. The  
10 central system shall be capable of:

11 A. monitoring continuously, retrieving and auditing  
12 the operations, financial data and program information of the  
13 network;

14 B. disabling from operation or play any gaming  
15 machine in the network that does not comply with the provisions  
16 of the Gaming Control Act or the regulations of the board;

17 C. communicating, through program modifications or  
18 other means equally effective, with all gaming machines licensed  
19 by the board;

20 D. interacting, reading, communicating and linking  
21 with gaming machines from a broad spectrum of manufacturers and  
22 associated equipment; and

23 E. providing linkage to each gaming machine in the  
24 network at a reasonable and affordable cost to the state and the  
25 gaming operator licensee and allowing for program modifications

1 and system updating at a reasonable cost.

2 Section 46. [NEW MATERIAL] MACHINE SPECIFICATIONS. -- To be  
3 eligible for licensure, each gaming machine shall meet all  
4 specifications established by regulations of the board and:

5 A. be unable to be manipulated in a manner that  
6 affects the random probability of winning plays or in any other  
7 manner determined by the board to be undesirable;

8 B. have at least one mechanism that accepts coins or  
9 currency, but does not accept bills of denominations greater than  
10 twenty dollars (\$20.00);

11 C. be capable of having play suspended through the  
12 central system by the executive director until he resets the  
13 gaming machine;

14 D. house nonresettable mechanical and electronic  
15 meters within a readily accessible locked area of the gaming  
16 machine that maintain a permanent record of all money inserted  
17 into the machine, all cash payouts of winnings, all refunds of  
18 winnings, all credits played for additional games and all credits  
19 won by players;

20 E. be capable of printing out, at the request of the  
21 executive director, readings on the electronic meters of the  
22 machine;

23 F. for machines that do not dispense coins or tokens  
24 directly to players, be capable of printing a ticket voucher  
25 stating the value of a cash prize won by the player at the

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Underscored material = new  
[bracketed material] = delete

1 completion of each game, the date and time of day the game was  
2 played in a twenty-four-hour format showing hours and minutes,  
3 the machine serial number, the sequential number of the ticket  
4 voucher and an encrypted validation number for determining the  
5 validity of a winning ticket voucher;

6 G. be capable of being linked to the board's central  
7 system for the purpose of being monitored continuously as  
8 required by the board;

9 H. provide for a payback value for each credit  
10 wagered, determined over time, of not less than eighty percent or  
11 more than ninety-six percent;

12 I. meet the standards and specifications set by laws  
13 or regulations of the states of Nevada and New Jersey for gaming  
14 machines, whichever are more stringent;

15 J. offer only games authorized and examined by the  
16 board; and

17 K. display the gaming machine license issued for that  
18 machine in an easily accessible place, before and during the time  
19 that a machine is available for use.

20 Section 47. [NEW MATERIAL] POSTING OF GAMING MACHINE  
21 ODDS. --The odds of winning on each gaming machine shall be posted  
22 on or near each gaming machine. The board shall provide the  
23 manner in which the odds shall be determined and posted by  
24 regulation.

25 Section 48. [NEW MATERIAL] EXAMINATION OF GAMING



1 DEVICES-- COST ALLOCATION. --

2 A. The board shall examine prototypes of gaming  
3 devices of manufacturers seeking a license as required.

4 B. The board by regulation shall require a  
5 manufacturer to pay the anticipated actual costs of the  
6 examination of a gaming device in advance and, after the  
7 completion of the examination, shall refund overpayments or  
8 charge and collect amounts sufficient to reimburse the board for  
9 underpayment of actual costs.

10 C. The board may contract for the examination of  
11 gaming devices to meet the requirements of this section.

12 Section 49. [NEW MATERIAL] GAMING TAX--IMPOSITION--  
13 ADMINISTRATION. --

14 A. An excise tax is imposed on the privilege of  
15 engaging in gaming activities in the state. This tax shall be  
16 known as the "gaming tax".

17 B. The gaming tax is an amount equal to ten percent  
18 of the gross receipts of manufacturer licensees from the sale or  
19 other transfer of gaming devices in or into the state; ten  
20 percent of the gross receipts of distributor licensees from the  
21 distribution of gaming devices in the state; and twenty-five  
22 percent of the net take of every gaming operator licensee.

23 C. The gaming tax imposed on a licensee is in lieu of  
24 all state and local gross receipts taxes on that portion of the  
25 licensee's gross receipts attributable to gaming activities.

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1           D. The gaming tax shall be administered and collected  
2 by the taxation and revenue department in cooperation with the  
3 board. The provisions of the Tax Administration Act apply to the  
4 collection and administration of the tax.

5           E. In addition to the gaming tax, a gaming operator  
6 licensee that is a racetrack shall pay twenty percent of the net  
7 take to purses to be distributed in accordance with regulations  
8 adopted by the state racing commission. A racetrack gaming  
9 operator licensee shall spend no less than one-fourth of one  
10 percent of the net take of its gaming machines to fund or support  
11 programs for the treatment and assistance of compulsive gamblers.

12           Section 50. [NEW MATERIAL] CIVIL ACTIONS TO RESTRAIN  
13 VIOLATIONS OF GAMING CONTROL ACT. --

14           A. The attorney general, at the request of the board,  
15 may institute a civil action in any court of this state against  
16 any person to enjoin a violation of a prohibitory provision of  
17 the Gaming Control Act.

18           B. An action brought against a person pursuant to  
19 this section shall not preclude a criminal action or  
20 administrative proceeding against that person.

21           Section 51. [NEW MATERIAL] TESTIMONIAL IMMUNITY. --

22           A. The board may order a person to answer a question  
23 or produce evidence and confer immunity pursuant to this section.  
24 If, in the course of an investigation or hearing conducted  
25 pursuant to the Gaming Control Act, a person refuses to answer a

1 question or produce evidence on the ground that he will be  
 2 exposed to criminal prosecution by doing so, then the board may  
 3 by approval of three members, after the written approval of the  
 4 attorney general, issue an order to answer or to produce evidence  
 5 with immunity.

6 B. If a person complies with an order issued pursuant  
 7 to Subsection A of this section, he shall be immune from having a  
 8 responsive answer given or responsive evidence produced, or  
 9 evidence derived from either, used to expose him to criminal  
 10 prosecution, except that the person may be prosecuted for any  
 11 perjury committed in the answer or production of evidence and may  
 12 also be prosecuted for contempt for failing to act in accordance  
 13 with the order of the board. An answer given or evidence  
 14 produced pursuant to the grant of immunity authorized by this  
 15 section may be used against the person granted immunity in a  
 16 prosecution of the person for perjury or a proceeding against him  
 17 for contempt.

18 Section 52. [NEW MATERIAL] CRIME--MANIPULATION OF GAMING  
 19 DEVICE WITH INTENT TO CHEAT.--A person who manipulates, with the  
 20 intent to cheat, any component of a gaming device in a manner  
 21 contrary to the designed and normal operational purpose of the  
 22 component, including varying the pull of the handle of a slot  
 23 machine with knowledge that the manipulation affects the outcome  
 24 of the game or with knowledge of any event that affects the  
 25 outcome of the game, is guilty of a fourth degree felony and

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1 shall be sentenced pursuant to the provisions of Section 31-18-15  
2 NMSA 1978.

3 Section 53. [NEW MATERIAL] CRIME--USE OF COUNTERFEIT OR  
4 UNAPPROVED TOKENS, CURRENCY OR DEVICES-- POSSESSION OF CERTAIN  
5 DEVICES, EQUIPMENT, PRODUCTS OR MATERIALS. --

6 A. A person who, in playing any game designed to be  
7 played with, to receive or to be operated by tokens approved by  
8 the board or by lawful currency of the United States, knowingly  
9 uses tokens other than those approved by the board, uses currency  
10 that is not lawful currency of the United States or uses currency  
11 not of the same denomination as the currency intended to be used  
12 in that game is guilty of a third degree felony and shall be  
13 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
14 1978.

15 B. A person who knowingly has on his person or in his  
16 possession within a gaming establishment any device intended to  
17 be used by him to violate the provisions of the Gaming Control  
18 Act is guilty of a third degree felony and shall be sentenced  
19 pursuant to the provisions of Section 31-18-15 NMSA 1978.

20 C. A person, other than a duly authorized employee of  
21 a gaming operator acting in furtherance of his employment within  
22 a gaming establishment, who knowingly has on his person or in his  
23 possession within a gaming establishment any key or device known  
24 by him to have been designed for the purpose of and suitable for  
25 opening, entering or affecting the operation of any game, dropbox

1 or any electronic or mechanical device connected to the game or  
 2 dropbox or for removing money or other contents from them is  
 3 guilty of a third degree felony and shall be sentenced pursuant  
 4 to the provisions of Section 31-18-15 NMSA 1978.

5 D. A person who knowingly and with intent to use them  
 6 for cheating has on his person or in his possession any  
 7 paraphernalia for manufacturing slugs is guilty of a third degree  
 8 felony and shall be sentenced pursuant to the provisions of  
 9 Section 31-18-15 NMSA 1978. As used in this subsection,  
 10 "paraphernalia for manufacturing slugs" means the equipment,  
 11 products and materials that are intended for use or designed for  
 12 use in manufacturing, producing, fabricating, preparing, testing,  
 13 analyzing, packaging, storing or concealing a counterfeit  
 14 facsimile of tokens approved by the board or a lawful coin of the  
 15 United States, the use of which is unlawful pursuant to the  
 16 Gaming Control Act. The term includes:

- 17 (1) lead or lead alloy;  
 18 (2) molds, forms or similar equipment capable of  
 19 producing a likeness of a gaming token or coin;  
 20 (3) melting pots or other receptacles;  
 21 (4) torches; and  
 22 (5) tongs, trimming tools or other similar  
 23 equipment.

24 E. Possession of more than two items of the  
 25 equipment, products or material described in Subsection D of this

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1 section permits a rebuttable inference that the possessor  
2 intended to use them for cheating.

3 Section 54. [NEW MATERIAL] CRIME--CHEATING. --A person who  
4 knowingly cheats at any game is guilty of a fourth degree felony  
5 and upon conviction shall be sentenced pursuant to the provisions  
6 of Section 31-18-15 NMSA 1978.

7 Section 55. [NEW MATERIAL] CRIME--POSSESSION OF GAMING  
8 DEVICE MANUFACTURED, SOLD OR DISTRIBUTED IN VIOLATION OF LAW. --A  
9 person who knowingly possesses any gaming device that has been  
10 manufactured, sold or distributed in violation of the Gaming  
11 Control Act is guilty of a fourth degree felony and shall be  
12 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
13 1978.

14 Section 56. [NEW MATERIAL] CRIME--REPORTING AND RECORD  
15 VIOLATIONS--PENALTY. --A person who, in an application, book or  
16 record required to be maintained by the Gaming Control Act or by  
17 a regulation adopted under that act or in a report required to be  
18 submitted by that act or a regulation adopted under that act,  
19 knowingly makes a statement or entry that is false or misleading  
20 or fails to maintain or make an entry the person knows is  
21 required to be maintained or made is guilty of a fourth degree  
22 felony and shall be sentenced pursuant to the provisions of  
23 Section 31-18-15 NMSA 1978.

24 Section 57. [NEW MATERIAL] CRIME--UNLAWFUL MANUFACTURE,  
25 SALE, DISTRIBUTION, MARKING, ALTERING OR MODIFICATION OF DEVICES

1 ASSOCIATED WITH GAMING-- UNLAWFUL INSTRUCTION-- PENALTY. --

2 A. A person who manufactures, sells or distributes a  
3 device that is intended by him to be used to violate any  
4 provision of the Gaming Control Act is guilty of a fourth degree  
5 felony and shall be sentenced pursuant to the provisions of  
6 Section 31-18-15 NMSA 1978.

7 B. A person who marks, alters or otherwise modifies  
8 any gaming device in a manner that affects the result of a wager  
9 by determining win or loss or alters the normal criteria of  
10 random selection that affects the operation of a game or that  
11 determines the outcome of a game is guilty of a fourth degree  
12 felony and shall be sentenced pursuant to the provisions of  
13 Section 31-18-15 NMSA 1978.

14 Section 58. [NEW MATERIAL] UNDERAGE GAMING-- PENALTY FOR  
15 PERMITTING OR PARTICIPATION. --

16 A. A person who knowingly permits an individual who  
17 the person knows is younger than twenty-one years of age to  
18 participate in gaming is guilty of a fourth degree felony and  
19 shall be sentenced pursuant to the provisions of Section 31-18-15  
20 NMSA 1978.

21 B. An individual who participates in gaming when he  
22 is younger than twenty-one years of age at the time of  
23 participation is guilty of a misdemeanor and shall be sentenced  
24 pursuant to the provisions of Section 31-19-1 NMSA 1978.

25 Section 59. [NEW MATERIAL] CRIME-- GENERAL PENALTIES FOR

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1 VIOLATION OF ACT. -- A person who willfully violates, attempts to  
2 violate or conspires to violate any of the provisions of the  
3 Gaming Control Act specifying prohibited acts, the classification  
4 of which is not specifically stated in that act, is guilty of a  
5 fourth degree felony and shall be sentenced pursuant to the  
6 provisions of Section 31-18-15 NMSA 1978.

7 Section 60. [NEW MATERIAL] DETENTION AND QUESTIONING OF A  
8 PERSON SUSPECTED OF VIOLATING ACT--LIMITATIONS ON LIABILITY--  
9 POSTING OF NOTICE. --

10 A. A gaming operator licensee or its officers,  
11 employees or agents may question a person in its gaming  
12 establishment suspected of violating any of the provisions of the  
13 Gaming Control Act. No gaming operator licensee or any of its  
14 officers, employees or agents is criminally or civilly liable:

15 (1) on account of any such questioning; or

16 (2) for reporting to the board or law

17 enforcement authorities the person suspected of the violation.

18 B. A gaming operator licensee or any of its officers,  
19 employees or agents who has reasonable cause for believing that  
20 there has been a violation of the Gaming Control Act in the  
21 gaming establishment by a person may detain that person in the  
22 gaming establishment in a reasonable manner and for a reasonable  
23 length of time. Such a detention does not render the gaming  
24 operator licensee or his officers, employees or agents criminally  
25 or civilly liable unless it is established by clear and



1 convincing evidence detention was unreasonable under the  
2 circumstances.

3 C. No gaming operator licensee or its officers,  
4 employees or agents are entitled to the immunity from liability  
5 provided for in Subsection B of this section unless there is  
6 displayed in a conspicuous place in the gaming establishment a  
7 notice in boldface type clearly legible and in substantially this  
8 form:

9 "Any gaming operator licensee or any of his officers,  
10 employees or agents who have reasonable cause for  
11 believing that any person has violated any provision  
12 of the Gaming Control Act prohibiting cheating in  
13 gaming may detain that person in the establishment.".

14 Section 61. [NEW MATERIAL] ADMINISTRATIVE APPEAL OF BOARD  
15 ACTION. --

16 A. Any person aggrieved by an action taken by the  
17 board or one of its agents may request and receive a hearing for  
18 the purpose of reviewing the action. To obtain a hearing the  
19 aggrieved person shall file a request for hearing with the board  
20 within thirty days after the date the action is taken. Failure  
21 to file the request within the specified time is an irrevocable  
22 waiver of the right to a hearing, and the action complained of  
23 shall be final with no further right to review, either  
24 administratively or by a court.

25 B. The board shall adopt procedural regulations to

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1 govern the procedures to be followed in administrative hearings  
2 pursuant to the provisions of this section. At a minimum, the  
3 regulations shall provide:

- 4 (1) for the hearings to be public;
- 5 (2) for the appointment of a hearing officer to  
6 conduct the hearing and make his recommendation to the board not  
7 more than ten days after the completion of the hearing;
- 8 (3) procedures for discovery;
- 9 (4) assurance that procedural due process  
10 requirements are satisfied;
- 11 (5) for the maintenance of a record of the  
12 hearing proceedings and assessment of costs of any transcription  
13 of testimony that is required for judicial review purposes; and  
14 (6) for the hearing to be held in Santa Fe for  
15 enforcement hearings and hearings on actions of statewide  
16 application, and to be held in the place or area affected for  
17 enforcement hearings and hearings on actions of limited local  
18 concern.

19 C. Actions taken by the board after a hearing  
20 pursuant to the provisions of this section shall be:

- 21 (1) written and shall state the reasons for the  
22 action;
- 23 (2) made public when taken;
- 24 (3) communicated to all persons who have made a  
25 written request for notification of the action taken; and

1 (4) taken not more than thirty days after the  
2 submission of the hearing officer's report to the board.

3 Section 62. [NEW MATERIAL] JUDICIAL REVIEW OF  
4 ADMINISTRATIVE ACTIONS. --

5 A. Any person adversely affected by an action taken  
6 by the board after review pursuant to the provisions of Section  
7 61 of the Gaming Control Act may appeal the action to the court  
8 of appeals. The appeal shall be on the record made at the  
9 hearing. To support his appeal, the appellant shall make  
10 arrangements with the board for a sufficient number of  
11 transcripts of the record of the hearing on which the appeal is  
12 based. The appellant shall pay for the preparation of the  
13 transcripts.

14 B. On appeal, the court of appeals shall set aside  
15 the administrative action only if it is found to be:

- 16 (1) arbitrary, capricious or an abuse of  
17 discretion;  
18 (2) not supported by substantial evidence in the  
19 whole record; or  
20 (3) otherwise not in accordance with law.

21 Section 63. Section 3-21-1 NMSA 1978 (being Laws 1965,  
22 Chapter 300, Section 14-20-1, as amended by Laws 1995, Chapter  
23 170, Section 4 and also by Laws 1995, Chapter 211, Section 3) is  
24 amended to read:

25 "3-21-1. ZONING-- AUTHORITY OF COUNTY OR MUNICIPALITY. --

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1           A. For the purpose of promoting health, safety,  
2 morals or the general welfare, a county or municipality is a  
3 zoning authority and may regulate and restrict within its  
4 jurisdiction the:

- 5                   (1) height, number of stories and size of  
6 buildings and other structures;  
7                   (2) percentage of a lot that may be occupied;  
8                   (3) size of yards, courts and other open space;  
9                   (4) density of population; and  
10                  (5) location and use of buildings, structures  
11 and land for trade, industry, residence or other purposes,  
12 including establishing areas in which structures containing legal  
13 gambling operations may or may not be located

14           B. The county or municipal zoning authority may:

- 15                   (1) divide the territory under its jurisdiction  
16 into districts of such number, shape, area and form as is  
17 necessary to carry out the purposes of Sections 3-21-1 through  
18 3-21-14 NMSA 1978; and  
19                   (2) regulate or restrict the erection,  
20 construction, reconstruction, alteration, repair or use of  
21 buildings, structures or land in each district. All such  
22 regulations shall be uniform for each class or kind of buildings  
23 within each district, but regulation in one district may differ  
24 from regulation in another district.

25           C. All state-licensed or state-operated community

1 residences for the mentally ill or developmentally disabled  
 2 serving ten or fewer persons may be considered a residential use  
 3 of property for purposes of zoning and may be permitted use in  
 4 all districts in which residential uses are permitted generally,  
 5 including particularly residential zones for single-family  
 6 dwellings.

7 D. A board of county commissioners of the county in  
 8 which the greatest portion of the territory of the petitioning  
 9 village, community, neighborhood or district lies may declare by  
 10 ordinance that a village, community, neighborhood or district is  
 11 a "traditional historic community" upon petition by twenty-five  
 12 percent or more of the registered qualified electors of the  
 13 territory within the village, community, neighborhood or district  
 14 requesting the designation. The number of registered qualified  
 15 electors shall be based on county records as of the date of the  
 16 last general election.

17 E. Any village, community, neighborhood or district  
 18 that is declared a traditional historic village shall be excluded  
 19 from the extraterritorial zone and extraterritorial zoning  
 20 authority of any municipality whose extraterritorial zoning  
 21 authority extends to include all or a portion of the traditional  
 22 historic community and shall be subject to the zoning  
 23 jurisdiction of the county in which the greatest portion of the  
 24 traditional historic community lies. "

25 Section 64. A new section of the New Mexico Finance

1 Authority Act is enacted to read:

2 "[NEW MATERIAL] NATIVE AMERICAN PROJECT REVOLVING FUND--  
3 PURPOSE-- ADMINISTRATION. --

4 A. The "Native American project revolving fund" is  
5 created within the authority. The fund shall be administered by  
6 the authority as a separate account, but may consist of such  
7 subaccounts as the authority deems necessary to carry out the  
8 purposes of the fund. The authority is authorized to establish  
9 procedures required to administer the fund in accordance with the  
10 New Mexico Finance Authority Act.

11 B. Except as otherwise provided in this section,  
12 money from payments of principal of and interest on loans and  
13 payments of principal of and interest on securities held by the  
14 authority for Native American projects shall be deposited in the  
15 Native American project revolving fund. The fund shall also  
16 consist of any other money appropriated, distributed or otherwise  
17 allocated to the fund for the purpose of financing Native  
18 American projects.

19 C. Money appropriated to pay administrative costs,  
20 money available for administrative costs from other sources and  
21 money from payments of interest on loans or securities held by  
22 the authority, including payments of interest on loans and  
23 securities held by the authority for Native American projects,  
24 that represents payments for administrative costs shall not be  
25 deposited in the Native American project revolving fund but shall

1 be deposited in a separate account of the authority and may be  
2 used by the authority to meet administrative costs of the  
3 authority.

4 D. Except as otherwise provided in this section,  
5 money in the Native American project revolving fund is  
6 appropriated to the authority to make loans or grants and to  
7 purchase or sell securities to assist qualified Native American  
8 entities in financing Native American projects in accordance with  
9 the New Mexico Finance Authority Act.

10 E. Money in the Native American project revolving  
11 fund not needed for immediate disbursement, including money held  
12 in reserve, may be deposited with the state treasurer for  
13 short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or  
14 may be invested in direct and general obligations of or  
15 obligations fully and unconditionally guaranteed by the United  
16 States, obligations issued by agencies of the United States,  
17 obligations of this state or any political subdivision of the  
18 state, interest-bearing time deposits, commercial paper issued by  
19 corporations organized and operating in the United States and  
20 rated "prime" quality by a national rating service, other  
21 investments permitted by Section 6-10-10 NMSA 1978 or as  
22 otherwise provided by the trust indenture or bond resolution, if  
23 money is pledged for or secures payment of bonds issued by the  
24 authority.

25 F. The authority shall establish fiscal controls and

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1 accounting procedures that are sufficient to assure proper  
2 accounting for Native American project revolving fund payments,  
3 disbursements and balances.

4 G. As used in this section, "qualified Native  
5 American entity" means an Indian nation, tribe or pueblo located  
6 wholly or partially in New Mexico, including a political  
7 subdivision or wholly owned enterprise of an Indian nation, tribe  
8 or pueblo, and "Native American project" means any economic  
9 development, utility, community facility or other infrastructure  
10 project for a qualified Native American entity.

11 H. To implement a program to assist qualified  
12 entities in financing public projects, the authority may:

13 (1) make loans to qualified Native American  
14 entities that establish one or more dedicated sources of revenue  
15 to repay the loan from the authority;

16 (2) make, enter into and enforce all contracts  
17 necessary, convenient or desirable for the purposes of the  
18 authority or pertaining to:

19 (a) a loan to a qualified Native American  
20 entity;

21 (b) a grant to a qualified Native American  
22 entity;

23 (c) a purchase or sale of securities  
24 individually or on a pooled basis; or

25 (d) the performance of its duties and



1 execution of any of its powers under the New Mexico Finance  
2 Authority Act;

3 (3) purchase or hold securities at prices and in  
4 a manner the authority considers advisable, giving due  
5 consideration to the financial capability of the qualified Native  
6 American entity, and sell securities acquired or held by it at  
7 prices without relation to cost and in a manner the authority  
8 considers advisable;

9 (4) prescribe the form of application or  
10 procedure required of a qualified Native American entity for a  
11 loan or purchase of its securities, fix the terms and conditions  
12 of the loan or purchase and enter into agreements with qualified  
13 entities with respect to loans or purchases;

14 (5) charge for its costs and services in review  
15 or consideration of a proposed loan to a qualified Native  
16 American entity or purchase by the authority of securities,  
17 whether or not the loan is made or the securities purchased;

18 (6) fix and establish terms and provisions with  
19 respect to:

20 (a) a purchase of securities by the  
21 authority, including date and maturities of the securities;

22 (b) redemption or payment before maturity;

23 and

24 (c) any other matters that in connection  
25 with the purchase are necessary, desirable or advisable in the

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1 judgment of the authority;

2 (7) to the extent permitted under its contracts  
3 with the holders of bonds of the authority, consent to  
4 modification of the rate of interest, time and payment of  
5 installment of principal or interest, security or any other term  
6 of a bond, contract or agreement of any kind to which the  
7 authority is a party;

8 (8) in connection with the purchase of any  
9 securities, consider the ability of the qualified Native American  
10 entity to secure financing from other sources and the costs of  
11 that financing and the particular public project or purpose to be  
12 financed or refinanced with the proceeds of the securities to be  
13 purchased by the authority;

14 (9) acquire and hold title to or leasehold  
15 interest in real and personal property and to sell, convey or  
16 lease that property for the purpose of satisfying a default or  
17 enforcing the provisions of a loan agreement; and

18 (10) in the event of default by a qualified  
19 entity, enforce its rights by suit or mandamus or may use all  
20 other available remedies under state law.

21 I. The authority may issue and sell bonds in  
22 principal amounts it considers necessary to provide sufficient  
23 funds for any purpose of this section, including:

24 (1) purchase of securities;

25 (2) making loans through the purchase of

1 securities;

2 (3) making grants for Native American projects;

3 (4) the construction of Native American  
4 projects;

5 (5) the payment, funding or refunding of the  
6 principal of or interest or redemption premiums on bonds issued  
7 by the authority, whether the bonds or interest to be paid,  
8 funded or refunded have or have not become due;

9 (6) the establishment or increase of reserves or  
10 sinking funds to secure or to pay principal, premium, if any, or  
11 interest on bonds; and

12 (7) all other costs or expenses of the authority  
13 incident to and necessary or convenient to carry out the  
14 provisions of this section.

15 J. Except as otherwise provided in this section, all  
16 bonds or other obligations issued by the authority shall be  
17 obligations of the authority payable solely from the revenues,  
18 income, fees, charges or funds of the authority that may,  
19 pursuant to the provisions of the New Mexico Finance Authority  
20 Act, be pledged to the payment of such obligations, and the bonds  
21 or other obligations shall not create an obligation, debt or  
22 liability of the state. No breach of any pledge, obligation or  
23 agreement of the authority shall impose a pecuniary liability or  
24 a charge upon the general credit or taxing power of the state or  
25 any political subdivision of the state.

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1           K. As security for the payment of the principal,  
2 interest or premium, if any, on bonds issued by the authority,  
3 the authority is authorized to pledge, transfer and assign:

4                   (1) any obligation of a qualified Native  
5 American entity that is payable to the authority;

6                   (2) the security for the qualified Native  
7 American entity's obligations;

8                   (3) money in the Native American project  
9 revolving fund;

10                  (4) any grant, subsidy or contribution from the  
11 United States or any of its agencies or instrumentalities; or

12                   (5) any income, revenues, funds or other money  
13 of the authority from any other source authorized for such  
14 pledge, transfer or assignment.

15           L. Bonds issued by the authority pursuant to this  
16 section may be issued in accordance with the New Mexico Finance  
17 Authority Act. "

18           Section 65. A new section of the Tax Administration Act is  
19 enacted to read:

20                   " [NEW MATERIAL] DISTRIBUTION OF REVENUE RECEIVED PURSUANT  
21 TO INDIAN GAMING REVENUE-SHARING AGREEMENT. --

22           A. A distribution of thirty-three and one-third  
23 percent of the net receipts attributable to amounts received by  
24 the state pursuant to the provisions of any Indian gaming  
25 revenue-sharing agreement shall be made to the Native American

1 project revolving fund administered by the New Mexico finance  
2 authority.

3 B. The state pledges to and agrees with the holders  
4 of any bonds or notes issued by the New Mexico finance authority  
5 and payable from the revenue source specified in Subsection A of  
6 this section that it will not limit, reduce or alter the  
7 distribution of the specified net receipts until the bonds or  
8 notes with any interest are fully met and discharged. The New  
9 Mexico finance authority is authorized to include this pledge and  
10 agreement of the state in any agreement with the holders of the  
11 bonds or notes. "

12 Section 66. Section 7-1-2 NMSA 1978 (being Laws 1965,  
13 Chapter 248, Section 2, as amended) is amended to read:

14 "7-1-2. APPLICABILITY. -- The Tax Administration Act applies  
15 to and governs:

16 A. the administration and enforcement of the  
17 following taxes or tax acts as they now exist or may hereafter be  
18 amended:

- 19 (1) Income Tax Act;
- 20 (2) Withholding Tax Act;
- 21 (3) Gross Receipts and Compensating Tax Act and  
22 any state gross receipts tax;
- 23 (4) Liquor Excise Tax Act;
- 24 (5) Local Liquor Excise Tax Act;
- 25 [~~(6) Banking and Financial Corporations Tax Act;~~

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1                   ~~(7)~~ (6) any municipal local option gross  
2 receipts tax;  
3                   ~~[(8)]~~ (7) any county local option gross receipts  
4 tax;  
5                   ~~[(9)]~~ (8) Special Fuels Supplier Tax Act;  
6                   ~~[(10)]~~ (9) Gasoline Tax Act;  
7                   ~~[(11)]~~ (10) petroleum products loading fee,  
8 which fee shall be considered a tax for the purpose of the Tax  
9 Administration Act;  
10                   ~~[(12)]~~ (11) Alternative Fuel Tax Act;  
11                   ~~[(13)]~~ (12) Cigarette Tax Act;  
12                   ~~[(14)]~~ (13) Estate Tax Act;  
13                   ~~[(15)]~~ (14) Railroad Car Company Tax Act;  
14                   ~~[(16)]~~ (15) Investment Credit Act;  
15                   ~~[(17)]~~ (16) Corporate Income and Franchise Tax  
16 Act;  
17                   ~~[(18)]~~ (17) Uniform Division of Income for Tax  
18 Purposes Act;  
19                   ~~[(19)]~~ (18) Multistate Tax Compact;  
20                   ~~[(20)]~~ (19) Tobacco Products Tax Act;  
21                   ~~[(21)]~~ (20) Filmmaker's Credit Act; and  
22                   ~~[(22)]~~ (21) the telecommunications relay service  
23 surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge  
24 shall be considered a tax for the purposes of the Tax  
25 Administration Act;

1           B. the administration and enforcement of the  
2 following taxes, surtaxes, advanced payments or tax acts as they  
3 now exist or may hereafter be amended:

- 4                   (1) Resources Excise Tax Act;  
5                   (2) Severance Tax Act;  
6                   (3) any severance surtax;  
7                   (4) Oil and Gas Severance Tax Act;  
8                   (5) Oil and Gas Conservation Tax Act;  
9                   (6) Oil and Gas Emergency School Tax Act;  
10                  (7) Oil and Gas Ad Valorem Production Tax Act;  
11                  (8) Natural Gas Processors Tax Act;  
12                  (9) Oil and Gas Production Equipment Ad Valorem  
13 Tax Act;
- 14                   (10) Copper Production Ad Valorem Tax Act; and  
15                   (11) any advance payment required to be made by  
16 any act specified in this subsection, which advance payment shall  
17 be considered a tax for the purposes of the Tax Administration  
18 Act;

19           C. the administration and enforcement of the  
20 following taxes, surcharges, fees or acts as they now exist or  
21 may hereafter be amended:

- 22                   (1) Weight Distance Tax Act;  
23                   (2) Special Fuels Tax Act;  
24                   (3) the workers' compensation fee authorized by  
25 Section 52-5-19 NMSA 1978, which fee shall be considered a tax

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1 for purposes of the Tax Administration Act;

2 (4) Uniform Unclaimed Property Act;

3 (5) 911 emergency surcharge and the network and  
4 database surcharge, which surcharges shall be considered taxes  
5 for purposes of the Tax Administration Act;

6 (6) the solid waste assessment fee authorized by  
7 the Solid Waste Act, which fee shall be considered a tax for  
8 purposes of the Tax Administration Act; ~~and]~~

9 (7) the water conservation fee imposed by  
10 Section 74-1-13 NMSA 1978, which fee shall be considered a tax  
11 for the purposes of the Tax Administration Act; and

12 (8) the gaming tax imposed pursuant to the  
13 Gaming Control Act; and

14 D. the administration and enforcement of all other  
15 laws, with respect to which the department is charged with  
16 responsibilities pursuant to the Tax Administration Act, but only  
17 to the extent that the other laws do not conflict with the Tax  
18 Administration Act. "

19 Section 67. A new section of the Tax Administration Act is  
20 enacted to read:

21 "[NEW MATERIAL] DISTRIBUTION OF PORTION OF GAMING TAX. -- A  
22 distribution of ten percent of the net receipts attributable to  
23 amounts received by the department as gaming tax revenue shall be  
24 distributed to the tourism fund to be expended in accordance with  
25 the provisions establishing that fund. "



1 Section 68. A new section of the Tourism Department Act is  
2 enacted to read:

3 "[NEW MATERIAL] TOURISM FUND CREATED--EXPENDITURE. -- There  
4 is created in the state treasury the "tourism fund". Money  
5 deposited in the fund is appropriated to the department to  
6 develop and implement the state's five-year tourism plan pursuant  
7 to the Tourism Department Act in fiscal year 1998. Unencumbered  
8 or unexpended balances remaining in the fund at the end of a  
9 fiscal year after fiscal year 1998 shall revert to the general  
10 fund."

11 Section 69. Section 10-15-1 NMSA 1978 (being Laws 1974,  
12 Chapter 91, Section 1, as amended) is amended to read:

13 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN  
14 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS. --

15 A. In recognition of the fact that a representative  
16 government is dependent upon an informed electorate, it is  
17 declared to be public policy of this state that all persons are  
18 entitled to the greatest possible information regarding the  
19 affairs of government and the official acts of those officers and  
20 employees who represent them. The formation of public policy or  
21 the conduct of business by vote shall not be conducted in closed  
22 meeting. All meetings of any public body except the legislature  
23 and the courts shall be public meetings, and all persons so  
24 desiring shall be permitted to attend and listen to the  
25 deliberations and proceedings. Reasonable efforts shall be made

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1 to accommodate the use of audio and video recording devices.

2 B. All meetings of a quorum of members of any board,  
3 commission, administrative adjudicatory body or other  
4 policymaking body of any state agency, any agency or authority of  
5 any county, municipality, district or any political subdivision,  
6 held for the purpose of formulating public policy, including the  
7 development of personnel policy, rules, regulations or  
8 ordinances, discussing public business or for the purpose of  
9 taking any action within the authority of or the delegated  
10 authority of any board, commission or other policymaking body are  
11 declared to be public meetings open to the public at all times,  
12 except as otherwise provided in the constitution of New Mexico or  
13 the Open Meetings Act. No public meeting once convened that is  
14 otherwise required to be open pursuant to the Open Meetings Act  
15 shall be closed or dissolved into small groups or committees for  
16 the purpose of permitting the closing of the meeting.

17 C. If otherwise allowed by law or rule of the public  
18 body, a member of a public body may participate in a meeting of  
19 the public body by means of a conference telephone or other  
20 similar communications equipment when it is otherwise difficult  
21 or impossible for the member to attend the meeting in person,  
22 provided that each member participating by conference telephone  
23 can be identified when speaking, all participants are able to  
24 hear each other at the same time and members of the public  
25 attending the meeting are able to hear any member of the public

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1 body who speaks during the meeting.

2 D. Any meetings at which the discussion or adoption  
3 of any proposed resolution, rule, regulation or formal action  
4 occurs and at which a majority or quorum of the body is in  
5 attendance, and any closed meetings, shall be held only after  
6 reasonable notice to the public. The affected body shall  
7 determine at least annually in a public meeting what notice for a  
8 public meeting is reasonable when applied to that body. That  
9 notice shall include broadcast stations licensed by the federal  
10 communications commission and newspapers of general circulation  
11 that have provided a written request for such notice.

12 E. A public body may recess and reconvene a meeting  
13 to a day subsequent to that stated in the meeting notice if,  
14 prior to recessing, the public body specifies the date, time and  
15 place for continuation of the meeting and, immediately following  
16 the recessed meeting, posts notice of the date, time and place  
17 for the reconvened meeting on or near the door of the place where  
18 the original meeting was held and in at least one other location  
19 appropriate to provide public notice of the continuation of the  
20 meeting. Only matters appearing on the agenda of the original  
21 meeting may be discussed at the reconvened meeting.

22 F. Meeting notices shall include an agenda containing  
23 a list of specific items of business to be discussed or  
24 transacted at the meeting or information on how the public may  
25 obtain a copy of such an agenda. Except in the case of an

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1 emergency, the agenda shall be available to the public at least  
2 twenty-four hours prior to the meeting. Except for emergency  
3 matters, a public body shall take action only on items appearing  
4 on the agenda. For purposes of this subsection, an "emergency"  
5 refers to unforeseen circumstances that, if not addressed  
6 immediately by the public body, will likely result in injury or  
7 damage to persons or property or substantial financial loss to  
8 the public body.

9 G. The board, commission or other policymaking body  
10 shall keep written minutes of all its meetings. The minutes  
11 shall include at a minimum the date, time and place of the  
12 meeting, the names of members in attendance and those absent, the  
13 substance of the proposals considered and a record of any  
14 decisions and votes taken that show how each member voted. All  
15 minutes are open to public inspection. Draft minutes shall be  
16 prepared within ten working days after the meeting and shall be  
17 approved, amended or disapproved at the next meeting where a  
18 quorum is present. Minutes shall not become official until  
19 approved by the policymaking body.

20 H. The provisions of Subsections A, B and G of this  
21 section do not apply to:

22 (1) meetings pertaining to issuance, suspension,  
23 renewal or revocation of a license, except that a hearing at  
24 which evidence is offered or rebutted shall be open. All final  
25 actions on the issuance, suspension, renewal or revocation of a

1 license shall be taken at an open meeting;

2 (2) limited personnel matters; provided that for  
3 purposes of the Open Meetings Act, "limited personnel matters"  
4 means the discussion of hiring, promotion, demotion, dismissal,  
5 assignment or resignation of or the investigation or  
6 consideration of complaints or charges against any individual  
7 public employee; provided further that this subsection is not to  
8 be construed as to exempt final actions on personnel from being  
9 taken at open public meetings, nor does it preclude an aggrieved  
10 public employee from demanding a public hearing. Judicial  
11 candidates interviewed by any commission shall have the right to  
12 demand an open interview;

13 (3) deliberations by a public body in connection  
14 with an administrative adjudicatory proceeding. For purposes of  
15 this paragraph, an "administrative adjudicatory proceeding" means  
16 a proceeding brought by or against a person before a public body  
17 in which individual legal rights, duties or privileges are  
18 required by law to be determined by the public body after an  
19 opportunity for a trial-type hearing. Except as otherwise  
20 provided in this section, the actual administrative adjudicatory  
21 proceeding at which evidence is offered or rebutted and any final  
22 action taken as a result of the proceeding shall occur in an open  
23 meeting;

24 (4) the discussion of personally identifiable  
25 information about any individual student, unless the student, his

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1 parent or guardian requests otherwise;

2 (5) meetings for the discussion of bargaining  
3 strategy preliminary to collective bargaining negotiations  
4 between the policymaking body and a bargaining unit representing  
5 the employees of that policymaking body and collective bargaining  
6 sessions at which the policymaking body and the representatives  
7 of the collective bargaining unit are present;

8 (6) that portion of meetings at which a decision  
9 concerning purchases in an amount exceeding two thousand five  
10 hundred dollars (\$2,500) that can be made only from one source  
11 and that portion of meetings at which the contents of competitive  
12 sealed proposals solicited pursuant to the Procurement Code are  
13 discussed during the contract negotiation process. The actual  
14 approval of purchase of the item or final action regarding the  
15 selection of a contractor shall be made in an open meeting;

16 (7) meetings subject to the attorney-client  
17 privilege pertaining to threatened or pending litigation in which  
18 the public body is or may become a participant;

19 (8) meetings for the discussion of the purchase,  
20 acquisition or disposal of real property or water rights by the  
21 public body; ~~and~~

22 (9) those portions of meetings of committees or  
23 boards of public hospitals that receive less than fifty percent  
24 of their operating budget from direct public funds and  
25 appropriations where strategic and long-range business plans are

1 discussed; and

2 (10) that portion of a meeting of the gaming  
 3 control board dealing with information made confidential pursuant  
 4 to the provisions of the Gaming Control Act.

5 I. If any meeting is closed pursuant to the  
 6 exclusions contained in Subsection H of this section, the  
 7 closure:

8 (1) if made in an open meeting, shall be  
 9 approved by a majority vote of a quorum of the policymaking body;  
 10 the authority for the closure and the subject to be discussed  
 11 shall be stated with reasonable specificity in the motion calling  
 12 for the vote on a closed meeting; the vote shall be taken in an  
 13 open meeting; and the vote of each individual member shall be  
 14 recorded in the minutes. Only those subjects announced or voted  
 15 upon prior to closure by the policymaking body may be discussed  
 16 in a closed meeting; and

17 (2) if called for when the policymaking body is  
 18 not in an open meeting, shall not be held until public notice,  
 19 appropriate under the circumstances, stating the specific  
 20 provision of the law authorizing the closed meeting and stating  
 21 with reasonable specificity the subject to be discussed is given  
 22 to the members and to the general public.

23 J. Following completion of any closed meeting, the  
 24 minutes of the open meeting that was closed or the minutes of the  
 25 next open meeting if the closed meeting was separately scheduled

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1 shall state that the matters discussed in the closed meeting were  
2 limited only to those specified in the motion for closure or in  
3 the notice of the separate closed meeting. This statement shall  
4 be approved by the public body under Subsection G of this section  
5 as part of the minutes. "

6 Section 70. Section 30-19-1 NMSA 1978 (being Laws 1963,  
7 Chapter 303, Section 19-1, as amended) is amended to read:

8 "30-19-1. DEFINITIONS RELATING TO GAMBLING. --As used in  
9 Chapter 30, Article 19 NMSA 1978:

10 A. "antique gambling device" means a gambling device  
11 twenty-five years of age or older and substantially in original  
12 condition that is not used for gambling or commercial gambling or  
13 located in a gambling place;

14 B. "bet" means a bargain in which the parties agree  
15 that, dependent upon chance, even though accompanied by some  
16 skill, one stands to win or lose anything of value specified in  
17 the agreement. A bet does not include:

18 (1) bona fide business transactions that are  
19 valid under the law of contracts, including ~~[without limitation]~~:

20 (a) contracts for the purchase or sale, at a  
21 future date, of securities or other commodities; and

22 (b) agreements to compensate for loss caused  
23 by the happening of the chance, including ~~[without limitation]~~  
24 contracts for indemnity or guaranty and life or health and  
25 accident insurance;



1 (2) offers of purses, prizes or premiums to the  
 2 actual contestants in any bona fide contest for the determination  
 3 of skill, speed, strength or endurance or to the bona fide owners  
 4 of animals or vehicles entered in such contest;

5 (3) a lottery as defined in this section; or

6 (4) betting otherwise permitted by law;

7 ~~[C. "lottery" means an enterprise other than the New~~  
 8 ~~Mexico state lottery established and operated pursuant to the New~~  
 9 ~~Mexico Lottery Act wherein, for a consideration, the participants~~  
 10 ~~are given an opportunity to win a prize, the award of which is~~  
 11 ~~determined by chance, even though accompanied by some skill. As~~  
 12 ~~used in this subsection, "consideration" means anything of~~  
 13 ~~pecuniary value required to be paid to the promoter in order to~~  
 14 ~~participate in such enterprise;~~

15 ~~D.] C.~~ "gambling device" means a contrivance other  
 16 than an antique gambling device that is not licensed for use  
 17 pursuant to the Gaming Control Act and that, for a consideration,  
 18 affords the player an opportunity to obtain anything of value,  
 19 the award of which is determined by chance, even though  
 20 accompanied by some skill, ~~[and]~~ whether or not the prize is  
 21 automatically paid by the device; ~~[and]~~

22 ~~[E.] D.~~ "gambling place" means ~~[any]~~ a building or  
 23 tent, ~~[any]~~ a vehicle, whether self-propelled or not, or ~~[any]~~ a  
 24 room within any of them that is not within the premises of a  
 25 person licensed as a lottery retailer or that is not licensed

1 pursuant to the Gaming Control Act, one of whose principal uses  
2 is:

- 3 (1) making and settling of bets;
- 4 (2) receiving, holding, recording or forwarding  
5 bets or offers to bet;
- 6 (3) conducting lotteries; or
- 7 (4) playing gambling devices; and

8 E. "lottery" means an enterprise wherein, for a  
9 consideration, the participants are given an opportunity to win a  
10 prize, the award of which is determined by chance, even though  
11 accompanied by some skill. "Lottery" does not include the New  
12 Mexico state lottery established and operated pursuant to the New  
13 Mexico Lottery Act or gaming that is licensed and operated  
14 pursuant to the Gaming Control Act. As used in this subsection,  
15 "consideration" means anything of pecuniary value required to be  
16 paid to the promoter in order to participate in a gambling or  
17 gaming enterprise. "

18 Section 71. A new section of Chapter 40, Article 3 NMSA  
19 1978 is enacted to read:

20 "[NEW MATERIAL] GAMBLING DEBTS ARE SEPARATE DEBTS OF  
21 SPOUSE INCURRING DEBT. --A gambling debt incurred by a married  
22 person as a result of legal gambling is a separate debt of the  
23 spouse incurring the debt. "

24 Section 72. Section 60-7A-19 NMSA 1978 (being Laws 1981,  
25 Chapter 39, Section 96) is amended to read:

1 "60- 7A- 19. COMMERCIAL GAMBLING ON LICENSED PREMISES. --

2 A. It is a violation of the Liquor Control Act for a  
3 licensee to knowingly allow commercial gambling on the licensed  
4 premises.

5 B. In addition to any criminal penalties, any person  
6 who violates Subsection A of this section may have his license  
7 suspended or revoked or a fine imposed, or both, pursuant to the  
8 Liquor Control Act.

9 C. [~~For purposes of~~] As used in this section:

10 (1) "commercial gambling" means:

11 [~~(1)~~] (a) participating in the earnings of  
12 or operating a gambling place;

13 [~~(2)~~] (b) receiving, recording or forwarding  
14 bets or offers to bet;

15 [~~(3)~~] (c) possessing facilities with the  
16 intent to receive, record or forward bets or offers to bet;

17 [~~(4)~~] (d) for gain, becoming a custodian of  
18 anything of value bet or offered to be bet;

19 [~~(5)~~] (e) conducting a lottery where both  
20 the consideration and the prize are money, or whoever with intent  
21 to conduct a lottery possesses facilities to do so; or

22 [~~(6)~~] (f) setting up for use for the purpose  
23 of gambling, or collecting the proceeds of, any gambling device  
24 or game; and

25 (2) "commercial gambling" does not mean:

1                    (a) activities authorized pursuant to the  
2 New Mexico Lottery Act;

3                    (b) the conduct of activities pursuant to  
4 Subsection D of Section 30-19-6 NMSA 1978; and

5                    (c) gaming authorized pursuant to the Gaming  
6 Control Act on the premises of a gaming operator licensee  
7 licensed pursuant to that act. "

8                    Section 73. SEVERABILITY.--If any part or application of  
9 the Gaming Control Act is held invalid, the remainder or its  
10 application to other situations or persons shall not be affected.

11                    Section 74. EMERGENCY.--It is necessary for the public  
12 peace, health and safety that this act take effect immediately.

**State of New Mexico  
House of Representatives**

1 FORTY-THIRD LEGISLATURE  
2 FIRST SESSION, 1997  
3  
4

5 March 10, 1997  
6

7 Mr. Speaker:  
8

9 Your TAXATION AND REVENUE COMMITTEE, to whom has  
10 been referred

11 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
12 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE  
13 FOR HOUSE BILL 399  
14

15 has had it under consideration and reports same with recommendation  
16 that it DO NOT PASS, but that

17  
18 HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE  
19 FOR HOUSE JUDICIARY COMMITTEE SUBSTITUTE  
20 FOR HOUSE BUSINESS AND INDUSTRY COMMITTEE  
21 SUBSTITUTE FOR HOUSE BILL 399

22 be reported WITHOUT RECOMMENDATION, and thence referred to  
23 the APPROPRIATIONS AND FINANCE COMMITTEE.  
24  
25

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FORTY-THIRD LEGISLATURE

HJC/HBIC/HB 399

FIRST SESSION, 1997

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Respectfully submitted,

\_\_\_\_\_  
Jerry W. Sandel, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 4 Against

Yes: 8

No: Parsons, Russell, Ryan, Stell

Excused: Porter

Absent: None

M \H0399

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HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR  
HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 399  
HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

AN ACT

RELATING TO GAMING; ENACTING THE INDIAN GAMING COMPACT;  
ENACTING A REVENUE-SHARING AGREEMENT TO PROVIDE FOR REVENUE  
SHARING BETWEEN THE STATE AND AN INDIAN NATION, TRIBE OR  
PUEBLO CONDUCTING GAMING PURSUANT TO THE COMPACT; ENACTING THE  
GAMING CONTROL ACT TO PERMIT CERTAIN NONTRIBAL GAMING;  
PROVIDING PENALTIES; IMPOSING A GAMING TAX AND FEES; AMENDING  
AND ENACTING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS;  
DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] INDIAN GAMING COMPACT  
ENTERED INTO. -- The Indian Gaming Compact is enacted into law  
and entered into with all Indian nations, tribes and pueblos  
in the state legally joining in it by enactment of a  
resolution pursuant to the requirements of applicable tribal  
and federal law. The compact is enacted and entered into in  
the form substantially as follows:

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"INDIAN GAMING COMPACT

INTRODUCTION

The State is a sovereign State of the United States of America, having been admitted to the Union pursuant to the Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and is authorized by its constitution to enter into contracts and agreements, including this Compact, with the Tribe;

The Tribe is a sovereign federally recognized Indian tribe and its governing body has authorized the officials of the Tribe to enter into contracts and agreements of every description, including this Compact, with the State;

The Congress of the United States has enacted the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701-2721 (hereinafter "IGRA"), which permits Indian tribes to conduct Class III Gaming on Indian Lands pursuant to a tribal-state compact entered into for that purpose;

The Tribe owns or controls Indian Lands and by Ordinance has adopted rules and regulations governing Class III games played and related activities at any Gaming Facility;

The State and the Tribe, in recognition of the sovereign rights of each party and in a spirit of cooperation to promote the best interests of the citizens of the State and the members of the Tribe, have engaged in good faith negotiations recognizing and respecting the interests of each party and have agreed to this Compact.



1 NOW, THEREFORE, the State and the Tribe agree as follows:

2 TERMS AND CONDITIONS

3 SECTION 1. Purpose and Objectives.

4 The purpose and objectives of the State and the Tribe in  
5 making this Compact are as follows:

6 A. To evidence the good will and cooperative spirit  
7 between the State and the Tribe;

8 B. To continue the development of an effective government-  
9 to-government relationship between the State and the Tribe;

10 C. To provide for the regulation of Class III Gaming on  
11 Indian Lands as required by the IGRA;

12 D. To fulfill the purpose and intent of the IGRA by  
13 providing for tribal gaming as a means of generating tribal  
14 revenues, thereby promoting tribal economic development, tribal  
15 self-sufficiency, and strong tribal government;

16 E. To provide revenues to fund tribal government  
17 operations or programs, to provide for the general welfare of the  
18 tribal members and for other purposes allowed under the IGRA;

19 F. To provide for the effective regulation of Class III  
20 Gaming in which the Tribe shall have the sole proprietary  
21 interest and be the primary beneficiary; and

22 G. To address the State's interest in the establishment,  
23 by the Tribe, of rules and procedures for ensuring that Class III  
24 Gaming is conducted fairly and honestly by the owners, operators,  
25 employees and patrons of any Class III Gaming enterprise on

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1 Indian Lands.

2 SECTION 2. Definitions.

3 For purposes of this Compact, the following definitions  
4 pertain:

5 A. "Class III Gaming" means all forms of gaming as defined  
6 in 25 U. S. C. § 2703(8), and 25 C. F. R. § 502. 4.

7 B. "Compact" means this compact between the State and the  
8 Tribe.

9 C. "Gaming Enterprise" means the tribal entity created and  
10 designated by the Tribe as having authority to conduct Class III  
11 Gaming pursuant to this Compact.

12 D. "Gaming Facility" means the buildings or structures in  
13 which Class III Gaming is conducted on Indian Lands.

14 E. "Gaming Machine" means a mechanical, electromechanical  
15 or electronic contrivance or machine that, upon insertion of a  
16 coin, token or similar object, or upon payment of any  
17 consideration, is available to play or operate a game, whether  
18 the payoff is made automatically from the Gaming Machine or in  
19 any other manner.

20 F. "Indian Lands" means:

21 1. all lands within the exterior boundaries of the  
22 Tribe's reservation and its confirmed grants from prior  
23 sovereigns; or

24 2. any other lands title to which is either held in  
25 trust by the United States for the exclusive benefit of the Tribe

1 or a member thereof or is held by the Tribe or a member thereof  
2 subject to restrictions against alienation imposed by the United  
3 States, and over which the Tribe exercises jurisdiction and  
4 governmental authority, but not including any land within the  
5 boundaries of a municipality that is outside of the boundaries of  
6 the Tribe's reservation or confirmed Spanish grant, as those  
7 boundaries existed on October 17, 1988.

8 G. "Key Employee" means that term as defined in 25 CFR  
9 Section 502.14.

10 H. "Management Contract" means a contract within the  
11 meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

12 I. "Management Contractor" means any person or entity that  
13 has entered into a Management Contract with the Tribe.

14 J. "Ordinance" means the gaming ordinance and any  
15 amendments thereto adopted by the Tribal Council of the Tribe.

16 K. "Primary Management Official" means that term as  
17 defined in 25 CFR Section 502.19.

18 L. "State" means the State of New Mexico.

19 M. "State Gaming Representative" means that person  
20 designated by the gaming control board pursuant to the Gaming  
21 Control Act who will be responsible for actions of the State set  
22 out in the Compact. The representative will be the single  
23 contact with the Tribe and may be relied upon as such by the  
24 Tribe. If the State Legislature enacts legislation to establish  
25 an agency of the State, such agency may assume the duties of the

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1 State Gaming Representative.

2 N. "Tribal Gaming Agency" means the tribal governmental  
3 agency which will be identified to the State Gaming  
4 Representative as the agency responsible for actions of the Tribe  
5 set out in the Compact. It will be the single contact with the  
6 State and may be relied upon as such by the State.

7 O. "Tribe" means any Indian Tribe or Pueblo located  
8 within the State of New Mexico entering into this Compact as  
9 provided for herein.

10 SECTION 3. Authorized Class III Gaming.

11 The Tribe may conduct, only on Indian Lands, subject to all  
12 of the terms and conditions of this Compact, any or all forms of  
13 casino-style gaming, including but not limited to slot machines  
14 and other forms of electronic gaming devices; all forms of poker,  
15 blackjack and other casino-style card games, both banked and  
16 unbanked; roulette; craps; keno; wheel of fortune; pai gow; and  
17 other games played in casino settings, and any form of a lottery.

18 Subject to the foregoing, the Tribe shall establish, in its  
19 discretion, by tribal law, such limitations as it deems  
20 appropriate on the number and type of Class III Gaming conducted,  
21 the location of Class III Gaming on Indian Lands, the hours and  
22 days of operation, and betting and pot limits, applicable to such  
23 gaming.

24 SECTION 4. Regulation of Class III Gaming.

25 A. Tribal Gaming Agency. The Tribal Gaming Agency will

1 assure that the Tribe will:

- 2 1. operate all Class III Gaming pursuant to this
- 3 Compact, tribal law, the IGRA and other applicable
- 4 Federal law;
- 5 2. provide for the physical safety of patrons in any
- 6 Gaming Facility;
- 7 3. provide for the physical safety of personnel
- 8 employed by the gaming enterprise;
- 9 4. provide for the physical safeguarding of assets
- 10 transported to and from the Gaming Facility and
- 11 cashier's cage department;
- 12 5. provide for the protection of the property of the
- 13 patrons and the gaming enterprise from illegal
- 14 activity;
- 15 6. participate in licensing of primary management
- 16 officials and key employees of a Class III Gaming
- 17 enterprise;
- 18 7. detain persons who may be involved in illegal acts
- 19 for the purpose of notifying law enforcement
- 20 authorities; and
- 21 8. record and investigate any and all unusual
- 22 occurrences related to Class III Gaming within the
- 23 Gaming Facility.

24 B. Regulations. Without affecting the generality of the  
25 foregoing, the Tribe shall adopt laws:

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1. prohibiting participation in any Class III Gaming by any person under the age of twenty-one (21);
2. prohibiting the employment of any person in Class III Gaming activities who is under the age of twenty-one (21) or who has not been licensed in accordance with Section 5, herein;
3. requiring the Tribe to take all necessary action to impose on its gaming operation standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and any other federal laws relating to wages, hours of work and conditions of work, and the regulations issued thereunder;
4. requiring that on any construction project involving any Gaming Facility or related structure that is funded in whole or in part by federal funds, all workers will be paid wages meeting or exceeding the standards established for New Mexico under the federal Davis-Bacon Act;
5. providing to all employees of a gaming establishment employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave, medical and dental insurance as well as

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- providing unemployment insurance and workers' compensation insurance through participation in the state programs offering those benefits;
- 6. providing a grievance process for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee;
- 7. permitting State Department of Environment inspectors to inspect Gaming Facilities' food service operations during normal Gaming Facility business hours to assure that standards and requirements equivalent to the State's Food Service Sanitation Act are maintained;
- 8. prohibiting a gaming enterprise from cashing any check for any patron;
- 9. prohibiting a gaming enterprise from extending credit by accepting IOUs or markers from its patrons;
- 10. requiring that odds be posted on each electronic and electromechanical gaming device;
- 11. requiring that automatic teller machines on Gaming Facility premises be programmed so that the machines will not accept cards issued by the State to AFDC recipients for access to AFDC benefits;

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- 1           12. providing that each electronic or
- 2           electromechanical gaming device in use at the
- 3           Gaming Facility must pay out a mathematically
- 4           demonstrable percentage of all amounts wagered,
- 5           which must not be less than eighty percent (80%);
- 6           13. providing that no later than July 1, 1997, all
- 7           gaming machines on the premises of the Gaming
- 8           Facility will be connected to a central
- 9           computerized reporting and auditing system on the
- 10          Gaming Facility premises, which shall collect on a
- 11          continual basis the activity of each gaming
- 12          machine in use at the Gaming Facility, and that
- 13          such data shall be electronically accessible to
- 14          the State Gaming Representative upon entry of
- 15          appropriate security codes;
- 16          14. enacting provisions that:
- 17               (a) prohibit an employee of the Gaming Facility
- 18               from selling, serving, giving or delivering
- 19               an alcoholic beverage to an intoxicated
- 20               person or from procuring or aiding in the
- 21               procurement of any alcoholic beverage for an
- 22               intoxicated person at the Gaming Facility;
- 23               (b) require Gaming Facility employees that
- 24               dispense, sell, serve or deliver alcoholic
- 25               beverages to attend Alcohol Server Education



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Classes similar to those classes provided for in the New Mexico Liquor Control Act; and  
(c) purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million dollars (\$1,000,000) per incident and two million dollars (\$2,000,000) aggregate per policy year;

- 15. prohibiting alcoholic beverages from being sold, served, delivered or consumed in that part of a Gaming Facility where gaming is allowed;
- 16. requiring the gaming enterprise to spend an amount that is no less than one-quarter of one percent (.25%) of its net win as that term is defined herein annually to fund or support programs for the treatment and assistance of compulsive gamblers and for the prevention of compulsive gambling;
- 17. governing any Management Contract regarding its Class III Gaming activity such that it conforms to the requirements of tribal law and the IGRA and the regulations issued thereunder;
- 18. prohibiting the operation of any Class III Gaming for at least four (4) consecutive hours daily, Mondays through Thursdays (except federal

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holidays);

19. prohibiting a Tribal Gaming Enterprise and the Tribe from providing, allowing, contracting to provide or arranging to provide alcoholic beverages, food or lodging for no charge or at reduced prices at a Gaming Facility or lodging facility as an incentive or enticement for patrons to game; and
20. prohibiting the Tribe, the Tribal Gaming Agency or a Management Contractor from contributing directly, or through an agent, representative or employee, revenue from a Gaming Enterprise owned by the Tribe, or anything of value acquired with that revenue, to a candidate, political committee or person holding an office elected or to be elected at an election covered by the State's Campaign Reporting Act.

The Tribal Gaming Agency will provide true copies of all tribal laws and regulations affecting Class III Gaming conducted under the provisions of this Compact to the State Gaming Representative within thirty (30) days after the effective date of this Compact, and will provide true copies of any amendments thereto or additional laws or regulations affecting gaming within thirty (30) days after their enactment (or approval, if any).

C. Audit and Financial Statements. The Tribal Gaming

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1 Agency shall require all books and records relating to Class III  
2 Gaming to be maintained in accordance with generally accepted  
3 accounting principles. All such books and records shall be  
4 retained for a period of at least six (6) years from the date of  
5 creation. Not less than annually, the Tribal Gaming Agency shall  
6 require an audit and a certified financial statement covering all  
7 financial activities of the gaming enterprise by an independent  
8 certified public accountant licensed by the State. The financial  
9 statement shall be prepared in accordance with generally accepted  
10 accounting principles and shall be submitted to the Tribal Gaming  
11 Agency within one hundred twenty (120) days of the close of the  
12 Tribe's fiscal year. Copies of the financial statement and the  
13 audit shall be furnished to the State Gaming Representative and  
14 the state treasurer by the Tribal Gaming Agency within one  
15 hundred twenty days of the agency's receipt of the documents.  
16 The Tribe will maintain the following records for not less than  
17 six (6) years:

- 18 1. revenues, expenses, assets, liabilities and equity  
19 for each Gaming Facility;
- 20 2. daily cash transactions for each Class III Gaming  
21 activity at each Gaming Facility, including but  
22 not limited to transactions relating to each  
23 gaming table bank, game drop box and gaming room  
24 bank;
- 25 3. all markers, IOUs, returned checks, hold check or

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- 1 other similar credit instruments;
- 2 4. individual and statistical game records (except
- 3 card games) to reflect statistical drop and
- 4 statistical win; for electronic, computer, or
- 5 other technologically assisted games, analytic
- 6 reports which show the total amount of cash
- 7 wagered and the total amount of prizes won;
- 8 5. contracts, correspondence and other transaction
- 9 documents relating to all vendors and contractors;
- 10 6. records of all tribal gaming enforcement
- 11 activities;
- 12 7. audits prepared by or on behalf of the Tribe; and
- 13 8. personnel information on all Class III Gaming
- 14 employees or agents, including rotation sheets,
- 15 hours worked, employee profiles and background
- 16 checks.

17 D. Violations. The agents of the Tribal Gaming Agency  
18 shall have unrestricted access to the Gaming Facility during all  
19 hours of Class III Gaming activity, and shall have immediate and  
20 unrestricted access to any and all areas of the Gaming Facility  
21 for the purpose of ensuring compliance with the provisions of  
22 this Compact and the Ordinance. The agents shall report  
23 immediately to the Tribal Gaming Agency any suspected violation  
24 of this Compact, the Ordinance, or regulations of the Tribal  
25 Gaming Agency by the gaming enterprise, Management Contractor, or

1 any person, whether or not associated with Class III Gaming.

2 E. State Gaming Representative.

3 1. Upon written request by the State to the Tribe,  
4 the Tribe will provide information on primary  
5 management officials, key employees and suppliers,  
6 sufficient to allow the State to conduct its own  
7 background investigations, as it may deem  
8 necessary, so that it may make an independent  
9 determination as to the suitability of such  
10 individuals, consistent with the standards set  
11 forth in Section 5, hereinafter. The Tribe shall  
12 consider any information or recommendations  
13 provided to it by the State as to any such person  
14 or entity, but the Tribe shall have the final say  
15 with respect to the hiring or licensing of any  
16 such person or entity.

17 2. Notwithstanding that the Tribe has the primary  
18 responsibility to administer and enforce the  
19 regulatory requirements, the State Gaming  
20 Representative authorized in writing by the  
21 Governor of the State or by legislation duly  
22 enacted by the State Legislature shall have the  
23 right to inspect a Gaming Facility, Class III  
24 Gaming activity, and all records relating to Class  
25 III Gaming (including those set forth in Section

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- 5, hereinafter) of the Tribe, subject to the following conditions:
- (a) with respect to public areas of a Gaming Facility, at any time without prior notice during normal Gaming Facility business hours;
  - (b) with respect to private areas of a Gaming Facility not accessible to the public, at any time during normal Gaming Facility business hours, immediately after notifying the Tribal Gaming Agency and Gaming Facility of his or her presence on the premises and presenting proper identification, and requesting access to the non-public areas of the Gaming Facility. The Tribe, in its sole discretion, may require an employee of the Gaming Facility or the Tribal Gaming Agency to accompany the State Gaming Representative at all times that the State Gaming Representative is on the premises of a Gaming Facility, but if the Tribe imposes such a requirement, the Tribe shall require such an employee of the Gaming Facility or the Tribal Gaming Agency to be available at all times for such purposes;
  - (c) with respect to inspection and copying of all

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management records relating to Class III Gaming, at any time without prior notice between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding official holidays. The reasonable costs of copying will be borne by the State; and

(d) whenever the State Gaming Representative, or his designee, enters the premises of the Gaming Facility for any such inspection, such Representative, or designee, shall identify himself to security or supervisory personnel of the Gaming Facility.

3. Gaming Enterprise and gaming operations information shall be considered public information and subject to the Inspection of Public Records Act. Trade secrets and proprietary information regarding the gaming enterprise of the Tribe, Class III Gaming conducted by the Tribe, or the operation thereof, shall not be deemed public records as a matter of state law, and shall not be disclosed to any member of the public, without the prior written approval of a duly authorized representative of the Tribe. These prohibitions shall not be construed to prohibit:

(a) the furnishing of any information to a law

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- enforcement or regulatory agency of the Federal Government;
- (b) the State from making known the names of persons, firms, or corporations conducting Class III Gaming pursuant to the terms of this Compact, locations at which such activities are conducted, or the dates on which such activities are conducted;
- (c) publishing the terms of this Compact;
- (d) disclosing information as necessary to audit, investigate, prosecute or arbitrate violations of this Compact or other applicable laws or to defend suits against the State; and
- (e) complying with subpoenas or court orders issued by courts of competent jurisdiction.

- 4. To the fullest extent allowed by State law, the Tribe shall have the right to inspect State records concerning all Class III Gaming conducted by the Tribe; the Tribe shall have the right to copy such State records, with the Tribe bearing the reasonable cost of copying.
- 5. For every year or part thereof in which the Tribe is actually engaged in Class III Gaming hereunder, the Tribe shall reimburse the State for the costs

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1 the State incurs in carrying out any functions  
 2 authorized by the terms of this Compact. All  
 3 calculations of amounts due shall be based upon  
 4 the operations of the Gaming Enterprise on the  
 5 final day of operation of each quarter of the  
 6 calendar year. Payments due the State shall be  
 7 made no later than the twenty-fifth day of the  
 8 month following the end of a quarter. The amount  
 9 of the regulatory fee each quarter shall be the  
 10 sum of six thousand two hundred fifty dollars  
 11 (\$6,250) per Gaming Facility plus three hundred  
 12 dollars (\$300) per gaming machine plus seven  
 13 hundred fifty dollars (\$750) per gaming table or  
 14 device other than a Gaming Machine. These amounts  
 15 shall increase by five percent (5%) each year  
 16 beginning on the first day of January occurring  
 17 after the Compact has been in effect for at least  
 18 twelve months.

- 19 6. In the event the State believes that the Tribe is  
 20 not administering and enforcing the regulatory  
 21 requirements set forth herein, it may invoke the  
 22 procedures set forth in Section 7 of this Compact.

23 F. The Tribe shall comply with all applicable provisions  
 24 of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C.  
 25 §§ 5311-5314, and all reporting requirements of the Internal

1 Revenue Service.

2 SECTION 5. Licensing Requirements.

3 A. License Required. The Gaming Facility operator (but  
4 not including the Tribe), including its principals, primary  
5 management officials, and key employees, the Management  
6 Contractor and its principals, primary management officials, and  
7 key employees (if the Tribe hires a Management Contractor); any  
8 person, corporation, or other entity that has supplied or  
9 proposes to supply any gaming device to the Tribe or the  
10 Management Contractor; and any person, corporation or other  
11 entity providing gaming services within or without a Gaming  
12 Facility, shall apply for and receive a license from the Tribal  
13 Gaming Agency before participating in any way in the operation or  
14 conduct of any Class III Gaming on Indian Lands.

15 B. License Application. Each applicant for a license  
16 shall file with the Tribal Gaming Agency a written application in  
17 the form prescribed by the Tribal Gaming Agency, along with the  
18 applicant's fingerprint card, current photograph and the fee  
19 required by the Tribal Gaming Agency.

- 20 1. The following Notice ("Privacy Act Notice") shall  
21 be placed on the application form for a principal,  
22 key employee or a primary management official  
23 before that form is filled out by an applicant:

24 "In compliance with the Privacy Act of 1974,  
25 the following information is provided:

1 Solicitation of the information on this form  
2 is authorized by 25 U.S.C. §§ 2701-2721. The  
3 purpose of the requested information is to  
4 determine the eligibility of individuals to be  
5 employed in a gaming enterprise. The  
6 information will be used by members and staff  
7 of the Tribal Gaming Agency and the National  
8 Indian Gaming Commission who have need for the  
9 information in the performance of their  
10 official duties. The information may be  
11 disclosed to appropriate federal, tribal,  
12 state, local or foreign law enforcement and  
13 regulatory agencies when relevant to civil,  
14 criminal or regulatory investigations or  
15 prosecutions or when, pursuant to a  
16 requirement by a Tribe, or the National Indian  
17 Gaming Commission, the information is relevant  
18 to the hiring or firing of an employee, the  
19 issuance or revocation of a gaming license or  
20 investigations of activities while associated  
21 with a Tribe or a gaming enterprise. Failure  
22 to consent to the disclosures indicated in  
23 this Notice will result in a Tribe being  
24 unable to hire you in a primary management  
25 official or key employee position with a

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tribal gaming enterprise.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply an SSN may result in errors in processing your application. "

- 2. Existing principals, key employees and primary management officials shall be notified, in writing, that they shall either:
  - (a) complete a new application form that contains a Privacy Act Notice; or
  - (b) sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that Notice.
- 3. The following Notice ("False Statement Notice") shall be placed on the application form for a principal, key employee or a primary management official before that form is filled out by an applicant:

"A false statement on any part of your application may be grounds for not hiring you or for firing you after you begin work. Also, you may be punished by fine or imprisonment. See 18 U. S. C. § 1001. "
- 4. The Tribal Gaming Agency shall notify, in writing, existing principals, key employees and primary

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management officials that they shall either:  
(a) complete a new application form that contains a False Statement Notice; or  
(b) sign a statement that contains the False Statement Notice.

5. The Tribal Gaming Agency shall request from each applicant, and from each principal, primary management official and key employee of each applicant, all of the following information:

- (a) full name, other names used (oral or written), Social Security Number(s), birth date, place of birth, citizenship, gender and all languages spoken or written;
- (b) currently, and for the previous ten (10) years, business and employment positions held, ownership interests in those businesses, business and residence addresses and driver's license numbers; provided, that any applicant who is a principal, primary management official, key employee, Management Contractor, manufacturer or supplier of gaming devices, and/or a person providing gaming services, must provide such information currently, and from the age of eighteen (18);

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- (c) the names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed in Paragraph B. 5. (b) of this section;
- (d) current business and residence telephone numbers;
- (e) a description of any existing and previous business relationships with a Tribe, including ownership interests in those businesses, and a description of any potential or actual conflict of interests between such businesses and a Tribe;
- (f) a description of any existing and previous business relationships in the gaming industry, including, but not limited to, ownership interests in those businesses;
- (g) the name and address of any licensing or regulatory agency with which the applicant has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- (h) for each felony for which there is an ongoing prosecution or a conviction, the charge, the

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- date of the charge, the name and address of the court involved and the disposition, if any;
- (i) for each misdemeanor for which there is an ongoing prosecution or conviction (excluding minor traffic violations), the charge, the date of the charge, the name and address of the court involved and the disposition, if any;
  - (j) for each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is not otherwise listed pursuant to Paragraph B. 5. (h) or B. 5. (i) of this section, the criminal charge, the date of the charge, the name and address of the court involved and the disposition, if any;
  - (k) the name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, as an applicant, principal, primary management official or key employee, and whether or not such license or permit was granted;
  - (l) a current photograph;

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- (m) fingerprints, which shall be taken by officers of the tribal police department or by another law enforcement agency and forwarded directly to the tribal police department. Pursuant to a Memorandum of Understanding between the Tribe and the National Indian Gaming Commission ("Commission"), tribal police officers shall forward the fingerprint cards directly to the Commission;
- (n) the fee required by the Tribal Gaming Agency; and
- (o) any other information the Tribal Gaming Agency deems relevant.

C. Background Investigations.

1. Upon receipt of a completed application and required fee for licensing, the Tribal Gaming Agency shall conduct or cause to be conducted a background investigation to ensure that the applicant is qualified for licensing.
2. Background checks of applicants will be performed pursuant to the following procedures:
  - (a) The Tribal Gaming Agency will provide applications to potential applicants upon request and shall collect and maintain the

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applications.

(b) Pursuant to a Memorandum of Understanding between the Tribe and the Commission, tribal police officers will collect fingerprints from all applicants and forward the fingerprint cards directly to the Commission. The Commission will obtain a criminal history record from the Federal Bureau of Investigation on each applicant and forward such information to the Tribal Gaming Agency.

(c) The Tribal Gaming Agency shall investigate the information provided in the applications. This investigation shall include:

- (1) contacting persons or entities identified in the application and verifying by written or oral communication that the information contained in the application is accurate;
- (2) interviewing a sufficient number of knowledgeable people, such as former employers, partners, business associates, and others referred to in the application, to provide a basis for the Tribal Gaming Agency to make a determination concerning whether the applicant meets applicable

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- eligibility requirements;
- (3) reviewing relevant financial records of the applicant for the three (3) years preceding the application; and
- (4) contacting any state, federal or other government agency that is referred to in the application.
- (d) The Tribal Gaming Agency shall document any information it obtains that calls into question whether the applicant would meet the eligibility requirements under the Ordinance. The Tribal Gaming Agency shall then document in detail the disposition of these problem areas, indicating the follow-up investigations performed on the problem areas and the result of such investigations.
- (e) The Tribal Gaming Agency will review the results of the investigation. This review will include a determination as to the scope of the investigation and whether sufficient information was obtained and verified. If such information is found not sufficient, the Tribal Gaming Agency will perform additional investigations.
- (f) Once the investigation is complete, the Tribal

1                   Gaming Agency will decide whether the applicant  
2                   meets the eligibility criteria under the  
3                   Ordinance.

4                   3. In conducting a background investigation, the  
5                   Tribal Gaming Agency and its agents shall keep  
6                   confidential the identity of each person  
7                   interviewed in the course of the investigation.

8                   4. Within twenty (20) days of the receipt of a  
9                   completed application for licensing, and upon  
10                  request of an applicant, the Tribal Gaming Agency  
11                  may issue a temporary license to the applicant,  
12                  unless the background investigation undertaken  
13                  discloses that the applicant has a criminal  
14                  history, or unless other grounds sufficient to  
15                  disqualify the applicant are apparent on the face  
16                  of the application. The temporary license shall  
17                  become void and be of no effect upon either:

- 18                  (a) the issuance of the license;
- 19                  (b) the issuance of a notice of denial; or
- 20                  (c) ninety (90) days after the temporary license is  
21                  issued, whichever occurs first.

22                  5. The Tribal Gaming Agency shall review a person's  
23                  prior activities, criminal record, if any, and  
24                  reputation, habits and associations to make a  
25                  finding concerning the eligibility or suitability

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1 of an applicant, or a principal, key employee or  
2 primary management official of an applicant, for  
3 employment or involvement in a gaming enterprise.  
4 After such consultation, the Tribal Gaming Agency  
5 shall either issue a license or deny the  
6 application. If the Tribal Gaming Agency  
7 determines that employment or involvement of the  
8 applicant poses a threat to the public interest or  
9 to the effective regulation of Class III Gaming or  
10 creates or enhances dangers of unsuitable, unfair  
11 or illegal practices, methods or activities in the  
12 conduct of Class III Gaming, the Tribal Gaming  
13 Agency shall deny the application.

14 6. The Tribal Gaming Agency shall retain the right to  
15 conduct additional background investigations of any  
16 person required to be licensed at any time while  
17 the license is valid.

18 D. Procedure for Forwarding Applications and Reports.

19 Procedures for forwarding applications and investigative reports  
20 to the Commission and State Gaming Representative:

21 1. When a key employee or primary management official  
22 begins work at a gaming enterprise authorized by  
23 this Compact, the Tribal Gaming Agency shall  
24 forward to the Commission and the State Gaming  
25 Representative a completed application for

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- employment.
2. The Tribal Gaming Agency shall forward the report referred to in Paragraph D. 4. of this section to the Commission and the State Gaming Representative within sixty (60) days after an employee begins work, or within sixty (60) days of the approval of this Compact by the Secretary of the Interior.
  3. A key employee or primary management official who does not have a license shall not be employed after ninety (90) days.
  4. The Tribal Gaming Agency shall prepare and forward to the Commission and the State Gaming Representative a report on each background investigation ("Investigative Report"). An Investigative Report shall include all of the following:
    - (a) steps taken in conducting the background investigation;
    - (b) results obtained;
    - (c) conclusions reached; and
    - (d) the basis for those conclusions.
  5. The Tribal Gaming Agency shall submit with the Investigative Report a copy of the eligibility determination made under Paragraph C. 5. of this section.

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- 1           6. If a license is not issued to an applicant, the
- 2           Tribal Gaming Agency shall notify the Commission
- 3           and the State Gaming Representative.
- 4           7. With respect to principals, key employees and
- 5           primary management officials, the Tribal Gaming
- 6           Agency shall retain applications for employment and
- 7           Investigative Reports (if any) for no less than
- 8           three (3) years from the date of termination of
- 9           employment.

10           E. Granting a Gaming License.

- 11           1. If within thirty (30) days after it receives an
- 12           Investigative Report, neither the Commission nor
- 13           the State Gaming Representative has notified the
- 14           Tribal Gaming Agency that it has an objection to
- 15           the issuance of a license pursuant to a license
- 16           application filed by a principal, key employee or
- 17           primary management official, the Tribal Gaming
- 18           Agency may issue a license to such applicant.
- 19           2. The Tribal Gaming Agency shall respond to any
- 20           request for additional information from the
- 21           Commission or the State Gaming Representative
- 22           concerning a principal, key employee or primary
- 23           management official who is the subject of an
- 24           Investigative Report. Such a request shall suspend
- 25           the thirty-day (30-day) period under Paragraph E. 1.

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1 of this section until the Commission or the State  
2 Gaming Representative receives the additional  
3 information; however, in no event shall a request  
4 for additional information by the State Gaming  
5 Representative extend the thirty-day (30-day)  
6 period under Paragraph E. 1. of this section for a  
7 total period of more than sixty (60) days from the  
8 date the State Gaming Representative received the  
9 Investigative Report.

- 10 3. If, within the thirty-day (30-day) period described  
11 above, the Commission or the State Gaming  
12 Representative provides the Tribal Gaming Agency  
13 with a statement itemizing objections to the  
14 issuance of a license to a principal, key employee  
15 or primary management official for whom the Tribal  
16 Gaming Agency has provided an application and  
17 Investigative Report, the Tribal Gaming Agency  
18 shall reconsider the application, taking into  
19 account the objections itemized by the Commission  
20 and/or the State Gaming Representative, and make a  
21 final decision whether to issue a license to such  
22 applicant.

23 F. Management Contract.

- 24 1. If the Tribe chooses to enter into a Management  
25 Contract, the Tribal Gaming Agency shall require

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that all principals, primary management officials and key employees of the Management Contractor be licensed.

2. The Tribe may enter into a Management Contract only if the Management Contract:

(a) provides that all Class III Gaming covered by the Management Contract will be conducted in accordance with the IGRA, the Ordinance and this Compact;

(b) enumerates the responsibilities of each of the parties for each identifiable function, including:

- (1) maintaining and improving the Gaming Facility;
- (2) providing operating capital;
- (3) establishing operating days and hours;
- (4) hiring, firing, training and promoting employees;
- (5) maintaining the gaming enterprise's books and records;
- (6) preparing the gaming enterprise's financial statements and reports;
- (7) paying for the services of the independent auditor engaged pursuant to 25 C. F. R. § 571.12;

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- 1 (8) hiring and supervising security personnel;  
2 (9) providing fire protection services;  
3 (10) setting an advertising budget and placing  
4 advertising;  
5 (11) paying bills and expenses;  
6 (12) establishing and administering employment  
7 practices;  
8 (13) obtaining and maintaining insurance  
9 coverage, including coverage of public  
10 liability and property loss or damage;  
11 (14) complying with all applicable provisions  
12 of the Internal Revenue Code of 1986, as  
13 amended;  
14 (15) paying the cost of public safety services;  
15 and  
16 (16) if applicable, supplying the Commission  
17 with all information necessary for the  
18 Commission to comply with the National  
19 Environmental Policy Act of 1969;  
20 (c) provides for the establishment and maintenance  
21 of satisfactory accounting systems and  
22 procedures that shall, at a minimum:  
23 (1) include an adequate system of internal  
24 controls;  
25 (2) permit the preparation of financial

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- statements in accordance with generally accepted accounting principles;
- (3) be susceptible to audit;
- (4) permit the calculation and payment of the Management Contractor's fee; and
- (5) provide for the allocation of operating expenses or overhead expenses among the Tribe, the Management Contractor and any other user of a shared Gaming Facility and services;
- (d) requires the Management Contractor to provide the Tribe, not less frequently than monthly, verifiable financial reports or all information necessary to prepare such reports;
- (e) requires the Management Contractor to provide immediate access to the Gaming Facility, including its books and records, by appropriate officials of the Tribe, who shall have:
  - (1) the right to verify the daily gross revenues and income from the gaming enterprise; and
  - (2) access to any other gaming-related information the Tribe deems appropriate;
- (f) provides for a minimum guaranteed monthly payment to the Tribe in a sum certain that has

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- preference over the retirement of development and construction costs;
- (g) provides an agreed upon maximum dollar amount for the recoupment of development and construction costs;
- (h) provides for a term not to exceed the period allowed by the IGRA;
- (i) details the method of compensating and reimbursing the Management Contractor. If a Management Contract provides for a percentage fee, such fee shall be either:
  - (1) not more than thirty percent (30%) of the net revenues of the gaming enterprise if the Chairman of the Commission determines that such percentage is reasonable considering the circumstances; or
  - (2) not more than forty percent (40%) of the net revenues if the Chairman of the Commission is satisfied that the capital investment required and income projections for the gaming enterprise require the additional fee;
- (j) provides the grounds and mechanisms for modifying or terminating the Management Contract;

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- (k) contains a mechanism to resolve disputes between:
  - (1) the Management Contractor and customers, consistent with the procedures in the Ordinance;
  - (2) the Management Contractor and the Tribe;
  - and
  - (3) the Management Contractor and the gaming enterprise employees;
- (l) indicates whether and to what extent contract assignments and subcontracting are permissible;
- (m) indicates whether and to what extent changes in the ownership interest in the Management Contract require advance approval by the Tribe;
- and
- (n) states that the Management Contract shall not be effective unless and until it is approved by the Chairman of the Commission, date of signature of the parties notwithstanding.

3. The Tribe shall not enter into any Management Contract if the Tribal Gaming Agency determines that the Management Contractor or any principal, primary management official or key employee of the Management Contractor is not licensed or is ineligible to be licensed.

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1           G. Confidentiality of Records. Any and all background  
2 Investigative Reports on employees or contractors, supporting  
3 documents acquired or generated in connection therewith, and any  
4 other Investigative Reports or documents acquired or generated in  
5 the course of investigations performed by the Tribe or the Tribal  
6 Gaming Agency, that are provided to the State Gaming  
7 Representative or any other agency or official of the State by  
8 the Tribal Gaming Agency or the Tribe pursuant to the provisions  
9 of this Compact, shall not be deemed public records of the State  
10 and shall not be disclosed to any member of the public without  
11 the prior express written authorization of an authorized  
12 representative of the Tribe; provided, that nothing herein shall  
13 preclude any State agency or official from providing information  
14 to a federal agency or official having responsibility relative to  
15 Indian Gaming or from compliance with any valid order of a court  
16 having jurisdiction.

17 SECTION 6. Providers of Class III Gaming Equipment or Devices or  
18 Supplies.

19           A. Within thirty (30) days after the effective date of  
20 this Compact, if it has not already done so, the Tribal Gaming  
21 Agency will adopt standards for any and all Class III Gaming  
22 equipment, devices or supplies to be purchased, leased or  
23 otherwise acquired by the Tribe after the effective date of this  
24 Compact for use in any Gaming Facility, which standards shall be  
25 at least as strict as the comparable standards applicable to

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1 Class III Gaming equipment, devices or supplies within the State  
2 of Nevada. Any and all Class III Gaming equipment, devices or  
3 supplies acquired by the Tribe after the date of this Compact  
4 shall meet or exceed the standards thereby adopted, and any and  
5 all Class III Gaming equipment, devices or supplies used by the  
6 Tribe in its Gaming Facilities as of the effective date of this  
7 Compact shall be upgraded or replaced, if necessary, so as to  
8 comply with such standards, by no later than one (1) year after  
9 the effective date of this Compact.

10 B. Prior to entering into any future lease or purchase  
11 agreement for Class III Gaming equipment, devices or supplies,  
12 the Tribe shall obtain sufficient information and identification  
13 from the proposed seller or lessor and all persons holding any  
14 direct or indirect financial interest in the lessor or the  
15 lease/purchase agreement to permit the Tribe to license those  
16 persons in accordance with Section 5, hereof.

17 C. The seller, lessor, manufacturer or distributor shall  
18 provide, assemble and install all Class III Gaming equipment,  
19 devices or supplies in a manner approved and licensed by the  
20 Tribe.

21 SECTION 7. Dispute Resolution.

22 A. In the event either party believes that the other party  
23 has failed to comply with or has otherwise breached any provision  
24 of this Compact, such party may invoke the following procedure:

- 25 1. The party asserting noncompliance shall serve

1 written notice on the other party. The notice  
2 shall identify the specific Compact provision  
3 believed to have been violated and shall specify  
4 the factual and legal basis for the alleged  
5 noncompliance. The notice shall specifically  
6 identify the date, time and nature of the alleged  
7 noncompliance. Representatives of the State and  
8 Tribe shall thereafter meet within thirty (30) days  
9 in an effort to resolve the dispute.

10 2. In the event an allegation by the complaining party  
11 is not resolved to the satisfaction of such party  
12 within ninety (90) days after service of the notice  
13 set forth in Paragraph A. 1. of this section, the  
14 complaining party may serve upon the other party a  
15 notice to cease conduct of the particular game(s)  
16 or activities alleged by the complaining party to  
17 be in noncompliance. Upon receipt of such notice,  
18 the responding party may elect to stop the game(s)  
19 or activities specified in the notice or invoke  
20 arbitration and continue the game(s) or activities  
21 pending the results of arbitration. The responding  
22 party shall act upon one of the foregoing options  
23 within thirty (30) days of receipt of notice from  
24 the complaining party.

25 3. Arbitration under this authority shall be conducted

1 under the Commercial Arbitration Rules of the  
2 American Arbitration Association, except that the  
3 arbitrators shall be attorneys who are licensed  
4 members in good standing of the State Bar of New  
5 Mexico or of the bar of another state. The State  
6 will select one arbitrator, the Tribe a second  
7 arbitrator, and the two so chosen shall select a  
8 third arbitrator. If the third arbitrator is not  
9 chosen in this manner within ten (10) days after  
10 the second arbitrator is selected, the third  
11 arbitrator will be chosen in accordance with the  
12 rules of the American Arbitration Association.

- 13 4. All parties shall bear their own costs of  
14 arbitration and attorney fees.
- 15 5. The results of arbitration shall be enforceable by  
16 an action for injunctive or mandatory injunctive  
17 relief against the State and the Tribe in any court  
18 of competent jurisdiction. For purposes of any  
19 such action, the State and the Tribe acknowledge  
20 that any action or failure to act on the part of  
21 any agent or employee of the State or the Tribe,  
22 contrary to a decision of the arbitrators in an  
23 arbitration proceeding conducted under the  
24 provisions of this section, occurring after such  
25 decision, shall be wholly unauthorized and ultra

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1 vires acts, not protected by the sovereign immunity  
2 of the State or the Tribe.

3 B. Nothing in Subsection 7A. shall be construed to waive,  
4 limit or restrict any remedy that is otherwise available to  
5 either party to enforce or resolve disputes concerning the  
6 provisions of this Compact. Nothing in this Compact shall be  
7 deemed a waiver of the Tribe's sovereign immunity. Nothing in  
8 this Compact shall be deemed a waiver of the State's sovereign  
9 immunity.

10 SECTION 8. Protection of Patrons.

11 A. Liability to Patrons. To ensure the personal safety  
12 and protection of patrons and other invitees of a Tribe's Gaming  
13 Facility operated under the provisions of this Compact, the Tribe  
14 shall at all times maintain in effect a policy of public  
15 liability insurance, insuring the Tribe, its agents and employees  
16 against any claims, demands or liability that may arise as a  
17 result of personal injury to any person (other than an employee  
18 of the gaming establishment) occurring anywhere on the premises  
19 of any gaming establishment operated by the Tribe under the  
20 provisions of this Compact, or as a result of any act or omission  
21 of any agent or employee of such gaming establishment while in  
22 the course of his or her employment, which policy shall provide  
23 personal injury coverage of no less than one million dollars  
24 (\$1,000,000) per injured person and ten million dollars  
25 (\$10,000,000) aggregate per policy year.

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1           The Tribe agrees that it will require that the insurance  
2 contract provide that in the event of any claim made against it  
3 or its gaming enterprise, or any agent or employee thereof,  
4 arising out of any personal injury as described above, neither  
5 the Tribe nor its insurer will assert any defense of immunity  
6 from suit as to such claim for compensatory damages up to the  
7 amount of one million dollars (\$1,000,000) per injured person, in  
8 any claim pursued as provided in this subsection; provided,  
9 however, that this agreement not to assert such defense shall be  
10 strictly limited as provided herein, and shall not apply to any  
11 claim for punitive damages, or to any claim for any loss or  
12 damage other than that arising from actual bodily injury or  
13 death, or to any claim for damages in excess of the amount set  
14 forth herein. Nothing herein shall be construed as stating or  
15 implying that the Tribe has waived or agreed not to assert its  
16 immunity from suit for any other purpose or in any other  
17 circumstance other than the limited purposes and circumstances  
18 expressly set forth herein, and nothing herein shall be construed  
19 as an admission of liability as to any claim for damages or as an  
20 agreement or indication of willingness to pay any amount as  
21 damages absent a determination of fault, and the Tribe or its  
22 insurer, or both, shall in every instance have the right to  
23 defend any such claim fully on the merits.

24           Any person wishing to prosecute a claim for personal injury  
25 against the Gaming Enterprise as provided in this subsection, and

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1 who is unable to arrive at a satisfactory settlement of such  
2 claim, may proceed, by no later than three (3) years after the  
3 date of the incident giving rise to the claim, either by filing  
4 suit in the tribal court of the Tribe, or by demanding binding  
5 arbitration as provided herein. The Tribe agrees that it will  
6 provide a tribal court that is competent to hear such claims, and  
7 that it will permit its Gaming Enterprise, and the employees  
8 thereof, to be sued in such courts on such claims, subject to the  
9 conditions set forth in this subsection. A claimant who wishes  
10 to proceed by binding arbitration shall submit a written demand  
11 therefor to the Gaming Enterprise, by certified mail, return  
12 receipt requested. The claimant and the Gaming Enterprise shall  
13 each designate an arbitrator within thirty (30) days of the date  
14 of receipt of such demand, and the two arbitrators shall select a  
15 third arbitrator. The arbitration panel shall permit the parties  
16 to engage in reasonable discovery, and shall establish other  
17 procedures so as to assure a full, fair and expeditious hearing  
18 on the claim. The award of the arbitration panel shall be final  
19 and binding (except that any such award of damages to the  
20 claimant shall in no event exceed the limits of liability set  
21 forth in this subsection). The Tribe's insurer shall be subject  
22 to suit in any court of competent jurisdiction for enforcement of  
23 the arbitration award.

24 The Tribe shall provide to the State Gaming Representative  
25 annually a certificate of insurance showing that its gaming

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1 enterprise and its agents and employees engaged therein are  
2 insured to the extent and in the circumstances required by this  
3 section. If the State Gaming Representative so requests in  
4 writing, the certificate of insurance may be furnished directly  
5 to the State Gaming Representative from the insurance carrier or  
6 the insuring agency for the insured Tribe.

7 The Tribe's failure to comply with any awards by an  
8 arbitration panel or judgment of a tribal court in any action  
9 brought under the provisions of this section shall be deemed a  
10 violation of the Compact and may be enforced by the State under  
11 the provisions of Section 7.

12 B. Public Health and Safety. The Tribe shall establish  
13 for its Gaming Facility health, safety and construction standards  
14 that are at least as stringent as the current editions of the  
15 National Electrical Code, the Uniform Building Code, the Uniform  
16 Mechanical Code, the Uniform Fire Code and the Uniform Plumbing  
17 Code, and any and all Gaming Facilities or additions thereto  
18 constructed by the Tribe hereafter shall be constructed and all  
19 facilities shall be maintained so as to comply with such  
20 standards. Inspections will be conducted with respect to these  
21 standards at least annually. If the State Gaming Representative  
22 requests sufficiently in advance of an annual inspection, the  
23 State Gaming Representative may be present during such  
24 inspection. The Tribe agrees to correct any deficiencies noted  
25 in such inspections within a time agreed upon between the State

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1 and Tribe. The Tribal Gaming Agency will provide copies of such  
2 inspection reports to the State Gaming Representative, if  
3 requested to do so in writing.

4 SECTION 9. Effective Date. This Compact shall be effective  
5 immediately upon the occurrence of the last of the following:

- 6 A. execution by the Tribe's Governor after approval of the  
7 Tribal Council;
- 8 B. execution by the Governor of the State;
- 9 C. approval by the Secretary of the Interior; and
- 10 D. publication in the Federal Register.

11 The Governor is authorized to execute compacts with an  
12 individual Tribe that has also entered into revenue-sharing  
13 agreements and has passed resolutions described herein, in  
14 substantially the same form as set forth herein. Upon signature  
15 by the Governor and the Tribe, the Compact shall be transmitted  
16 to the Secretary of the Interior for approval.

17 SECTION 10. Criminal Jurisdiction.

18 A. The Tribe and the State acknowledge that under the  
19 provisions of § 23 of the IGRA, especially that portion codified  
20 at 18 U.S.C. § 1166(d), jurisdiction to prosecute violations of  
21 State gambling laws made applicable by that section to Indian  
22 country is vested exclusively within the United States, unless  
23 the Tribe and the State agree in a compact entered into the IGRA  
24 to transfer such jurisdiction to the State.

25 B. The Tribe and the State hereby agree that, in the event

1 of any violation of any State gambling law on Indian Lands or any  
2 other crime against the Gaming Enterprise or any employee thereof  
3 or that occurs on the premises of the Tribal Gaming Facility,  
4 that is committed by any person who is not a member of the Tribe,  
5 the State shall have and may exercise jurisdiction, concurrent  
6 with that of the United States, to prosecute such person, under  
7 its laws and in its courts.

8 C. Immediately upon becoming aware of any such suspected  
9 crime by a nonmember of the Tribe, the Gaming Enterprise or the  
10 Tribal Gaming Agency shall notify the state attorney general and  
11 the district attorney for the district in which the Gaming  
12 Facility is located, supplying all particulars available to the  
13 tribal entity at the time. The Tribe agrees that its law  
14 enforcement and gaming agencies shall perform such additional  
15 investigation or take such other steps in furtherance of the  
16 investigation and prosecution of the violation as the district  
17 attorney may reasonably request, and otherwise cooperate fully  
18 with the district attorney and any state law enforcement agencies  
19 with respect to the matter, but once notice of a suspected  
20 violation has been given to the district attorney, the matter  
21 shall be deemed to be under the jurisdiction of the State (except  
22 that in the event of emergency circumstances involving a possible  
23 violation, the Tribe and its constituent agencies shall have the  
24 discretion to act as they see fit, and to call upon such other  
25 agencies or entities as they deem reasonable or necessary, in

1 order to protect against any immediate threat to lives or  
2 property). The State may, in its discretion, refer the matter to  
3 federal authorities, but it shall notify the Tribal Gaming Agency  
4 upon doing so.

5 D. The State agrees that no less frequently than annually  
6 it will provide the Tribal Gaming Agency with a written report of  
7 the status and disposition of each matter referred to it under  
8 the provisions of this section that is still pending. In the  
9 event the district attorney to whom a matter is referred under  
10 the provisions of this section decides not to prosecute such  
11 matter, the district attorney shall promptly notify the Tribal  
12 Gaming Agency of such decision in writing. The Tribal Gaming  
13 Agency may in that event ask the attorney general of the state to  
14 pursue the matter.

15 E. The district attorney for the district in which the  
16 Gaming Facility is situated may decline to accept referrals of  
17 cases under the provisions of this section unless and until the  
18 Tribe has entered into a Memorandum of Understanding with the  
19 office of the district attorney to which Memorandum of  
20 Understanding the United States Attorney for the District of New  
21 Mexico may also be a party addressing such matters as the  
22 specific procedures by which cases are to be referred,  
23 participation of the Tribal Gaming Agency and tribal law  
24 enforcement personnel in the investigation and prosecution of any  
25 such case, payments by the Tribe to the office of the district

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1 attorney to defray the costs of handling cases referred under the  
2 provisions of this section, and related matters.

3 SECTION 11. Binding Effect and Duration.

4 A. This Compact shall be binding upon the State and Tribe  
5 for a term of ten (10) years from the date it becomes effective  
6 and may renew for an additional period.

7 B. Before the date that is one (1) year prior to the  
8 expiration of the ten-year (10-year) initial term, and/or before  
9 the date that is one (1) year prior to the expiration of the  
10 renewal period, either party may serve written notice on the  
11 other of its desire to renegotiate this Compact.

12 C. In the event that either party gives written notice to  
13 the other of its desire to renegotiate this Compact pursuant to  
14 Subsection B. of this section, the Tribe may, pursuant to the  
15 procedures of the IGRA, request the State to enter into  
16 negotiations for a new compact governing the conduct of Class III  
17 Gaming. If the parties are unable to conclude a successor  
18 compact, this Compact shall terminate.

19 D. Notwithstanding the foregoing, at any time while this  
20 Compact remains in effect, either party may, by written notice to  
21 the other party, request reopening of negotiations with respect  
22 to any provision of this Compact, or with respect to any issue  
23 not addressed in the Compact, specifying such provision or issue  
24 in such notice. No such request shall be unreasonably refused,  
25 but neither party shall be required to agree to any change in the



1 Compact, and no agreement to supplement or amend this Compact in  
 2 any respect shall have any validity until the same shall have  
 3 been approved in writing by the Tribe, the State and the  
 4 Secretary of the Interior and notice of such approval published  
 5 in the Federal Register.

6 E. The Tribe may operate Class III Gaming only while this  
 7 Compact or any renegotiated compact is in effect.

8 SECTION 12. Notice to Parties.

9 Unless otherwise indicated, all notices, payments,  
 10 requests, reports, information or demand that any party hereto  
 11 may desire or may be required to give to the other party hereto,  
 12 shall be in writing and shall be personally delivered or sent by  
 13 first-class mail sent to the other party at the address provided  
 14 in writing by the other party. Every notice, payment, request,  
 15 report, information or demand so given shall be deemed effective  
 16 upon receipt or, if mailed, upon receipt or the expiration of the  
 17 third day following the day of mailing, whichever occurs first,  
 18 except that any notice of change of address shall be effective  
 19 only upon receipt by the party to whom said notice is addressed.

20 SECTION 13. Entire Agreement.

21 This Compact is the entire agreement between the parties  
 22 and supersedes all prior agreements, whether written or oral,  
 23 with respect to the subject matter hereof. Neither this Compact  
 24 nor any provision herein may be changed, waived, discharged or  
 25 terminated orally, but only by an instrument, in writing, signed

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Underscored material = new  
 [bracketed material] = delete

1 by the Tribe and the State and approved by the Secretary of the  
2 Interior. This Compact shall not be amended without the express  
3 approval of the Tribe, the Governor of the State and the State  
4 Legislature.

5 SECTION 14. Filing of Compact with State Records Center.

6 Upon the effective date of this Compact, a copy shall be  
7 filed by the Governor with the New Mexico Records Center. Any  
8 subsequent amendment or modification of this Compact shall be  
9 filed with the New Mexico Records Center.

10 SECTION 15. Counterparts.

11 This Compact may be executed by the parties in any number  
12 of separate counterparts with the same effect as if the  
13 signatures were upon the same instrument. All such counterparts  
14 shall together constitute one and the same document."

15 Section 2. [NEW MATERIAL] REVENUE SHARING OF TRIBAL  
16 GAMING REVENUE. --The governor is authorized to execute a revenue-  
17 sharing agreement in the form substantially set forth in this  
18 section with any New Mexico Indian nation, tribe or pueblo that  
19 has also entered into an Indian gaming compact as provided by  
20 law. Execution of an Indian gaming compact is conditioned upon  
21 execution of a revenue-sharing agreement. The consideration for  
22 the Indian entity entering into the revenue-sharing agreement is  
23 the condition of the agreement providing limited exclusivity of  
24 gaming activities to the tribal entity. The revenue-sharing  
25 agreement shall be in substantially the following form and is

1 effective when executed by the governor on behalf of the state  
2 and the appropriate official of the Indian entity:

3 "REVENUE-SHARING AGREEMENT

4 1. Summary and consideration. The Tribe shall agree to  
5 contribute a portion of its Class III Gaming revenues identified  
6 in and under procedures of this Revenue-Sharing Agreement, in  
7 return for which the State agrees that the Tribe:

8 A. has the exclusive right within the State to provide  
9 all types of Class III Gaming described in the Indian Gaming  
10 Compact, with the sole exception of the use of Gaming Machines,  
11 which the State may permit on a limited basis for racetracks and  
12 veterans' and fraternal organizations; and

13 B. will only share that part of its revenue arising  
14 from the use of Gaming Machines and all other gaming revenue is  
15 exclusively the Tribe's.

16 2. Revenue to State. The parties agree that, after the  
17 effective date hereof, the Tribe shall make the quarterly  
18 payments provided for in Section 3 of the Revenue Sharing  
19 Agreement to the state treasurer for deposit into the General  
20 Fund of the State ("State General Fund").

21 3. Calculation of Revenue to State.

22 A. As used in this Revenue-Sharing Agreement, "net  
23 win" means the annual total amount wagered at a Gaming Facility  
24 on Gaming Machines less the following amounts:

25 (1) the annual amount paid out in prizes from

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1 gaming on Gaming Machines;

2 (2) the actual amount of regulatory fees paid to  
3 the state; and

4 (3) the sum of two hundred fifty thousand dollars  
5 (\$250,000) per year as an amount representing tribal regulatory  
6 fees, with these amounts increasing by five percent (5%) each  
7 year beginning on the first day of January occurring after the  
8 Compact has been in effect for at least twelve months.

9 B. The Tribe shall pay the state sixteen percent (16%)  
10 of the net win.

11 C. For purposes of these payments, all calculations of  
12 amounts due shall be based upon the quarterly activity of the  
13 gaming facility. Quarterly payments due to the State pursuant to  
14 these terms shall be paid no later than twenty-five (25) days  
15 after the last day of each calendar quarter. Any payments due  
16 and owing from the Tribe in the quarter the Compact is approved,  
17 or the final quarter the Compact is in force, shall reflect the  
18 net win, but only for the portion of the quarter the Compact is  
19 in effect.

20 4. Limitations. The Tribe's obligation to make the  
21 payments provided for in Paragraphs 2 and 3 of this section shall  
22 apply and continue only so long as there is a binding Indian  
23 Gaming Compact in effect between the Tribe and the State, which  
24 Compact provides for the play of Class III Gaming, but shall  
25 terminate in the event of any of the following conditions:

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1           A. If the State passes, amends, or repeals any law, or  
 2 takes any other action, which would directly or indirectly  
 3 attempt to restrict, or has the effect of restricting, the scope  
 4 of Indian gaming.

5           B. If the State permits any expansion of nontribal  
 6 Class III Gaming in the State. Notwithstanding this general  
 7 prohibition against permitted expansion of gaming activities, the  
 8 State may permit: (1) the enactment of a State lottery, (2) any  
 9 fraternal, veterans or other nonprofit membership organization to  
 10 operate such electronic gaming devices lawfully, but only for the  
 11 benefit of such organization's members, (3) limited fundraising  
 12 activities conducted by nonprofit tax exempt organizations  
 13 pursuant to Section 30-19-6 NMSA 1978, and (4) any horse  
 14 racetracks to operate electronic gaming devices on days on which  
 15 live or simulcast horse racing occurs.

16           5. Effect of Variance. In the event the acts or omissions  
 17 of the State cause the Tribe's obligation to make payments under  
 18 Paragraph 3 of this section to terminate under the provisions of  
 19 Paragraph 4 of this section, such cessation of obligation to pay  
 20 will not adversely affect the validity of the Compact, but the  
 21 amount that the Tribe agrees to reimburse the State for  
 22 regulatory fees under the Compact shall automatically increase by  
 23 twenty percent (20%).

24           6. Third-Party Beneficiaries. This Agreement is not  
 25 intended to create any third-party beneficiaries and is entered

Underscored material = new  
 [bracketed material] = delete

1 into solely for the benefit of the Tribe and the State."

2 Section 3. ~~[NEW MATERIAL]~~ SHORT TITLE.--Sections 3  
3 through 62 of this act may be cited as the "Gaming Control Act".

4 Section 4. ~~[NEW MATERIAL]~~ POLICY.--It is the state's  
5 policy on gaming that:

6 A. limited gaming activities should be allowed in the  
7 state if those activities are strictly regulated to ensure honest  
8 and competitive gaming that is free from criminal and corruptive  
9 elements and influences; and

10 B. the holder of any license issued by the state in  
11 connection with the regulation of gaming activities has a  
12 revocable privilege only and has no property right or vested  
13 interest in the license.

14 Section 5. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the  
15 Gaming Control Act:

16 A. "affiliate" means a person who, directly or  
17 indirectly through one or more intermediaries, controls, is  
18 controlled by or is under common control with a specified person;

19 B. "affiliated company" means a company that:  
20 (1) controls, is controlled by or is under  
21 common control with a company licensee; and  
22 (2) is involved in gaming activities or involved  
23 in the ownership of property on which gaming is conducted;

24 C. "applicant" means a person who has applied for a  
25 license or for approval of an act or transaction for which

1 approval is required or allowed pursuant to the provisions of the  
2 Gaming Control Act;

3 D. "application" means a request for the issuance of  
4 a license or for approval of an act or transaction for which  
5 approval is required or allowed pursuant to the provisions of the  
6 Gaming Control Act, but "application" does not include a  
7 supplemental form or information that may be required with the  
8 application;

9 E. "associated equipment" means equipment or a  
10 mechanical, electromechanical or electronic contrivance,  
11 component or machine used in connection with gaming;

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

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

15 H. "certified technician" means a person certified by  
16 a manufacturer licensee to repair and service gaming devices, but  
17 who is prohibited from programming gaming devices;

18 I. "company" means a corporation, partnership,  
19 limited partnership, trust, association, joint stock company,  
20 joint venture, limited liability company or other form of  
21 business organization that is not a natural person;

22 J. "distributor" means a person who supplies gaming  
23 devices to a gaming operator but does not manufacture gaming  
24 devices;

25 K. "equity security" means an interest in a company

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1 that is evidenced by:

2 (1) voting stock or similar security;

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

7 (3) a warrant or right to subscribe to or  
8 purchase voting stock or similar security; or

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

11 L. "executive director" means the chief  
12 administrative officer appointed by the board pursuant to Section  
13 9 of the Gaming Control Act;

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

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

24 O. "gaming" means offering a game for play;

25 P. "gaming activity" means any endeavor associated



1 with the manufacture or distribution of gaming devices or the  
2 conduct of gaming;

3 Q. "gaming device" means associated equipment or a  
4 gaming machine and includes a system for processing information  
5 that can alter the normal criteria of random selection that  
6 affects the operation of a game or determines the outcome of a  
7 game; "gaming device" does not include a system or device that  
8 affects a game solely by stopping its operation so that the  
9 outcome remains undetermined;

10 R. "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 beverages;

15 (2) secretarial or janitorial personnel;

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

17 (4) other nongaming personnel;

18 S. "gaming establishment" means the premises on or in  
19 which gaming is conducted;

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

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1           U. "gaming operator" means a person who conducts  
2 gaming;

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

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

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

17           Y. "institutional investor" means a state or federal  
18 government pension plan or a person that meets the requirements  
19 of a qualified institutional buyer as defined in Rule 144A of the  
20 federal Securities Act of 1933, and is:

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

23                   (2) an insurance company as defined in Section  
24 2(a)(17) of the federal Investment Company Act of 1940;

25                   (3) an investment company registered under

1 Section 8 of the federal Investment Company Act of 1940;

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

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

6 (6) an employee benefit plan or pension fund  
7 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 (7) a group comprised entirely of persons  
12 specified in Paragraphs (1) through (6) of this subsection;

13 Z. "intermediary company" means a company that:

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

16 (2) is a subsidiary with respect to any holding  
17 company;

18 AA. "key executive" means an executive of a licensee  
19 or other person having the power to exercise significant  
20 influence over decisions concerning any part of the licensed  
21 operations of the licensee or whose compensation exceeds an  
22 amount established by the board in a regulation;

23 BB. "license" means an authorization required by the  
24 board for engaging in gaming activities;

25 CC. "licensee" means a person to whom a valid license

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1 has been issued;

2 DD. "manufacturer" means a person who manufactures,  
3 fabricates, assembles, produces, programs or makes modifications  
4 to any gaming device for use or play in New Mexico or for sale,  
5 lease or distribution outside New Mexico from any location within  
6 New Mexico;

7 EE. "net take" means the total of the following, less  
8 the total of all cash paid out as losses to winning patrons and  
9 those amounts paid to purchase annuities to fund losses paid to  
10 winning patrons over several years by independent administrators:

11 (1) cash received from patrons for playing a  
12 game;

13 (2) cash received in payment for credit extended  
14 by a licensee to a patron for playing a game; and

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

17 FF. "nonprofit organization" means:

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

24 (2) a bona fide chartered or incorporated post,  
25 auxiliary unit or society of, or a trust or foundation for the

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

6 GG. "person" means a legal entity;

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

10 II. "progressive jackpot" means a prize that  
 11 increases over time or as gaming machines that are linked to a  
 12 progressive system are played and upon conditions established by  
 13 the board may be paid by an annuity;

14 JJ. "progressive system" means one or more gaming  
 15 machines linked to one or more common progressive jackpots;

16 KK. "publicly traded corporation" means a corporation  
 17 that:

18 (1) has one or more classes of securities  
 19 registered pursuant to the securities laws of the United States  
 20 or New Mexico;

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

23 (3) has one or more classes of securities  
 24 registered or is an issuer pursuant to applicable foreign laws  
 25 that the board finds provide protection for institutional

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1 investors that is comparable to or greater than the stricter of  
2 the securities laws of the United States or New Mexico;

3 LL. "registration" means a board action that  
4 authorizes a company to be a holding company with respect to a  
5 company that holds or applies for a license or that relates to  
6 other persons required to be registered pursuant to the Gaming  
7 Control Act;

8 MM. "subsidiary" means a company, all or a part of  
9 whose outstanding equity securities are owned, subject to a power  
10 or right of control or held, with power to vote, by a holding  
11 company or intermediary company; and

12 NN. "work permit" means a card, certificate or permit  
13 issued by the board, whether denominated as a work permit,  
14 registration card or otherwise, authorizing the employment of the  
15 holder as a gaming employee.

16 Section 6. [NEW MATERIAL] LIMITED GAMING ACTIVITY  
17 PERMITTED. -- Gaming activity is permitted in New Mexico only if it  
18 is conducted in compliance with and pursuant to:

- 19 A. the Gaming Control Act; or  
20 B. a state or federal law other than the Gaming  
21 Control Act that expressly permits the activity or exempts it  
22 from the application of the state criminal law, or both.

23 Section 7. [NEW MATERIAL] GAMING CONTROL BOARD CREATED. --

- 24 A. The "gaming control board" is created and consists  
25 of five members. Three members are appointed by the governor

1 with the advice and consent of the senate, and two members are ex  
 2 officio: the chairman of the state racing commission and the  
 3 chairman of the board of the New Mexico lottery authority. All  
 4 members of the board shall be residents of New Mexico and  
 5 citizens of the United States. One appointed member of the board  
 6 shall have a minimum of five years of previous employment in a  
 7 supervisory and administrative position in a law enforcement  
 8 agency; one appointed member of the board shall be a certified  
 9 public accountant in New Mexico who has had at least five years  
 10 of experience in public accountancy; and one appointed member of  
 11 the board shall be an attorney who has been admitted to practice  
 12 before the supreme court of New Mexico.

13 B. The appointed members of the board shall be  
 14 appointed for terms of five years, except, of the members who are  
 15 first appointed, the member with law enforcement experience shall  
 16 be appointed for a term of five years; the member who is a  
 17 certified public accountant shall be appointed for a term of four  
 18 years; and the member who is an attorney shall be appointed for  
 19 a term of three years. Thereafter, all members shall be  
 20 appointed for terms of five years. No person shall serve as a  
 21 board member for more than two consecutive terms or ten years  
 22 total.

23 C. No person appointed to the board may be employed  
 24 in any other capacity or shall in any manner receive compensation  
 25 for services rendered to any person or entity other than the

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1 board while a member of the board.

2 D. A vacancy on the board of an appointed member  
3 shall be filled within thirty days by the governor with the  
4 advice and consent of the senate for the unexpired portion of the  
5 term in which the vacancy occurs. A person appointed to fill a  
6 vacancy shall meet all qualification requirements of the office  
7 established in this section.

8 E. The governor shall choose a chairman annually from  
9 the board's appointed membership.

10 F. No more than three members of the board shall be  
11 from the same political party.

12 G. The appointed members of the board shall be full-  
13 time state officials and shall receive a salary set by the  
14 governor.

15 H. The department of public safety shall conduct  
16 background investigations of all members of the board prior to  
17 confirmation by the senate. To assist the department in the  
18 background investigation, a prospective board member shall  
19 furnish a disclosure statement to the department on a form  
20 provided by the department containing that information deemed by  
21 the department as necessary for completion of a detailed and  
22 thorough background investigation. The required information  
23 shall include at least:

24 (1) a full set of fingerprints made by a law  
25 enforcement agency on forms supplied by the department;



1           (2) complete information and details with  
2 respect to the prospective board member's antecedents, habits,  
3 immediate family, character, criminal record, business  
4 activities, financial affairs and business associates covering at  
5 least a ten-year period immediately preceding the date of  
6 submitting the disclosure statement;

7           (3) complete disclosure of any equity interest  
8 held by the prospective board member or a member of his immediate  
9 family in a company that is an applicant or licensee or an  
10 affiliate, affiliated company, intermediary company or holding  
11 company in respect to an applicant or licensee; and

12           (4) the names and addresses of members of the  
13 immediate family of the prospective board member.

14           I. No person may be appointed or confirmed as a  
15 member of the board if that person or member of his immediate  
16 family holds an equity interest in a company that is an applicant  
17 or licensee or an affiliate, affiliated company, intermediary  
18 company or holding company in respect to an applicant or  
19 licensee.

20           J. A prospective board member shall provide  
21 assistance and information requested by the department of public  
22 safety or the governor and shall cooperate in any inquiry or  
23 investigation of the prospective board member's fitness or  
24 qualifications to hold the office to which he is appointed. The  
25 senate shall not confirm a prospective board member if it has

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1 reasonable cause to believe that the prospective board member  
2 has:

3 (1) knowingly misrepresented or omitted a  
4 material fact required in a disclosure statement;

5 (2) been convicted of a felony, a gaming related  
6 offense or a crime involving fraud, theft or moral turpitude  
7 within ten years immediately preceding the date of submitting a  
8 disclosure statement required pursuant to the provisions of  
9 Subsection H of this section;

10 (3) exhibited a history of willful disregard for  
11 the gaming laws of this or any other state or the United States;  
12 or

13 (4) had a permit or license issued pursuant to  
14 the gaming laws of this or any other state or the United States  
15 permanently suspended or revoked for cause.

16 K. At the time of taking office, each board member  
17 shall file with the secretary of state a sworn statement that he  
18 is not disqualified under the provisions of Subsection I of this  
19 section.

20 Section 8. [NEW MATERIAL] BOARD- - MEETINGS- - QUORUM -  
21 RECORDS. - -

22 A. A majority of the qualified membership of the  
23 board then in office constitutes a quorum. No action may be  
24 taken by the board unless at least three members concur.

25 B. Written notice of the time and place of each board

1 meeting shall be given to each member of the board at least ten  
2 days prior to the meeting.

3 C. Meetings of the board shall be open and public in  
4 accordance with the Open Meetings Act, except that the board may  
5 close a meeting to hear confidential security and investigative  
6 information and other information made confidential by the  
7 provisions of the Gaming Control Act.

8 D. All proceedings of the board shall be recorded by  
9 audiotape or other equivalent verbatim audio recording device.

10 E. The chairman of the board, the executive director  
11 or a majority of the members of the board then in office may call  
12 a special meeting of the board upon at least five days' prior  
13 written notice to all members of the board and the executive  
14 director.

15 Section 9. [NEW MATERIAL] BOARD'S POWERS AND DUTIES. - -

16 A. The board shall implement the state's policy on  
17 gaming consistent with the provisions of the Gaming Control Act.  
18 It has the duty to fulfill all responsibilities assigned to it  
19 pursuant to that act, and it has all authority necessary to carry  
20 out those responsibilities. It may delegate authority to the  
21 executive director, but it retains accountability. The board is  
22 an adjunct agency.

23 B. The board shall:

- 24 (1) employ the executive director;
- 25 (2) make the final decision on issuance, denial,

1 suspension and revocation of all licenses pursuant to and  
2 consistent with the provisions of the Gaming Control Act;

3 (3) develop, adopt and promulgate all  
4 regulations necessary to implement and administer the provisions  
5 of the Gaming Control Act;

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

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

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

17 C. The board may:

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

24 (2) conduct investigations;

25 (3) subpoena persons and documents to compel

1 access to or the production of documents and records, including  
2 books and memoranda, in the custody or control of any licensee;

3 (4) compel the appearance of employees of a  
4 licensee or persons for the purpose of ascertaining compliance  
5 with provisions of the Gaming Control Act or a regulation adopted  
6 pursuant to its provisions;

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

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

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

15 (8) conduct audits of applicants, licensees and  
16 persons affiliated with licensees;

17 (9) inspect, examine, photocopy and audit all  
18 documents and records of an applicant or licensee relevant to his  
19 gaming activities in the presence of the applicant or licensee or  
20 his agent;

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

25 (11) inspect all places where gaming activities

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1 are conducted and inspect all property connected with gaming in  
2 those places;

3 (12) summarily seize, remove and impound from  
4 places inspected any gaming devices, property connected with  
5 gaming, documents or records for the purpose of examination or  
6 inspection;

7 (13) inspect, examine, photocopy and audit all  
8 documents and records of any affiliate of an applicant or  
9 licensee who the board knows or reasonably suspects is involved  
10 in the financing, operation or management of the applicant or  
11 licensee. The inspection, examination, photocopying and audit  
12 shall be in the presence of a representative of the affiliate or  
13 its agent when practicable;

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

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

22 Section 10. [NEW MATERIAL] BOARD REGULATIONS--  
23 DISCRETIONARY REGULATIONS-- PROCEDURE-- REQUIRED PROVISIONS. --

24 A. The board may adopt any regulation:

25 (1) consistent with the provisions of the Gaming

1 Control Act; and

2 (2) it decides is necessary to implement the  
3 provisions of the Gaming Control Act.

4 B. No regulation shall be adopted, amended or  
5 repealed without a public hearing on the proposed action before  
6 the board or a hearing officer designated by it. The public  
7 hearing shall be held in Santa Fe. Notice of the subject matter  
8 of the regulation, the action proposed to be taken, the time and  
9 place of the hearing, the manner in which interested persons may  
10 present their views and the method by which copies of the  
11 proposed regulation, amendment or repeal may be obtained shall be  
12 published once at least thirty days prior to the hearing date in  
13 a newspaper of general circulation and mailed at least thirty  
14 days prior to the hearing date to all persons who have made a  
15 written request for advance notice of hearing. All regulations  
16 and actions taken on regulations shall be filed in accordance  
17 with the State Rules Act.

18 C. The board shall adopt regulations:

19 (1) prescribing the method and form of  
20 application to be followed by an applicant;

21 (2) prescribing the information to be furnished  
22 by an applicant or licensee concerning his antecedents, immediate  
23 family, habits, character, associates, criminal record, business  
24 activities and financial affairs, past or present;

25 (3) prescribing the manner and procedure of all

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1 hearings conducted by the board or a hearing officer;

2 (4) prescribing the manner and method of  
3 collection and payment of fees;

4 (5) prescribing the manner and method of the  
5 issuance of licenses, permits, registrations, certificates and  
6 other actions of the board not elsewhere prescribed in the Gaming  
7 Control Act;

8 (6) defining the area, games and gaming devices  
9 allowed and the methods of operation of the games and gaming  
10 devices for authorized gaming;

11 (7) prescribing under what conditions the  
12 nonpayment of winnings is grounds for suspension or revocation of  
13 a license of a gaming operator;

14 (8) governing the manufacture, sale,  
15 distribution, repair and servicing of gaming devices;

16 (9) prescribing accounting procedures, security,  
17 collection and verification procedures required of licensees and  
18 matters regarding financial responsibility of licensees;

19 (10) prescribing what shall be considered to be  
20 an unsuitable method of operating gaming activities;

21 (11) restricting access to confidential  
22 information obtained pursuant to the provisions of the Gaming  
23 Control Act and ensuring that the confidentiality of that  
24 information is maintained and protected;

25 (12) prescribing financial reporting and



1 internal control requirements for licensees;

2 (13) prescribing the manner in which winnings,  
3 compensation from gaming activities and net take shall be  
4 computed and reported by a gaming operator licensee;

5 (14) prescribing the frequency of and the  
6 matters to be contained in audits of and periodic financial  
7 reports from a gaming operator licensee consistent with standards  
8 prescribed by the board;

9 (15) prescribing the procedures to be followed  
10 by a gaming operator licensee for the exclusion of persons from  
11 gaming establishments;

12 (16) establishing criteria and conditions for  
13 the operation of progressive systems;

14 (17) establishing criteria and conditions for  
15 approval of procurement by the board of personal property valued  
16 in excess of twenty thousand dollars (\$20,000), including  
17 background investigation requirements for a person submitting a  
18 bid or proposal; and

19 (18) establishing an applicant fee schedule for  
20 processing applications that is based on costs of the application  
21 review incurred by the board whether directly or through payment  
22 by the board for costs charged for investigations of applicants  
23 by state departments and agencies other than the board, which  
24 regulation shall set a maximum fee of one hundred thousand  
25 dollars (\$100,000).

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1           Section 11. [NEW MATERIAL] EXECUTIVE DIRECTOR--  
2 EMPLOYMENT-- QUALIFICATIONS. --

3           A. The executive director shall be employed by,  
4 report directly to and serve at the pleasure of the board.

5           B. The executive director shall have had at least  
6 five years of responsible supervisory administrative experience  
7 in a governmental gaming regulatory agency.

8           C. The executive director shall receive an annual  
9 salary to be set by the board, but not to exceed eighty-five  
10 thousand dollars (\$85,000) per year.

11           Section 12. [NEW MATERIAL] EXECUTIVE DIRECTOR-- POWERS--  
12 DUTIES. --

13           A. The executive director shall implement the  
14 policies of the board.

15           B. The executive director shall employ all personnel  
16 who work for the board. The employees shall be covered employees  
17 pursuant to the provisions of the Personnel Act. Among those  
18 personnel he shall employ and designate an appropriate number of  
19 individuals as law enforcement officers subject to proper  
20 certification pursuant to the Law Enforcement Training Act.

21           C. The executive director shall establish  
22 organizational units he determines are appropriate to administer  
23 the provisions of the Gaming Control Act.

24           D. The executive director:

25               (1) may delegate authority to subordinates as he

1 deems necessary and appropriate, clearly delineating the  
2 delegated authority and the limitations on it, if any;

3 (2) shall take administrative action by issuing  
4 orders and instructions consistent with the Gaming Control Act  
5 and regulations of the board to assure implementation of and  
6 compliance with the provisions of that act and those regulations;

7 (3) may conduct research and studies that will  
8 improve the operations of the board and the provision of services  
9 to the citizens of the state;

10 (4) may provide courses of instruction and  
11 practical training for employees of the board and other persons  
12 involved in the activities regulated by the board with the  
13 objectives of improving operations of the board and achieving  
14 compliance with the law and regulations;

15 (5) shall prepare an annual budget for the board  
16 and submit it to the board for approval; and

17 (6) shall make recommendations to the board of  
18 proposed regulations and any legislative changes needed to  
19 provide better administration of the Gaming Control Act and fair  
20 and efficient regulation of gaming activities in the state.

21 Section 13. [NEW MATERIAL] INVESTIGATION OF EXECUTIVE  
22 DIRECTOR CANDIDATES AND EMPLOYEES. --

23 A. A person who is under consideration in the final  
24 selection process for appointment as the executive director shall  
25 file a disclosure statement pursuant to the requirements of this

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1 section, and the board shall not make an appointment of a person  
2 as executive director until a background investigation is  
3 completed by the department of public safety and a report is made  
4 to the board.

5 B. A person who has reached the final selection  
6 process for employment by the executive director shall file a  
7 disclosure statement pursuant to the requirements of this section  
8 if the executive director or the board has directed the person do  
9 so. The person shall not be further considered for employment  
10 until a background investigation is completed by the department  
11 of public safety and a report is made to the executive director.

12 C. Forms for the disclosure statements required by  
13 this section shall be developed by the board in cooperation with  
14 the department of public safety. At least the following  
15 information shall be required of a person submitting a statement:

16 (1) a full set of fingerprints made by a law  
17 enforcement agency on forms supplied by the board;

18 (2) complete information and details with  
19 respect to the person's antecedents, habits, immediate family,  
20 character, criminal record, business activities and business  
21 associates, covering at least a ten-year period immediately  
22 preceding the date of submitting the disclosure statement; and

23 (3) a complete description of any equity  
24 interest held in a business connected with the gaming industry.

25 D. In preparing an investigative report, the

1 department of public safety may request and receive criminal  
2 history information from the federal bureau of investigation or  
3 any other law enforcement agency or organization. The department  
4 of public safety shall maintain confidentiality regarding  
5 information received from a law enforcement agency that may be  
6 imposed by the agency as a condition for providing the  
7 information to the department.

8 E. A person required to file a disclosure statement  
9 shall provide any assistance or information requested by the  
10 department of public safety or the board and shall cooperate in  
11 any inquiry or investigation.

12 F. If information required to be included in a  
13 disclosure statement changes or if information is added after  
14 the statement is filed, the person required to file it shall  
15 provide that information in writing to the person requesting the  
16 investigation. The supplemental information shall be provided  
17 within thirty days after the change or addition.

18 G. The board shall not appoint a person as executive  
19 director, and the executive director shall not employ a person,  
20 if the board or the executive director has reasonable cause to  
21 believe that the person has:

22 (1) knowingly misrepresented or omitted a  
23 material fact required in a disclosure statement;

24 (2) been convicted of a felony, a gaming related  
25 offense or a crime involving fraud, theft or moral turpitude

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1 within ten years immediately preceding the date of submitting a  
2 disclosure statement required pursuant to this section;

3 (3) exhibited a history of willful disregard for  
4 the gaming laws of this or any other state or the United States;  
5 or

6 (4) had a permit or license issued pursuant to  
7 the gaming laws of this or any other state or the United States  
8 permanently suspended or revoked for cause.

9 H. Both the board and the executive director may  
10 exercise absolute discretion in exercising their respective  
11 appointing and employing powers.

12 Section 14. [NEW MATERIAL] CONFLICTS OF INTEREST-- BOARD--  
13 EXECUTIVE DIRECTOR. --

14 A. In addition to all other provisions of New Mexico  
15 law regarding conflicts of interest of state officials and  
16 employees, a member of the board, the executive director, or a  
17 person in the immediate family of or residing in the household of  
18 any of the foregoing persons, shall not:

19 (1) directly or indirectly, as a proprietor or  
20 as a member, stockholder, director or officer of a company, have  
21 an interest in a business engaged in gaming activities in this or  
22 another jurisdiction; or

23 (2) accept or agree to accept any economic  
24 opportunity, gift, loan, gratuity, special discount, favor,  
25 hospitality or service having an aggregate value of one hundred

1 dollars (\$100) or more in any calendar year from a licensee or  
2 applicant.

3 B. If a member of the board, the executive director  
4 or a person in the immediate family of or residing in the  
5 household of a member of the board or the executive director  
6 violates a provision of this section, the member of the board or  
7 executive director shall be removed from office. A board member  
8 shall be removed by the governor, and the executive director  
9 shall be removed from his position by the board.

10 Section 15. [NEW MATERIAL] ACTIVITIES REQUIRING  
11 LICENSING. --

12 A. A person shall not conduct gaming unless he is  
13 licensed as a gaming operator.

14 B. A person shall not sell, supply or distribute any  
15 gaming device or associated equipment for use or play in this  
16 state or for use or play outside of this state from a location  
17 within this state unless he is licensed as a distributor or  
18 manufacturer, but a gaming operator licensee may sell or trade in  
19 a gaming device or associated equipment to a gaming operator  
20 licensee, distributor licensee or manufacturer licensee.

21 C. A person shall not manufacture, fabricate,  
22 assemble, program or make modifications to a gaming device or  
23 associated equipment for use or play in this state or for use or  
24 play outside of this state from any location within this state  
25 unless he is a manufacturer licensee. A manufacturer licensee

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1 may sell, supply or distribute only the gaming devices or  
2 associated equipment that he manufactures, fabricates, assembles,  
3 programs or modifies.

4 D. A gaming operator licensee or a person other than  
5 a manufacturer licensee or distributor licensee shall not possess  
6 or control a place where there is an unlicensed gaming machine.  
7 Any unlicensed gaming machine, except one in the possession of a  
8 licensee while awaiting transfer to a gaming operator licensee  
9 for licensure of the machine, is subject to forfeiture and  
10 confiscation by any law enforcement agency or peace officer.

11 E. A person shall not service or repair a gaming  
12 device or associated equipment unless he is licensed as a  
13 manufacturer, is employed by a manufacturer licensee or is a  
14 technician certified by a manufacturer and employed by a  
15 distributor licensee or a gaming operator licensee.

16 F. A person shall not engage in any activity for  
17 which the board requires a license or permit without obtaining  
18 the license or permit.

19 G. Except as provided in Subsection B of this  
20 section, a person shall not purchase, lease or acquire possession  
21 of a gaming device or associated equipment except from a licensed  
22 distributor or manufacturer.

23 H. A distributor licensee may receive a percentage of  
24 the amount wagered, the net take or other measure related to the  
25 operation of a gaming machine as a payment pursuant to a lease or



1 other arrangement for furnishing a gaming machine, but the board  
2 shall adopt a regulation setting the maximum allowable  
3 percentage.

4 Section 16. [NEW MATERIAL] LICENSURE--APPLICATION. --

5 A. The board shall establish and issue the following  
6 categories of licenses:

- 7 (1) manufacturer;
- 8 (2) distributor;
- 9 (3) gaming operator; and
- 10 (4) gaming machine.

11 B. The board shall issue certifications of findings  
12 of suitability for key executives and other persons for whom  
13 certification is required.

14 C. The board shall issue work permits for gaming  
15 employees.

16 D. A licensee shall not be issued more than one type  
17 of license, but this provision does not prohibit a licensee from  
18 owning, leasing, acquiring or having in his possession licensed  
19 gaming machines if that activity is otherwise allowed by the  
20 provisions of the Gaming Control Act. A licensee shall not own a  
21 majority interest in, manage or otherwise control a holder of  
22 another type of license issued pursuant to the provisions of that  
23 act.

24 E. Applicants shall apply on forms provided by the  
25 board and furnish all information requested by the board.

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1 Submission of an application constitutes consent to a credit  
2 check of the applicant and all persons having a substantial  
3 interest in the applicant and any other background investigations  
4 required pursuant to the Gaming Control Act or deemed necessary  
5 by the board.

6 F. All licenses issued by the board pursuant to the  
7 provisions of this section shall be reviewed for renewal annually  
8 unless revoked, suspended, canceled or terminated.

9 G. A license shall not be transferred or assigned.

10 H. The application for a license shall include:

11 (1) the name of the applicant;

12 (2) the location of the proposed operation;

13 (3) the gaming devices to be operated,  
14 manufactured, distributed or serviced;

15 (4) the names of all persons having a direct or  
16 indirect interest in the business of the applicant and the nature  
17 of such interest; and

18 (5) such other information and details as the  
19 board may require.

20 I. The board shall furnish to the applicant  
21 supplemental forms that the applicant shall complete and file  
22 with the application. Such supplemental forms shall require  
23 complete information and details with respect to the applicant's  
24 antecedents, habits, immediate family, character, criminal  
25 record, business activities, financial affairs and business

1 associates, covering at least a ten-year period immediately  
2 preceding the date of filing of the application.

3 Section 17. [NEW MATERIAL] LICENSE, CERTIFICATION AND  
4 WORK PERMIT FEES. --

5 A. License and other fees shall be established by  
6 board regulation but shall not exceed the following amounts:

7 (1) manufacturer's license, twenty thousand  
8 dollars (\$20,000) for the initial license and five thousand  
9 dollars (\$5,000) for annual renewal;

10 (2) distributor's license, ten thousand dollars  
11 (\$10,000) for the initial license and one thousand dollars  
12 (\$1,000) for annual renewal;

13 (3) gaming operator's license for a racetrack,  
14 fifty thousand dollars (\$50,000) for the initial license and ten  
15 thousand dollars (\$10,000) for annual renewal;

16 (4) gaming operator's license for a nonprofit  
17 organization, one thousand dollars (\$1,000) for the initial  
18 license and two hundred dollars (\$200) for annual renewal;

19 (5) for each separate gaming machine licensed to  
20 a person holding an operator's license, five hundred dollars  
21 (\$500) for the initial license and one hundred dollars (\$100) for  
22 annual renewal; and

23 (6) work permit, one hundred dollars (\$100)  
24 annually.

25 B. The board shall establish the fee for

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1 certifications or other actions by regulation, but no fee  
2 established by the board shall exceed one thousand dollars  
3 (\$1,000), except for fees established pursuant to Paragraph (18)  
4 of Subsection C of Section 10 of the Gaming Control Act.

5 C. All license, certification or work permit fees  
6 shall be paid to the board at the time and in the manner  
7 established by regulations of the board.

8 Section 18. [NEW MATERIAL] ACTION BY BOARD ON  
9 APPLICATIONS. --

10 A. A person that the board determines is qualified to  
11 receive a license pursuant to the provisions of the Gaming  
12 Control Act may be issued a license. The burden of proving  
13 qualifications is on the applicant.

14 B. A license shall not be issued unless the board is  
15 satisfied that the applicant is:

16 (1) a person of good moral character, honesty  
17 and integrity;

18 (2) a person whose prior activities, criminal  
19 record, reputation, habits and associations do not pose a threat  
20 to the public interest or to the effective regulation and control  
21 of gaming or create or enhance the dangers of unsuitable, unfair  
22 or illegal practices, methods and activities in the conduct of  
23 gaming or the carrying on of the business and financial  
24 arrangements incidental thereto; and

25 (3) in all other respects qualified to be

1 licensed consistent with the laws of this state.

2 C. A license shall not be issued unless the applicant  
3 has satisfied the board that:

4 (1) the applicant has adequate business probity,  
5 competence and experience in business and gaming;

6 (2) the proposed financing of the applicant is  
7 adequate for the nature of the proposed license and from a  
8 suitable source; any lender or other source of money or credit  
9 that the board finds does not meet the standards set forth in  
10 Subsection B of this section shall be deemed unsuitable; and

11 (3) the applicant is sufficiently capitalized  
12 under standards set by the board to conduct the business covered  
13 by the license.

14 D. An application to receive a license, certification  
15 or work permit constitutes a request for a determination of the  
16 applicant's general moral character, integrity and ability to  
17 participate or engage in or be associated with gaming. Any  
18 written or oral statement made in the course of an official  
19 proceeding of the board or by a witness testifying under oath  
20 that is relevant to the purpose of the proceeding is absolutely  
21 privileged and does not impose liability for defamation or  
22 constitute a ground for recovery in any civil action.

23 E. The board shall not issue a license or  
24 certification to an applicant who has been denied a license or  
25 certification in this state or another state, who has had a

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1 certification, permit or license issued pursuant to the gaming  
2 laws of a state or the United States permanently suspended or  
3 revoked for cause or who is currently under suspension or subject  
4 to any other limiting action in this state or another state  
5 involving gaming activities or licensure for gaming activities.

6 F. The board shall investigate the qualifications of  
7 each applicant before a license, certification or work permit is  
8 issued by the board and shall continue to observe and monitor the  
9 conduct of all licensees, work permit holders, persons certified  
10 as being suitable and the persons having a material involvement  
11 directly or indirectly with a licensee.

12 G. The board has the authority to deny an application  
13 or limit, condition, restrict, revoke or suspend a license,  
14 certification or permit for any cause.

15 H. After issuance, a license, certification or permit  
16 shall continue in effect upon proper payment of the initial and  
17 renewal fees, subject to the power of the board to revoke,  
18 suspend, condition or limit licenses, certifications and permits.

19 I. The board has full and absolute power and  
20 authority to deny an application for any cause it deems  
21 reasonable. If an application is denied, the board shall prepare  
22 and file its written decision on which its order denying the  
23 application is based.

24 Section 19. [NEW MATERIAL] INVESTIGATION FOR LICENSES,  
25 CERTIFICATIONS AND PERMITS. --The board shall initiate an

1 investigation of the applicant within thirty days after an  
2 application is filed and supplemental information that the board  
3 may require is received.

4 Section 20. [NEW MATERIAL] ELIGIBILITY REQUIREMENTS FOR  
5 COMPANIES. --In order to be eligible to receive a license, a  
6 company shall:

7 A. be incorporated or otherwise organized and in good  
8 standing in this state or incorporated or otherwise organized in  
9 another state, qualified to do business in this state and in good  
10 standing in this state and in the state of incorporation;

11 B. comply with all of the requirements of the laws of  
12 this state pertaining to the company;

13 C. maintain a ledger in the principal office of the  
14 company in this state, which shall:

15 (1) at all times reflect the ownership according  
16 to company records of every class of security issued by the  
17 company; and

18 (2) be available for inspection by the board at  
19 all reasonable times without notice; and

20 D. file notice of all changes of ownership of all  
21 classes of securities issued by the company with the board within  
22 thirty days of the change.

23 Section 21. [NEW MATERIAL] REGISTRATION WITH BOARD BY  
24 COMPANY APPLICANTS--REQUIRED INFORMATION. --A company applicant  
25 shall provide the following information to the board on forms

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1 provided by the board:

2           A. the organization, financial structure and nature  
3 of the business to be operated, including the names and personal  
4 histories of all officers, directors and key executives;

5           B. the rights and privileges acquired by the holders  
6 of different classes of authorized securities;

7           C. the terms and conditions of all outstanding loans,  
8 mortgages, trust deeds, pledges or any other indebtedness or  
9 security interest evidenced by a security instrument pertaining  
10 to the proposed gaming operation or other licensed activity in  
11 this state and the name and address of the person who is  
12 servicing the loan, mortgage, trust deed, pledge or other  
13 indebtedness or security interest;

14           D. remuneration to persons, other than directors,  
15 officers and key executives, exceeding fifty thousand dollars  
16 (\$50,000) per year;

17           E. bonus and profit-sharing arrangements within the  
18 company;

19           F. management and service contracts pertaining to the  
20 proposed gaming activity in this state;

21           G. balance sheets and profit and loss statements for  
22 at least the three preceding fiscal years, or, if the company has  
23 not been in business for a period of three years, balance sheets  
24 and profit and loss statements from the time of its commencement  
25 of business operations and projected for three years from the



1 time of its commencement of business operations. All balance  
 2 sheets and profit and loss statements shall be certified by  
 3 independent certified public accountants; and

4 H. any further financial data that the board deems  
 5 necessary or appropriate.

6 Section 22. [NEW MATERIAL] INDIVIDUAL CERTIFICATION OF  
 7 OFFICERS, DIRECTORS AND OTHER PERSONS. -- An officer, director,  
 8 equity security holder of five percent or more, partner, general  
 9 partner, limited partner, trustee or beneficiary of the company  
 10 that holds or has applied for a license shall be certified  
 11 individually, according to the provisions of the Gaming Control  
 12 Act, and if in the judgment of the board the public interest is  
 13 served by requiring any or all of the company's key executives to  
 14 be certified, the company shall require those persons to apply  
 15 for certification. A person who is required to be certified  
 16 pursuant to this section shall apply for certification within  
 17 thirty days after becoming an officer, director, equity security  
 18 holder of five percent or more, partner, general partner, limited  
 19 partner of five percent or more, trustee, beneficiary or key  
 20 executive. A person who is required to be certified pursuant to  
 21 a decision of the board shall apply for certification within  
 22 thirty days after the board so requests.

23 Section 23. [NEW MATERIAL] REQUIREMENTS IF COMPANY IS OR  
 24 BECOMES A SUBSIDIARY-- INVESTIGATIONS-- RESTRICTIONS ON UNSUITABLE  
 25 PERSONS-- OTHER REQUIREMENTS. --

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1           A. If the company applicant or licensee is or becomes  
2 a subsidiary, each nonpublicly traded holding company and  
3 intermediary company with respect to the subsidiary company  
4 shall:

5                   (1) qualify to do business in New Mexico; and

6                   (2) register with the board and furnish to the  
7 board the following information:

8                           (a) a complete list of all beneficial owners  
9 of five percent or more of its equity securities, which shall be  
10 updated within thirty days after any change;

11                           (b) the names of all company officers and  
12 directors within thirty days of their appointment or election;

13                           (c) its organization, financial structure  
14 and nature of the business it operates;

15                           (d) the terms, position, rights and  
16 privileges of the different classes of its outstanding  
17 securities;

18                           (e) the terms on which its securities are to  
19 be, and during the preceding three years have been, offered;

20                           (f) the holder of and the terms and  
21 conditions of all outstanding loans, mortgages, trust deeds,  
22 pledges or any other indebtedness or security interest pertaining  
23 to the applicant or licensee;

24                           (g) the extent of the securities holdings or  
25 other interest in the holding company or intermediary company of

1 all officers, directors, key executives, underwriters, partners,  
 2 principals, trustees or any direct or beneficial owners, and the  
 3 amount of any remuneration paid them as compensation for their  
 4 services in the form of salary, wages, fees or by contract  
 5 pertaining to the licensee;

6 (h) remuneration to persons other than  
 7 directors, officers and key executives exceeding fifty thousand  
 8 dollars (\$50,000) per year;

9 (i) bonus and profit-sharing arrangements  
 10 within the holding company or intermediary company;

11 (j) management and service contracts  
 12 pertaining to the licensee or applicant;

13 (k) options existing or to be created in  
 14 respect to the company's securities or other interests;

15 (l) balance sheets and profit and loss  
 16 statements, certified by independent certified public  
 17 accountants, for not more than the three preceding fiscal years,  
 18 or, if the holding company or intermediary company has not been  
 19 in existence more than three years, balance sheets and profit and  
 20 loss statements from the time of its establishment, together with  
 21 projections for three years from the time of its establishment;

22 (m) any further financial statements  
 23 necessary or appropriate to assist the board in making its  
 24 determinations; and

25 (n) a current annual profit and loss

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1 statement, a current annual balance sheet and a copy of the  
2 company's most recent federal income tax return within thirty  
3 days after the return is filed.

4 B. All holders of five percent or more of the equity  
5 security of a holding company or intermediary company shall apply  
6 for a finding of suitability.

7 C. The board may in its discretion perform the  
8 investigations concerning the officers, directors, key  
9 executives, underwriters, security holders, partners, principals,  
10 trustees or direct or beneficial owners of any interest in any  
11 holding company or intermediary company as it deems necessary,  
12 either at the time of initial registration or at any time  
13 thereafter.

14 D. If at any time the board finds that any person  
15 owning, controlling or holding with power to vote all or any part  
16 of any class of securities of, or any interest in, any holding  
17 company or intermediary company is unsuitable to be connected  
18 with a licensee, it shall so notify both the unsuitable person  
19 and the holding company or intermediary company. The unsuitable  
20 person shall immediately offer the securities or other interest  
21 to the issuing company for purchase. The company shall purchase  
22 the securities or interest offered upon the terms and within the  
23 time period ordered by the board.

24 E. Beginning on the date when the board serves notice  
25 that a person has been found to be unsuitable pursuant to

1 Subsection D of this section, it is unlawful for the unsuitable  
2 person to:

3 (1) receive any dividend or interest upon any  
4 securities held in the holding company or intermediary company,  
5 or any dividend, payment or distribution of any kind from the  
6 holding company or intermediary company;

7 (2) exercise, directly or indirectly or through  
8 a proxy, trustee or nominee, any voting right conferred by the  
9 securities or interest; or

10 (3) receive remuneration in any form from the  
11 licensee, or from any holding company or intermediary company  
12 with respect to that licensee, for services rendered or  
13 otherwise.

14 F. A holding company or intermediary company subject  
15 to the provisions of Subsection A of this section shall not make  
16 any public offering of any of its equity securities unless such  
17 public offering has been approved by the board.

18 G. This section does not apply to a holding company  
19 or intermediary company that is a publicly traded corporation,  
20 the stock of which is traded on recognized stock exchanges, which  
21 shall instead comply with the provisions of Section 24 of the  
22 Gaming Control Act.

23 Section 24. [NEW MATERIAL] REGISTRATION AND CERTIFICATION  
24 OF PUBLICLY TRADED CORPORATIONS. --

25 A. If a company applicant or company licensee is or

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1 becomes a publicly traded corporation, it shall register with the  
2 board and provide the following information:

3 (1) as of the date the company became a publicly  
4 traded corporation, and on any later date when the information  
5 changes, the names of all stockholders of record who hold five  
6 percent or more of the outstanding shares of any class of equity  
7 securities issued by the publicly traded corporation;

8 (2) the names of all officers within thirty days  
9 of their respective appointments;

10 (3) the names of all directors within thirty  
11 days of their respective elections or appointments;

12 (4) the organization, financial structure and  
13 nature of the businesses the publicly traded corporation  
14 operates;

15 (5) the terms, position, rights and privileges  
16 of the different classes of securities outstanding as of the date  
17 the company became a publicly traded corporation;

18 (6) the terms on which the company's securities  
19 were issued during the three years preceding the date on which  
20 the company became a publicly traded corporation and the terms on  
21 which the publicly traded corporation's securities are to be  
22 offered to the public as of the date the company became a  
23 publicly traded corporation;

24 (7) the terms and conditions of all outstanding  
25 indebtedness and evidence of security pertaining directly or

1 indirectly to the publicly traded corporation;

2 (8) remuneration exceeding fifty thousand  
3 dollars (\$50,000) per year paid to persons other than directors,  
4 officers and key executives who are actively and directly engaged  
5 in the administration or supervision of the gaming activities of  
6 the publicly traded corporation;

7 (9) bonus and profit-sharing arrangements within  
8 the publicly traded corporation directly or indirectly relating  
9 to its gaming activities;

10 (10) management and service contracts of the  
11 corporation pertaining to its gaming activities;

12 (11) options existing or to be created pursuant  
13 to its equity securities;

14 (12) balance sheets and profit and loss  
15 statements, certified by independent certified public  
16 accountants, for not less than the three fiscal years preceding  
17 the date the company became a publicly traded corporation;

18 (13) any further financial statements deemed  
19 necessary or appropriate by the board; and

20 (14) a description of the publicly traded  
21 corporation's affiliated companies and intermediary companies and  
22 gaming licenses, permits and approvals held by those entities.

23 B. The board shall consider the following criteria in  
24 determining whether to certify a publicly traded corporation:

25 (1) the business history of the publicly traded

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1 corporation, including its record of financial stability,  
2 integrity and success of its gaming operations in other  
3 jurisdictions;

4 (2) the current business activities and  
5 interests of the applicant, as well as those of its officers,  
6 promoters, lenders and other sources of financing, or any other  
7 persons associated with it;

8 (3) the current financial structure of the  
9 publicly traded corporation as well as changes that could  
10 reasonably be expected to occur to its financial structure as a  
11 consequence of its proposed action;

12 (4) the present and proposed compensation  
13 arrangements between the publicly traded corporation and its  
14 directors, officers, key executives, securities holders, lenders  
15 or other sources of financing;

16 (5) the equity investment, commitment or  
17 contribution of present or prospective directors, key executives,  
18 investors, lenders or other sources of financing; and

19 (6) the dealings and arrangements, prospective  
20 or otherwise, between the publicly traded corporation and its  
21 investment bankers, promoters, finders or lenders and other  
22 sources of financing.

23 C. The board may issue a certification upon receipt  
24 of a proper application and consideration of the criteria set  
25 forth in Subsection B of this section if it finds that the



1 certification would not be contrary to the public interest or the  
2 policy set forth in the Gaming Control Act.

3 Section 25. [NEW MATERIAL] FINDING OF SUITABILITY  
4 REQUIRED FOR DIRECTORS, OFFICERS AND KEY EXECUTIVES-- REMOVAL FROM  
5 POSITION IF FOUND UNSUITABLE-- SUSPENSION OF SUITABILITY BY  
6 BOARD. --

7 A. Each officer, director and key executive of a  
8 holding company, intermediary company or publicly traded  
9 corporation that the board determines is or is to become actively  
10 and directly engaged in the administration or supervision of, or  
11 any other significant involvement with, the activities of the  
12 subsidiary licensee or applicant shall apply for a finding of  
13 suitability.

14 B. If any officer, director or key executive of a  
15 holding company, intermediary company or publicly traded  
16 corporation required to be found suitable pursuant to Subsection  
17 A of this section fails to apply for a finding of suitability  
18 within thirty days after being requested to do so by the board,  
19 or is not found suitable by the board, or if his finding of  
20 suitability is revoked after appropriate findings by the board,  
21 the holding company, intermediary company or publicly traded  
22 corporation shall immediately remove that officer, director or  
23 key executive from any office or position in which the person is  
24 engaged in the administration or supervision of, or any other  
25 involvement with, the activities of the certified subsidiary

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1 until the person is thereafter found to be suitable. If the  
2 board suspends the finding of suitability of any officer,  
3 director or key executive, the holding company, intermediary  
4 company or publicly traded corporation shall immediately and for  
5 the duration of the suspension suspend that officer, director or  
6 key executive from performance of any duties in which he is  
7 actively and directly engaged in the administration or  
8 supervision of, or any other involvement with, the activities of  
9 the subsidiary licensee.

10 Section 26. [NEW MATERIAL] SUITABILITY OF INDIVIDUALS  
11 ACQUIRING BENEFICIAL OWNERSHIP OF VOTING SECURITY IN PUBLICLY  
12 TRADED CORPORATION--REPORT OF ACQUISITION--APPLICATION--  
13 PROHIBITION.--

14 A. Each person who, individually or in association  
15 with others, acquires, directly or indirectly, beneficial  
16 ownership of five percent or more of any voting securities in a  
17 publicly traded corporation registered with the board may be  
18 required to be found suitable if the board has reason to believe  
19 that the acquisition of the ownership would otherwise be  
20 inconsistent with the declared policy of this state.

21 B. Each person who, individually or in association  
22 with others, acquires, directly or indirectly, beneficial  
23 ownership of five percent or more of any class of voting  
24 securities of a publicly traded corporation certified by the  
25 board shall notify the board within ten days after acquiring such

1 interest.

2 C. Each person who, individually or in association  
3 with others, acquires, directly or indirectly, the beneficial  
4 ownership of more than ten percent of any class of voting  
5 securities of a publicly traded corporation certified by the  
6 board shall apply to the board for a finding of suitability  
7 within thirty days after acquiring such interest.

8 D. Institutional investors that have been exempted  
9 from or have received a waiver of suitability requirements  
10 pursuant to regulations adopted by the board are not required to  
11 comply with this section.

12 E. Any person required by the board or by the  
13 provisions of this section to be found suitable shall apply for a  
14 finding of suitability within thirty days after the board  
15 requests that he do so.

16 F. Any person required by the board or the provisions  
17 of this section to be found suitable who subsequently is found  
18 unsuitable by the board shall not hold directly or indirectly the  
19 beneficial ownership of any security of a publicly traded  
20 corporation that is registered with the board beyond that period  
21 of time prescribed by the board.

22 G. The board may, but is not required to, deem a  
23 person qualified to hold a license or be found suitable as  
24 required by this section if the person currently holds a valid  
25 license issued by, or has been found suitable by, gaming

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1 regulatory authorities in another jurisdiction, provided that the  
2 board finds that the other jurisdiction has conducted a thorough  
3 investigation of the applicant and has criteria substantially  
4 similar to those of the board to determine when a person is to be  
5 found suitable or to obtain a license.

6 Section 27. [NEW MATERIAL] REPORT OF PROPOSED ISSUANCE OR  
7 TRANSFER OF SECURITIES--REPORT OF CHANGE IN CORPORATE OFFICERS  
8 AND DIRECTORS--APPROVAL OF BOARD.--

9 A. Before a company licensee, other than a publicly  
10 traded corporation, may issue or transfer five percent or more of  
11 its securities to any person, it shall file a report of its  
12 proposed action with the board, which report shall request the  
13 approval of the board. The board shall have ninety days within  
14 which to approve or deny the request. If the board fails to act  
15 in ninety days, the request is deemed approved. If the board  
16 denies the request, the company shall not issue or transfer five  
17 percent or more of its securities to the person about whom the  
18 request was made.

19 B. A company licensee shall file a report of each  
20 change of the corporate officers and directors with the board  
21 within thirty days of the change. The board shall have ninety  
22 days from the date the report is filed within which to approve or  
23 disapprove such change. During the ninety-day period and  
24 thereafter, if the board does not disapprove the change, an  
25 officer or director is be entitled to exercise all powers of the

1 office to which he was elected or appointed.

2 C. A company licensee shall report to the board in  
3 writing any change in company personnel who have been designated  
4 as key executives. The report shall be made no later than thirty  
5 days after the change.

6 D. The board may require that a company licensee  
7 furnish the board with a copy of its federal income tax return  
8 within thirty days after the return is filed.

9 Section 28. [NEW MATERIAL] GAMING OPERATOR LICENSEES--  
10 GENERAL PROVISIONS-- BUSINESS PLAN-- PLAYER AGE LIMIT--  
11 RESTRICTIONS. --

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

18 B. An applicant for licensure as a gaming operator  
19 shall submit with the application a proposed business plan. The  
20 plan shall include at least:

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

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- 1 (4) a financial control plan;
- 2 (5) a security plan;
- 3 (6) a staffing plan for gaming machine
- 4 operations; and
- 5 (7) details of any proposed progressive systems.

6 C. A gaming operator licensee shall be granted a  
7 license to operate a specific number of machines at a gaming  
8 establishment identified in the license application and shall be  
9 granted a license for each gaming machine.

10 D. A gaming operator licensee who desires to change  
11 the number of machines in operation at a gaming establishment  
12 shall apply to the board for an amendment to his license  
13 authorizing a change in the number of machines.

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

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

25 G. A gaming operator licensee shall not have

1 automated teller machines in the area restricted pursuant to  
2 Subsection F of this section.

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

7 I. Only a racetrack licensed by the state racing  
8 commission or a nonprofit organization may apply for or be issued  
9 a gaming operator's license. No other persons are qualified to  
10 apply for or be issued a gaming operator's license pursuant to  
11 the Gaming Control Act.

12 Section 29. [NEW MATERIAL] GAMING OPERATOR LICENSEES--  
13 SPECIAL CONDITIONS FOR RACETRACKS--NUMBER OF GAMING MACHINES--  
14 DAYS AND HOURS OF OPERATIONS. --

15 A. A racetrack licensed by the state racing  
16 commission pursuant to the Horse Racing Act to conduct live horse  
17 races or simulcast races may be issued a gaming operator's  
18 license to operate gaming machines on its premises where live  
19 racing is conducted.

20 B. A racetrack's gaming operator's license shall  
21 automatically become void if:

22 (1) the racetrack no longer holds an active  
23 license to conduct pari-mutuel wagering; or

24 (2) the racetrack fails to maintain a minimum of  
25 three live race days a week with at least nine live races on each

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Underscored material = new  
[bracketed material] = delete

1 race day during its licensed race meet in the 1997 calendar year  
2 and in the 1998 and subsequent calendar years, four live race  
3 days a week with at least nine live races on each race day during  
4 its licensed race meet.

5 C. A gaming operator licensee that is a racetrack may  
6 have not more than three hundred licensed gaming machines, but  
7 the number of gaming machines to be located on the licensee's  
8 premises shall be specified in the gaming operator's license.

9 D. Gaming machines on a racetrack gaming operator  
10 licensee's premises may be played only on days when the racetrack  
11 is either conducting live horse races or simulcasting horse race  
12 meets and during times established by regulation of the board,  
13 but the regulations shall provide for a maximum of twelve hours a  
14 day.

15 E. Alcoholic beverages shall not be sold, served,  
16 delivered or consumed in the area restricted pursuant to  
17 Subsection F of Section 28 of the Gaming Control Act.

18 Section 30. [NEW MATERIAL] GAMING OPERATOR LICENSEES--  
19 SPECIAL CONDITIONS FOR NONPROFIT ORGANIZATIONS-- NUMBER OF GAMING  
20 MACHINES-- DAYS AND HOURS OF OPERATIONS. --

21 A. A nonprofit organization may be issued a gaming  
22 operator's license to operate licensed gaming machines on its  
23 premises to be played only by active and auxiliary members.

24 B. No more than fifteen gaming machines may be  
25 offered for play on the premises of a nonprofit organization



1 gaming operator licensee.

2 C. No gaming machine on the premises of a nonprofit  
3 organization gaming operator licensee may award a prize that  
4 exceeds four thousand dollars (\$4,000).

5 D. Gaming machines may be played on the premises of a  
6 nonprofit organization gaming operator licensee from 12:00 noon  
7 until 12:00 midnight every day.

8 E. Alcoholic beverages shall not be sold, served,  
9 delivered or consumed in the area where gaming machines are  
10 installed and operated on the premises of a nonprofit  
11 organization gaming operator licensee.

12 Section 31. [NEW MATERIAL] LICENSING OF MANUFACTURERS OF  
13 GAMING DEVICES--EXCEPTION--DISPOSITION OF GAMING DEVICES.--

14 A. It is unlawful for any person to operate, carry  
15 on, conduct or maintain any form of manufacturing of any gaming  
16 device or associated equipment for use or play in New Mexico or  
17 any form of manufacturing of any gaming device or associated  
18 equipment in New Mexico for use or play outside of New Mexico  
19 without first obtaining and maintaining a manufacturer's license.

20 B. If the board revokes a manufacturer's license:

21 (1) no new gaming device manufactured by the  
22 manufacturer may be approved for use in this state;

23 (2) any previously approved gaming device  
24 manufactured by the manufacturer is subject to revocation of  
25 approval if the reasons for the revocation of the license also

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[bracketed material] = delete

1 apply to that gaming device;

2 (3) no new gaming device or associated equipment  
3 made by the manufacturer may be distributed, sold, transferred or  
4 offered for use or play in New Mexico; and

5 (4) any association or agreement between the  
6 manufacturer and a distributor licensee or gaming operator  
7 licensee in New Mexico shall be terminated.

8 C. An agreement between a manufacturer licensee and a  
9 distributor licensee or a gaming operator licensee in New Mexico  
10 shall be deemed to include a provision for its termination  
11 without liability for the termination on the part of either party  
12 upon a finding by the board that either party is unsuitable.  
13 Failure to include that condition in the agreement is not a  
14 defense in any action brought pursuant to this section to  
15 terminate the agreement.

16 D. A gaming device shall not be used and offered for  
17 play by a gaming operator licensee unless it is identical in all  
18 material aspects to a model that has been specifically tested and  
19 approved by:

- 20 (1) the board;  
21 (2) a laboratory selected by the board; or  
22 (3) gaming officials in Nevada or New Jersey  
23 after January 1, 1990.

24 E. The board may inspect every gaming device that is  
25 manufactured:

- 1 (1) for use in New Mexico; or
- 2 (2) in New Mexico for use outside of New Mexico.

3 F. The board may inspect every gaming device that is  
4 offered for play within New Mexico by a gaming operator licensee.

5 G. The board may inspect all associated equipment  
6 that is manufactured and sold for use in New Mexico or  
7 manufactured in New Mexico for use outside of New Mexico.

8 H. In addition to all other fees and charges imposed  
9 pursuant to the Gaming Control Act, the board may determine,  
10 charge and collect from each manufacturer an inspection fee,  
11 which shall not exceed the actual cost of inspection and  
12 investigation.

13 I. The board may prohibit the use of a gaming device  
14 by a gaming operator licensee if it finds that the gaming device  
15 does not meet the requirements of this section.

16 Section 32. [NEW MATERIAL] LICENSING OF DISTRIBUTORS OF  
17 GAMING DEVICES. --

18 A. It is unlawful for any person to operate, carry  
19 on, conduct or maintain any form of distribution of any gaming  
20 device for use or play in New Mexico without first obtaining and  
21 maintaining a distributor's or manufacturer's license.

22 B. If the board revokes a distributor's license:

23 (1) no new gaming device distributed by the  
24 person may be approved;

25 (2) any previously approved gaming device

1 distributed by the distributor is subject to revocation of  
2 approval if the reasons for the revocation of the license also  
3 apply to that gaming device;

4 (3) no new gaming device or associated equipment  
5 distributed by the distributor may be distributed, sold,  
6 transferred or offered for use or play in New Mexico; and

7 (4) any association or agreement between the  
8 distributor and a gaming operator licensee shall be terminated.

9 An agreement between a distributor licensee and a gaming operator  
10 licensee shall be deemed to include a provision for its  
11 termination without liability on the part of either party upon a  
12 finding by the board that the other party is unsuitable. Failure  
13 to include that condition in the agreement is not a defense in  
14 any action brought pursuant to this section to terminate the  
15 agreement.

16 C. The board may inspect every gaming device that is  
17 distributed for use in New Mexico.

18 D. In addition to all other fees and charges imposed  
19 by the Gaming Control Act, the board may determine, charge and  
20 collect from each distributor an inspection fee, which shall not  
21 exceed the actual cost of inspection and investigation.

22 Section 33. [NEW MATERIAL] SUITABILITY OF CERTAIN PERSONS  
23 FURNISHING SERVICES OR PROPERTY OR DOING BUSINESS WITH GAMING  
24 OPERATORS-- TERMINATION OF ASSOCIATION. --

25 A. The board may determine the suitability of any

1 person who furnishes services or property to a gaming operator  
2 licensee under any arrangement pursuant to which the person  
3 receives compensation based on earnings, profits or receipts from  
4 gaming. The board may require the person to comply with the  
5 requirements of the Gaming Control Act and with the regulations  
6 of the board. If the board determines that the person is  
7 unsuitable, it may require the arrangement to be terminated.

8 B. The board may require a person to apply for a  
9 finding of suitability to be associated with a gaming operator  
10 licensee if the person:

11 (1) does business on the premises of a gaming  
12 establishment; or

13 (2) provides any goods or services to a gaming  
14 operator licensee for compensation that the board finds to be  
15 grossly disproportionate to the value of the goods or services.

16 C. If the board determines that a person is  
17 unsuitable to be associated with a gaming operator licensee, the  
18 association shall be terminated. Any agreement that entitles a  
19 business other than gaming to be conducted on the premises of a  
20 gaming establishment, or entitles a person other than a licensee  
21 to conduct business with the gaming operator licensee, is subject  
22 to termination upon a finding of unsuitability of the person  
23 seeking association with a gaming operator licensee. Every  
24 agreement shall be deemed to include a provision for its  
25 termination without liability on the part of the gaming operator

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1 licensee upon a finding by the board of the unsuitability of the  
2 person seeking or having an association with the gaming operator  
3 licensee. Failure to include that condition in the agreement is  
4 not a defense in any action brought pursuant to this section to  
5 terminate the agreement. If the application is not presented to  
6 the board within thirty days following demand or the unsuitable  
7 association is not terminated, the board may pursue any remedy or  
8 combination of remedies provided in the Gaming Control Act.

9 Section 34. [NEW MATERIAL] REASONS FOR INVESTIGATIONS BY  
10 BOARD-- COMPLAINT BY BOARD-- BOARD TO APPOINT HEARING EXAMINER--  
11 REVIEW BY BOARD-- ORDER OF BOARD. --

12 A. The board shall make appropriate investigations  
13 to:

14 (1) determine whether there has been any  
15 violation of the Gaming Control Act or of any regulations adopted  
16 pursuant to that act;

17 (2) determine any facts, conditions, practices  
18 or matters that it deems necessary or proper to aid in the  
19 enforcement of the Gaming Control Act or regulations adopted  
20 pursuant to that act;

21 (3) aid in adopting regulations;

22 (4) secure information as a basis for  
23 recommending legislation relating to the Gaming Control Act; or

24 (5) determine whether a licensee is able to meet  
25 its financial obligations, including all financial obligations

1 imposed by the Gaming Control Act, as they become due.

2           B. If after an investigation the board is satisfied  
3 that a license, registration, finding of suitability or prior  
4 approval by the board of any transaction for which approval was  
5 required by the provisions of the Gaming Control Act should be  
6 limited, conditioned, suspended or revoked, or that a fine should  
7 be levied, the board shall initiate a hearing by filing a  
8 complaint and transmitting a copy of it to the licensee, together  
9 with a summary of evidence in its possession bearing on the  
10 matter and the transcript of testimony at any investigative  
11 hearing conducted by or on behalf of the board. The complaint  
12 shall be a written statement of charges that sets forth in  
13 ordinary and concise language the acts or omissions with which  
14 the respondent is charged. It shall specify the statutes or  
15 regulations that the respondent is alleged to have violated but  
16 shall not consist merely of charges raised in the language of the  
17 statutes or regulations. The summary of the evidence shall be  
18 confidential and made available only to the respondent until such  
19 time as it is offered into evidence at any public hearing on the  
20 matter.

21           C. The respondent shall file an answer within thirty  
22 days after service of the complaint.

23           D. Upon filing the complaint the board shall appoint  
24 a hearing examiner to conduct further proceedings.

25           E. The hearing examiner shall conduct proceedings in

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1 accordance with the Gaming Control Act and the regulations  
2 adopted by the board. At the conclusion of the proceedings, the  
3 hearing examiner may recommend that the board take any  
4 appropriate action, including revocation, suspension, limitation  
5 or conditioning of a license or imposition of a fine not to  
6 exceed fifty thousand dollars (\$50,000) for each violation or any  
7 combination or all of the foregoing actions.

8 F. The hearing examiner shall prepare a written  
9 decision containing his recommendation to the board and shall  
10 serve it on all parties. Any respondent who disagrees with the  
11 hearing examiner's recommendation may request the board, within  
12 ten days of service of the recommendation, to review the  
13 recommendation.

14 G. Upon proper request, the board shall review the  
15 recommendation. The board may remand the case to the hearing  
16 examiner for the presentation of additional evidence upon a  
17 showing of good cause why such evidence could not have been  
18 presented at the previous hearing.

19 H. The board shall by a majority vote accept, reject  
20 or modify the recommendation.

21 I. If the board limits, conditions, suspends or  
22 revokes any license or imposes a fine or limits, conditions,  
23 suspends or revokes any registration, finding of suitability or  
24 prior approval, it shall issue a written order specifying its  
25 action.



1           J. The board's order is effective unless and until  
2 reversed upon judicial review, except that the board may stay its  
3 order pending a rehearing or judicial review upon such terms and  
4 conditions as it deems proper.

5           Section 35. [NEW MATERIAL] EMERGENCY ORDERS OF BOARD. --

6 The board may issue an emergency order for suspension, limitation  
7 or conditioning of a license, registration, finding of  
8 suitability or work permit or may issue an emergency order  
9 requiring a gaming operator licensee to exclude an individual  
10 licensee from the premises of the gaming operator licensee's  
11 gaming establishment or not to pay an individual licensee any  
12 remuneration for services or any profits, income or accruals on  
13 his investment in the licensed gaming establishment in the  
14 following manner:

15           A. an emergency order may be issued only when the  
16 board believes that:

17                   (1) a licensee has willfully failed to report,  
18 pay or truthfully account for and pay over any fee imposed by the  
19 provisions of the Gaming Control Act or willfully attempted in  
20 any manner to evade or defeat any fee or payment thereof;

21                   (2) a licensee or gaming employee has cheated at  
22 a game; or

23                   (3) the emergency order is necessary for the  
24 immediate preservation of the public peace, health, safety,  
25 morals, good order or general welfare;

1           B. the emergency order shall set forth the grounds  
2 upon which it is issued, including a statement of facts  
3 constituting the alleged emergency necessitating such action;

4           C. the emergency order is effective immediately upon  
5 issuance and service upon the licensee or resident agent of the  
6 licensee or gaming employee or, in cases involving registration  
7 or findings of suitability, upon issuance and service upon the  
8 person or entity involved or resident agent of the entity  
9 involved; the emergency order may suspend, limit, condition or  
10 take other action in relation to the license of one or more  
11 persons in an operation without affecting other individual  
12 licenses or the gaming operator licensee. The emergency order  
13 remains effective until further order of the board or final  
14 disposition of the case; and

15           D. within five days after issuance of an emergency  
16 order, the board shall cause a complaint to be filed and served  
17 upon the person or entity involved; thereafter, the person or  
18 entity against whom the emergency order has been issued and  
19 served is entitled to a hearing before the board and to judicial  
20 review of the decision and order of the board in accordance with  
21 the provisions of the board's regulations.

22           Section 36. [NEW MATERIAL] EXCLUSION OR EJECTION OF  
23 CERTAIN PERSONS FROM GAMING ESTABLISHMENTS-- PERSONS INCLUDED. --

24           A. The board shall by regulation provide for the  
25 establishment of a list of persons who are to be excluded or

1 ejected from a gaming establishment. The list may include any  
2 person whose presence in the gaming establishment is determined  
3 by the board to pose a threat to the public interest or licensed  
4 gaming activities.

5 B. In making the determination in Subsection A of  
6 this section, the board may consider a:

7 (1) prior conviction for a crime that is a  
8 felony under state or federal law, a crime involving moral  
9 turpitude or a violation of the gaming laws of any jurisdiction;

10 (2) violation or conspiracy to violate the  
11 provisions of the Gaming Control Act relating to:

12 (a) the failure to disclose an interest in a  
13 gaming activity for which the person must obtain a license; or

14 (b) willful evasion of fees or taxes;

15 (3) notorious or unsavory reputation that would  
16 adversely affect public confidence and trust that the gaming  
17 industry is free from criminal or corruptive influences; or

18 (4) written order of any other governmental  
19 agency in this state or any other state that authorizes the  
20 exclusion or ejection of the person from an establishment at  
21 which gaming is conducted.

22 C. A gaming operator licensee has the right, without  
23 a list established by the board, to exclude or eject a person  
24 from its gaming establishment who poses a threat to the public  
25 interest or for any business reason.

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1           D. Race, color, creed, national origin or ancestry,  
2 age, disability or sex shall not be grounds for placing the name  
3 of a person on the list or for exclusion or ejection under  
4 Subsection A or C of this section.

5           Section 37. [NEW MATERIAL] INTERNAL CONTROL SYSTEMS. --

6           A. Each gaming operator licensee shall adopt internal  
7 control systems that shall include provisions for:

8                   (1) safeguarding its assets and revenues,  
9 especially the recording of cash and evidences of indebtedness;

10                   (2) making and maintaining reliable records,  
11 accounts and reports of transactions, operations and events,  
12 including reports to the board; and

13                   (3) a system by which the amount wagered on each  
14 gaming machine and the amount paid out by each gaming machine is  
15 recorded on a daily basis, which results may be obtained by the  
16 board by appropriate means as described in regulations adopted by  
17 the board; all manufacturers are required to have such a system  
18 available for gaming operators for the gaming machines that it  
19 supplies for use in New Mexico, and all distributors shall make  
20 such a system available to gaming operators.

21           B. The internal control system shall be designed to  
22 reasonably ensure that:

- 23                   (1) assets are safeguarded;  
24                   (2) financial records are accurate and reliable;  
25                   (3) transactions are performed only in

1 accordance with management's general or specific authorization;

2 (4) transactions are recorded adequately to  
3 permit proper reporting of gaming revenue and of fees and taxes  
4 and to maintain accountability of assets;

5 (5) access to assets is allowed only in  
6 accordance with management's specific authorization;

7 (6) recorded accountability for assets is  
8 compared with actual assets at reasonable intervals and  
9 appropriate action is taken with respect to any discrepancies;  
10 and

11 (7) functions, duties and responsibilities are  
12 appropriately segregated and performed in accordance with sound  
13 accounting and management practices by competent, qualified  
14 personnel.

15 C. A gaming operator licensee and an applicant for a  
16 gaming operator's license shall describe, in the manner the board  
17 may approve or require, its administrative and accounting  
18 procedures in detail in a written system of internal control. A  
19 gaming operator licensee and an applicant for a gaming operator's  
20 license shall submit a copy of its written system to the board.

21 Each written system shall include:

22 (1) an organizational chart depicting  
23 appropriate segregation of functions and responsibilities;

24 (2) a description of the duties and  
25 responsibilities of each position shown on the organizational

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1 chart;

2 (3) a detailed, narrative description of the  
3 administrative and accounting procedures designed to satisfy the  
4 requirements of Subsection A of this section;

5 (4) a written statement signed by the licensee's  
6 chief financial officer and either the licensee's chief executive  
7 officer or a licensed owner attesting that the system satisfies  
8 the requirements of this section;

9 (5) if the written system is submitted by an  
10 applicant, a letter from an independent certified public  
11 accountant stating that the applicant's written system has been  
12 reviewed by the accountant and complies with the requirements of  
13 this section; and

14 (6) other items as the board may require.

15 D. The board shall adopt and publish minimum  
16 standards for internal control procedures.

17 Section 38. [NEW MATERIAL] GAMING EMPLOYEES--ISSUANCE OF  
18 WORK PERMITS--REVOCATION OF WORK PERMITS. --

19 A. A person shall not be employed as a gaming  
20 employee unless the person holds a valid work permit issued by  
21 the board.

22 B. A work permit shall be issued and may be revoked  
23 by the board as provided in regulations adopted by the board.

24 C. Any person whose work permit has been denied or  
25 revoked may seek judicial review.

1           Section 39. [NEW MATERIAL] AGE REQUIREMENT FOR PATRONS  
2 AND GAMING EMPLOYEES. --A person under the age of twenty-one years  
3 shall not:

4           A. play, be allowed to play, place wagers on or  
5 collect winnings from, whether personally or through an agent,  
6 any game authorized or offered to play pursuant to the Gaming  
7 Control Act; or

8           B. be employed as a gaming employee.

9           Section 40. [NEW MATERIAL] CALCULATION OF NET TAKE--  
10 CERTAIN EXPENSES NOT DEDUCTIBLE. --In calculating net take from  
11 gaming machines, the actual cost to the licensee of any personal  
12 property distributed to a patron as the result of a legitimate  
13 wager may be deducted as a loss, except for travel expenses,  
14 food, refreshments, lodging or services. For the purposes of  
15 this section, "as the result of a legitimate wager" means that  
16 the patron must make a wager prior to receiving the personal  
17 property, regardless of whether the receipt of the personal  
18 property is dependent on the outcome of the wager.

19           Section 41. [NEW MATERIAL] LIMITATIONS ON TAXES AND  
20 LICENSE FEES. --A political subdivision of the state shall not  
21 impose a license fee or tax on any licensee licensed pursuant to  
22 the Gaming Control Act except for the imposition of property  
23 taxes and the distribution provided for and determined pursuant  
24 to Subsection C of Section 60-1-15 and Section 10-1-15.2 NMSA  
25 1978.

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1           Section 42. ~~[NEW MATERIAL]~~ USE OF CHIPS, TOKENS OR LEGAL  
2 TENDER REQUIRED FOR ALL GAMING. --All gaming shall be conducted  
3 with chips, tokens or other similar objects approved by the board  
4 or with the legal currency of the United States.

5           Section 43. ~~[NEW MATERIAL]~~ COMMUNICATION OR DOCUMENT OF  
6 APPLICANT OR LICENSEE ABSOLUTELY CONFIDENTIAL-- CONFIDENTIALITY  
7 NOT WAIVED-- DISCLOSURE OF CONFIDENTIAL INFORMATION PROHIBITED. --

8           A. Any communication or document of an applicant or  
9 licensee is confidential and does not impose liability for  
10 defamation or constitute a ground for recovery in any civil  
11 action if it is required by:

12                   (1) law or the regulations of the board; or

13                   (2) a subpoena issued by the board to be made or  
14 transmitted to the board.

15           B. The confidentiality created pursuant to Subsection  
16 A of this section is not waived or lost because the document or  
17 communication is disclosed to the board.

18           C. Notwithstanding the powers granted to the board by  
19 the Gaming Control Act, the board:

20                   (1) may release or disclose any confidential  
21 information, documents or communications provided by an applicant  
22 or licensee only with the prior written consent of the applicant  
23 or licensee or pursuant to a lawful court order after timely  
24 notice of the proceedings has been given to the applicant or  
25 licensee;



1           (2) shall maintain all confidential information,  
2 documents and communications in a secure place accessible only to  
3 members of the board; and

4           (3) shall adopt procedures and regulations to  
5 protect the confidentiality of information, documents and  
6 communications provided by an applicant or licensee.

7           Section 44. [NEW MATERIAL] MOTION FOR RELEASE OF  
8 CONFIDENTIAL INFORMATION.-- An application to a court for an order  
9 requiring the board to release any information declared by law to  
10 be confidential shall be made only by petition in district court.  
11 A hearing shall be held on the petition not less than ten days  
12 and not more than twenty days after the date of service of the  
13 petition on the board, the attorney general and all persons who  
14 may be affected by the entry of that order. A copy of the  
15 petition, all papers filed in support of it and a notice of  
16 hearing shall be served.

17           Section 45. [NEW MATERIAL] GAMING MACHINE CENTRAL  
18 SYSTEM --The board shall develop and operate a central system  
19 into which all licensed gaming machines are connected. The  
20 central system shall be capable of:

21           A. monitoring continuously, retrieving and auditing  
22 the operations, financial data and program information of the  
23 network;

24           B. disabling from operation or play any gaming  
25 machine in the network that does not comply with the provisions

1 of the Gaming Control Act or the regulations of the board;

2 C. communicating, through program modifications or  
3 other means equally effective, with all gaming machines licensed  
4 by the board;

5 D. interacting, reading, communicating and linking  
6 with gaming machines from a broad spectrum of manufacturers and  
7 associated equipment; and

8 E. providing linkage to each gaming machine in the  
9 network at a reasonable and affordable cost to the state and the  
10 gaming operator licensee and allowing for program modifications  
11 and system updating at a reasonable cost.

12 Section 46. [NEW MATERIAL] MACHINE SPECIFICATIONS. --To be  
13 eligible for licensure, each gaming machine shall meet all  
14 specifications established by regulations of the board and:

15 A. be unable to be manipulated in a manner that  
16 affects the random probability of winning plays or in any other  
17 manner determined by the board to be undesirable;

18 B. have at least one mechanism that accepts coins or  
19 currency, but does not accept bills of denominations greater than  
20 twenty dollars (\$20.00);

21 C. be capable of having play suspended through the  
22 central system by the executive director until he resets the  
23 gaming machine;

24 D. house nonresettable mechanical and electronic  
25 meters within a readily accessible locked area of the gaming

1 machine that maintain a permanent record of all money inserted  
2 into the machine, all cash payouts of winnings, all refunds of  
3 winnings, all credits played for additional games and all credits  
4 won by players;

5 E. be capable of printing out, at the request of the  
6 executive director, readings on the electronic meters of the  
7 machine;

8 F. for machines that do not dispense coins or tokens  
9 directly to players, be capable of printing a ticket voucher  
10 stating the value of a cash prize won by the player at the  
11 completion of each game, the date and time of day the game was  
12 played in a twenty-four-hour format showing hours and minutes,  
13 the machine serial number, the sequential number of the ticket  
14 voucher and an encrypted validation number for determining the  
15 validity of a winning ticket voucher;

16 G. be capable of being linked to the board's central  
17 system for the purpose of being monitored continuously as  
18 required by the board;

19 H. provide for a payback value for each credit  
20 wagered, determined over time, of not less than eighty percent or  
21 more than ninety-six percent;

22 I. meet the standards and specifications set by laws  
23 or regulations of the states of Nevada and New Jersey for gaming  
24 machines, whichever are more stringent;

25 J. offer only games authorized and examined by the

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1 board; and

2 K. display the gaming machine license issued for that  
3 machine in an easily accessible place, before and during the time  
4 that a machine is available for use.

5 Section 47. [NEW MATERIAL] POSTING OF GAMING MACHINE  
6 ODDS. -- The odds of winning on each gaming machine shall be posted  
7 on or near each gaming machine. The board shall provide the  
8 manner in which the odds shall be determined and posted by  
9 regulation.

10 Section 48. [NEW MATERIAL] EXAMINATION OF GAMING  
11 DEVICES-- COST ALLOCATION. --

12 A. The board shall examine prototypes of gaming  
13 devices of manufacturers seeking a license as required.

14 B. The board by regulation shall require a  
15 manufacturer to pay the anticipated actual costs of the  
16 examination of a gaming device in advance and, after the  
17 completion of the examination, shall refund overpayments or  
18 charge and collect amounts sufficient to reimburse the board for  
19 underpayment of actual costs.

20 C. The board may contract for the examination of  
21 gaming devices to meet the requirements of this section.

22 Section 49. [NEW MATERIAL] GAMING TAX-- IMPOSITION--  
23 ADMINISTRATION. --

24 A. An excise tax is imposed on the privilege of  
25 engaging in gaming activities in the state. This tax shall be

1 known as the "gaming tax".

2 B. The gaming tax is an amount equal to ten percent  
3 of the gross receipts of manufacturer licensees from the sale,  
4 lease or other transfer of gaming devices in or into the state,  
5 except receipts of a manufacturer from the sale, lease or other  
6 transfer to a licensed distributor for subsequent sale or lease  
7 may be excluded from gross receipts; ten percent of the gross  
8 receipts of distributor licensees from the sale, lease or other  
9 transfer of gaming devices in or into the state; and twenty-five  
10 percent of the net take of every gaming operator licensee.

11 C. The gaming tax imposed on a licensee is in lieu of  
12 all state and local gross receipts taxes on that portion of the  
13 licensee's gross receipts attributable to gaming activities.

14 D. The gaming tax shall be administered and collected  
15 by the taxation and revenue department in cooperation with the  
16 board. The provisions of the Tax Administration Act apply to the  
17 collection and administration of the tax.

18 E. In addition to the gaming tax, a gaming operator  
19 licensee that is a racetrack shall pay twenty percent of the net  
20 take to purses to be distributed in accordance with regulations  
21 adopted by the state racing commission. A racetrack gaming  
22 operator licensee shall spend no less than one-fourth of one  
23 percent of the net take of its gaming machines to fund or support  
24 programs for the treatment and assistance of compulsive gamblers.

25 F. A nonprofit gaming operator licensee shall

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1 distribute at least eighty-eight percent of the balance of net  
2 take, after payment of the gaming tax and any income taxes, for  
3 charitable or educational purposes.

4 G. The taxation and revenue department shall deduct  
5 an amount equal to three percent of the gaming tax collected as a  
6 charge for the administrative costs of collection, which amount  
7 is appropriated to the taxation and revenue department for  
8 collection and administration of the tax.

9 Section 50. [NEW MATERIAL] CIVIL ACTIONS TO RESTRAIN  
10 VIOLATIONS OF GAMING CONTROL ACT. --

11 A. The attorney general, at the request of the board,  
12 may institute a civil action in any court of this state against  
13 any person to enjoin a violation of a prohibitory provision of  
14 the Gaming Control Act.

15 B. An action brought against a person pursuant to  
16 this section shall not preclude a criminal action or  
17 administrative proceeding against that person.

18 Section 51. [NEW MATERIAL] TESTIMONIAL IMMUNITY. --

19 A. The board may order a person to answer a question  
20 or produce evidence and confer immunity pursuant to this section.  
21 If, in the course of an investigation or hearing conducted  
22 pursuant to the Gaming Control Act, a person refuses to answer a  
23 question or produce evidence on the ground that he will be  
24 exposed to criminal prosecution by doing so, then the board may  
25 by approval of three members, after the written approval of the

1 attorney general, issue an order to answer or to produce evidence  
2 with immunity.

3 B. If a person complies with an order issued pursuant  
4 to Subsection A of this section, he shall be immune from having a  
5 responsive answer given or responsive evidence produced, or  
6 evidence derived from either, used to expose him to criminal  
7 prosecution, except that the person may be prosecuted for any  
8 perjury committed in the answer or production of evidence and may  
9 also be prosecuted for contempt for failing to act in accordance  
10 with the order of the board. An answer given or evidence  
11 produced pursuant to the grant of immunity authorized by this  
12 section may be used against the person granted immunity in a  
13 prosecution of the person for perjury or a proceeding against him  
14 for contempt.

15 Section 52. [NEW MATERIAL] CRIME--MANIPULATION OF GAMING  
16 DEVICE WITH INTENT TO CHEAT.--A person who manipulates, with the  
17 intent to cheat, any component of a gaming device in a manner  
18 contrary to the designed and normal operational purpose of the  
19 component, including varying the pull of the handle of a slot  
20 machine with knowledge that the manipulation affects the outcome  
21 of the game or with knowledge of any event that affects the  
22 outcome of the game, is guilty of a fourth degree felony and  
23 shall be sentenced pursuant to the provisions of Section 31-18-15  
24 NMSA 1978.

25 Section 53. [NEW MATERIAL] CRIME--USE OF COUNTERFEIT OR

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1 UNAPPROVED TOKENS, CURRENCY OR DEVICES-- POSSESSION OF CERTAIN  
2 DEVICES, EQUIPMENT, PRODUCTS OR MATERIALS. --

3 A. A person who, in playing any game designed to be  
4 played with, to receive or to be operated by tokens approved by  
5 the board or by lawful currency of the United States, knowingly  
6 uses tokens other than those approved by the board, uses currency  
7 that is not lawful currency of the United States or uses currency  
8 not of the same denomination as the currency intended to be used  
9 in that game is guilty of a third degree felony and shall be  
10 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
11 1978.

12 B. A person who knowingly has on his person or in his  
13 possession within a gaming establishment any device intended to  
14 be used by him to violate the provisions of the Gaming Control  
15 Act is guilty of a third degree felony and shall be sentenced  
16 pursuant to the provisions of Section 31-18-15 NMSA 1978.

17 C. A person, other than a duly authorized employee of  
18 a gaming operator acting in furtherance of his employment within  
19 a gaming establishment, who knowingly has on his person or in his  
20 possession within a gaming establishment any key or device known  
21 by him to have been designed for the purpose of and suitable for  
22 opening, entering or affecting the operation of any game, dropbox  
23 or any electronic or mechanical device connected to the game or  
24 dropbox or for removing money or other contents from them is  
25 guilty of a third degree felony and shall be sentenced pursuant



1 to the provisions of Section 31-18-15 NMSA 1978.

2 D. A person who knowingly and with intent to use them  
 3 for cheating has on his person or in his possession any  
 4 paraphernalia for manufacturing slugs is guilty of a third degree  
 5 felony and shall be sentenced pursuant to the provisions of  
 6 Section 31-18-15 NMSA 1978. As used in this subsection,  
 7 "paraphernalia for manufacturing slugs" means the equipment,  
 8 products and materials that are intended for use or designed for  
 9 use in manufacturing, producing, fabricating, preparing, testing,  
 10 analyzing, packaging, storing or concealing a counterfeit  
 11 facsimile of tokens approved by the board or a lawful coin of the  
 12 United States, the use of which is unlawful pursuant to the  
 13 Gaming Control Act. The term includes:

- 14 (1) lead or lead alloy;
- 15 (2) molds, forms or similar equipment capable of  
 16 producing a likeness of a gaming token or coin;
- 17 (3) melting pots or other receptacles;
- 18 (4) torches; and
- 19 (5) tongs, trimming tools or other similar  
 20 equipment.

21 E. Possession of more than two items of the  
 22 equipment, products or material described in Subsection D of this  
 23 section permits a rebuttable inference that the possessor  
 24 intended to use them for cheating.

25 Section 54. [NEW MATERIAL] CRIME--CHEATING. --A person who

1 knowingly cheats at any game is guilty of a fourth degree felony  
2 and upon conviction shall be sentenced pursuant to the provisions  
3 of Section 31-18-15 NMSA 1978.

4 Section 55. [NEW MATERIAL] CRIME--POSSESSION OF GAMING  
5 DEVICE MANUFACTURED, SOLD OR DISTRIBUTED IN VIOLATION OF LAW.--A  
6 person who knowingly possesses any gaming device that has been  
7 manufactured, sold or distributed in violation of the Gaming  
8 Control Act is guilty of a fourth degree felony and shall be  
9 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
10 1978.

11 Section 56. [NEW MATERIAL] CRIME--REPORTING AND RECORD  
12 VIOLATIONS--PENALTY.--A person who, in an application, book or  
13 record required to be maintained by the Gaming Control Act or by  
14 a regulation adopted under that act or in a report required to be  
15 submitted by that act or a regulation adopted under that act,  
16 knowingly makes a statement or entry that is false or misleading  
17 or fails to maintain or make an entry the person knows is  
18 required to be maintained or made is guilty of a fourth degree  
19 felony and shall be sentenced pursuant to the provisions of  
20 Section 31-18-15 NMSA 1978.

21 Section 57. [NEW MATERIAL] CRIME--UNLAWFUL MANUFACTURE,  
22 SALE, DISTRIBUTION, MARKING, ALTERING OR MODIFICATION OF DEVICES  
23 ASSOCIATED WITH GAMING--UNLAWFUL INSTRUCTION--PENALTY.--

24 A. A person who manufactures, sells or distributes a  
25 device that is intended by him to be used to violate any

1 provision of the Gaming Control Act is guilty of a fourth degree  
2 felony and shall be sentenced pursuant to the provisions of  
3 Section 31-18-15 NMSA 1978.

4 B. A person who marks, alters or otherwise modifies  
5 any gaming device in a manner that affects the result of a wager  
6 by determining win or loss or alters the normal criteria of  
7 random selection that affects the operation of a game or that  
8 determines the outcome of a game is guilty of a fourth degree  
9 felony and shall be sentenced pursuant to the provisions of  
10 Section 31-18-15 NMSA 1978.

11 Section 58. [NEW MATERIAL] UNDERAGE GAMING--PENALTY FOR  
12 PERMITTING OR PARTICIPATION.--

13 A. A person who knowingly permits an individual who  
14 the person knows is younger than twenty-one years of age to  
15 participate in gaming is guilty of a fourth degree felony and  
16 shall be sentenced pursuant to the provisions of Section 31-18-15  
17 NMSA 1978.

18 B. An individual who participates in gaming when he  
19 is younger than twenty-one years of age at the time of  
20 participation is guilty of a misdemeanor and shall be sentenced  
21 pursuant to the provisions of Section 31-19-1 NMSA 1978.

22 Section 59. [NEW MATERIAL] CRIME--GENERAL PENALTIES FOR  
23 VIOLATION OF ACT.--A person who willfully violates, attempts to  
24 violate or conspires to violate any of the provisions of the  
25 Gaming Control Act specifying prohibited acts, the classification

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1 of which is not specifically stated in that act, is guilty of a  
2 fourth degree felony and shall be sentenced pursuant to the  
3 provisions of Section 31-18-15 NMSA 1978.

4 Section 60. [NEW MATERIAL] DETENTION AND QUESTIONING OF A  
5 PERSON SUSPECTED OF VIOLATING ACT--LIMITATIONS ON LIABILITY--  
6 POSTING OF NOTICE. --

7 A. A gaming operator licensee or its officers,  
8 employees or agents may question a person in its gaming  
9 establishment suspected of violating any of the provisions of the  
10 Gaming Control Act. No gaming operator licensee or any of its  
11 officers, employees or agents is criminally or civilly liable:

12 (1) on account of any such questioning; or

13 (2) for reporting to the board or law

14 enforcement authorities the person suspected of the violation.

15 B. A gaming operator licensee or any of its officers,  
16 employees or agents who has reasonable cause for believing that  
17 there has been a violation of the Gaming Control Act in the  
18 gaming establishment by a person may detain that person in the  
19 gaming establishment in a reasonable manner and for a reasonable  
20 length of time. Such a detention does not render the gaming  
21 operator licensee or his officers, employees or agents criminally  
22 or civilly liable unless it is established by clear and  
23 convincing evidence detention was unreasonable under the  
24 circumstances.

25 C. No gaming operator licensee or its officers,

1 employees or agents are entitled to the immunity from liability  
 2 provided for in Subsection B of this section unless there is  
 3 displayed in a conspicuous place in the gaming establishment a  
 4 notice in boldface type clearly legible and in substantially this  
 5 form:

6 "Any gaming operator licensee or any of his officers,  
 7 employees or agents who have reasonable cause for  
 8 believing that any person has violated any provision  
 9 of the Gaming Control Act prohibiting cheating in  
 10 gaming may detain that person in the establishment.".

11 Section 61. [NEW MATERIAL] ADMINISTRATIVE APPEAL OF BOARD  
 12 ACTION. --

13 A. Any person aggrieved by an action taken by the  
 14 board or one of its agents may request and receive a hearing for  
 15 the purpose of reviewing the action. To obtain a hearing the  
 16 aggrieved person shall file a request for hearing with the board  
 17 within thirty days after the date the action is taken. Failure  
 18 to file the request within the specified time is an irrevocable  
 19 waiver of the right to a hearing, and the action complained of  
 20 shall be final with no further right to review, either  
 21 administratively or by a court.

22 B. The board shall adopt procedural regulations to  
 23 govern the procedures to be followed in administrative hearings  
 24 pursuant to the provisions of this section. At a minimum, the  
 25 regulations shall provide:

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- 1 (1) for the hearings to be public;
- 2 (2) for the appointment of a hearing officer to
- 3 conduct the hearing and make his recommendation to the board not
- 4 more than ten days after the completion of the hearing;
- 5 (3) procedures for discovery;
- 6 (4) assurance that procedural due process
- 7 requirements are satisfied;
- 8 (5) for the maintenance of a record of the
- 9 hearing proceedings and assessment of costs of any transcription
- 10 of testimony that is required for judicial review purposes; and
- 11 (6) for the hearing to be held in Santa Fe for
- 12 enforcement hearings and hearings on actions of statewide
- 13 application, and to be held in the place or area affected for
- 14 enforcement hearings and hearings on actions of limited local
- 15 concern.

16 C. Actions taken by the board after a hearing  
17 pursuant to the provisions of this section shall be:

- 18 (1) written and shall state the reasons for the
- 19 action;
- 20 (2) made public when taken;
- 21 (3) communicated to all persons who have made a
- 22 written request for notification of the action taken; and
- 23 (4) taken not more than thirty days after the
- 24 submission of the hearing officer's report to the board.

25 Section 62. [NEW MATERIAL] JUDICIAL REVIEW OF

1 ADMINISTRATIVE ACTIONS. --

2 A. Any person adversely affected by an action taken  
3 by the board after review pursuant to the provisions of Section  
4 61 of the Gaming Control Act may appeal the action to the court  
5 of appeals. The appeal shall be on the record made at the  
6 hearing. To support his appeal, the appellant shall make  
7 arrangements with the board for a sufficient number of  
8 transcripts of the record of the hearing on which the appeal is  
9 based. The appellant shall pay for the preparation of the  
10 transcripts.

11 B. On appeal, the court of appeals shall set aside  
12 the administrative action only if it is found to be:

- 13 (1) arbitrary, capricious or an abuse of
- 14 discretion;
- 15 (2) not supported by substantial evidence in the
- 16 whole record; or
- 17 (3) otherwise not in accordance with law.

18 Section 63. Section 7-1-2 NMSA 1978 (being Laws 1965,  
19 Chapter 248, Section 2, as amended) is amended to read:

20 "7-1-2. APPLICABILITY. -- The Tax Administration Act applies  
21 to and governs:

22 A. the administration and enforcement of the  
23 following taxes or tax acts as they now exist or may hereafter be  
24 amended:

- 25 (1) Income Tax Act;

Underscored material = new  
[bracketed material] = delete

- 1                   (2) Withholding Tax Act;
- 2                   (3) Gross Receipts and Compensating Tax Act and
- 3 any state gross receipts tax;
- 4                   (4) Liquor Excise Tax Act;
- 5                   (5) Local Liquor Excise Tax Act;
- 6                   ~~[(6) Banking and Financial Corporations Tax Act;~~
- 7                   ~~(7)]~~ (6) any municipal local option gross
- 8 receipts tax;
- 9                   ~~[(8)]~~ (7) any county local option gross receipts
- 10 tax;
- 11                   ~~[(9)]~~ (8) Special Fuels Supplier Tax Act;
- 12                   ~~[(10)]~~ (9) Gasoline Tax Act;
- 13                   ~~[(11)]~~ (10) petroleum products loading fee,
- 14 which fee shall be considered a tax for the purpose of the Tax
- 15 Administration Act;
- 16                   ~~[(12)]~~ (11) Alternative Fuel Tax Act;
- 17                   ~~[(13)]~~ (12) Cigarette Tax Act;
- 18                   ~~[(14)]~~ (13) Estate Tax Act;
- 19                   ~~[(15)]~~ (14) Railroad Car Company Tax Act;
- 20                   ~~[(16)]~~ (15) Investment Credit Act;
- 21                   ~~[(17)]~~ (16) Corporate Income and Franchise Tax
- 22 Act;
- 23                   ~~[(18)]~~ (17) Uniform Division of Income for Tax
- 24 Purposes Act;
- 25                   ~~[(19)]~~ (18) Multistate Tax Compact;

Underscored material = new  
[bracketed material] = delete



1                    [~~(20)~~] (19) Tobacco Products Tax Act;  
2                    [~~(21)~~] (20) Filmmaker's Credit Act; and  
3                    [~~(22)~~] (21) the telecommunications relay service  
4 surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge  
5 shall be considered a tax for the purposes of the Tax  
6 Administration Act;

7                    B. the administration and enforcement of the  
8 following taxes, surtaxes, advanced payments or tax acts as they  
9 now exist or may hereafter be amended:

- 10                    (1) Resources Excise Tax Act;
- 11                    (2) Severance Tax Act;
- 12                    (3) any severance surtax;
- 13                    (4) Oil and Gas Severance Tax Act;
- 14                    (5) Oil and Gas Conservation Tax Act;
- 15                    (6) Oil and Gas Emergency School Tax Act;
- 16                    (7) Oil and Gas Ad Valorem Production Tax Act;
- 17                    (8) Natural Gas Processors Tax Act;
- 18                    (9) Oil and Gas Production Equipment Ad Valorem

19 Tax Act;

- 20                    (10) Copper Production Ad Valorem Tax Act; and
- 21                    (11) any advance payment required to be made by

22 any act specified in this subsection, which advance payment shall  
23 be considered a tax for the purposes of the Tax Administration  
24 Act;

25                    C. the administration and enforcement of the

Underscored material = new  
[bracketed material] = delete

1 following taxes, surcharges, fees or acts as they now exist or  
2 may hereafter be amended:

- 3 (1) Weight Distance Tax Act;
- 4 (2) Special Fuels Tax Act;
- 5 (3) the workers' compensation fee authorized by  
6 Section 52-5-19 NMSA 1978, which fee shall be considered a tax  
7 for purposes of the Tax Administration Act;

- 8 (4) Uniform Unclaimed Property Act;
- 9 (5) 911 emergency surcharge and the network and  
10 database surcharge, which surcharges shall be considered taxes  
11 for purposes of the Tax Administration Act;

- 12 (6) the solid waste assessment fee authorized by  
13 the Solid Waste Act, which fee shall be considered a tax for  
14 purposes of the Tax Administration Act; ~~and~~

- 15 (7) the water conservation fee imposed by  
16 Section 74-1-13 NMSA 1978, which fee shall be considered a tax  
17 for the purposes of the Tax Administration Act; and

- 18 (8) the gaming tax imposed pursuant to the  
19 Gaming Control Act; and

20 D. the administration and enforcement of all other  
21 laws, with respect to which the department is charged with  
22 responsibilities pursuant to the Tax Administration Act, but only  
23 to the extent that the other laws do not conflict with the Tax  
24 Administration Act. "

25 Section 64. Section 10-15-1 NMSA 1978 (being Laws 1974,

1 Chapter 91, Section 1, as amended) is amended to read:

2 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN  
3 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

4 A. In recognition of the fact that a representative  
5 government is dependent upon an informed electorate, it is  
6 declared to be public policy of this state that all persons are  
7 entitled to the greatest possible information regarding the  
8 affairs of government and the official acts of those officers and  
9 employees who represent them. The formation of public policy or  
10 the conduct of business by vote shall not be conducted in closed  
11 meeting. All meetings of any public body except the legislature  
12 and the courts shall be public meetings, and all persons so  
13 desiring shall be permitted to attend and listen to the  
14 deliberations and proceedings. Reasonable efforts shall be made  
15 to accommodate the use of audio and video recording devices.

16 B. All meetings of a quorum of members of any board,  
17 commission, administrative adjudicatory body or other  
18 policymaking body of any state agency, any agency or authority of  
19 any county, municipality, district or any political subdivision,  
20 held for the purpose of formulating public policy, including the  
21 development of personnel policy, rules, regulations or  
22 ordinances, discussing public business or for the purpose of  
23 taking any action within the authority of or the delegated  
24 authority of any board, commission or other policymaking body are  
25 declared to be public meetings open to the public at all times,

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1 except as otherwise provided in the constitution of New Mexico or  
2 the Open Meetings Act. No public meeting once convened that is  
3 otherwise required to be open pursuant to the Open Meetings Act  
4 shall be closed or dissolved into small groups or committees for  
5 the purpose of permitting the closing of the meeting.

6 C. If otherwise allowed by law or rule of the public  
7 body, a member of a public body may participate in a meeting of  
8 the public body by means of a conference telephone or other  
9 similar communications equipment when it is otherwise difficult  
10 or impossible for the member to attend the meeting in person,  
11 provided that each member participating by conference telephone  
12 can be identified when speaking, all participants are able to  
13 hear each other at the same time and members of the public  
14 attending the meeting are able to hear any member of the public  
15 body who speaks during the meeting.

16 D. Any meetings at which the discussion or adoption  
17 of any proposed resolution, rule, regulation or formal action  
18 occurs and at which a majority or quorum of the body is in  
19 attendance, and any closed meetings, shall be held only after  
20 reasonable notice to the public. The affected body shall  
21 determine at least annually in a public meeting what notice for a  
22 public meeting is reasonable when applied to that body. That  
23 notice shall include broadcast stations licensed by the federal  
24 communications commission and newspapers of general circulation  
25 that have provided a written request for such notice.

1           E. A public body may recess and reconvene a meeting  
2 to a day subsequent to that stated in the meeting notice if,  
3 prior to recessing, the public body specifies the date, time and  
4 place for continuation of the meeting and, immediately following  
5 the recessed meeting, posts notice of the date, time and place  
6 for the reconvened meeting on or near the door of the place where  
7 the original meeting was held and in at least one other location  
8 appropriate to provide public notice of the continuation of the  
9 meeting. Only matters appearing on the agenda of the original  
10 meeting may be discussed at the reconvened meeting.

11           F. Meeting notices shall include an agenda containing  
12 a list of specific items of business to be discussed or  
13 transacted at the meeting or information on how the public may  
14 obtain a copy of such an agenda. Except in the case of an  
15 emergency, the agenda shall be available to the public at least  
16 twenty-four hours prior to the meeting. Except for emergency  
17 matters, a public body shall take action only on items appearing  
18 on the agenda. For purposes of this subsection, an "emergency"  
19 refers to unforeseen circumstances that, if not addressed  
20 immediately by the public body, will likely result in injury or  
21 damage to persons or property or substantial financial loss to  
22 the public body.

23           G. The board, commission or other policymaking body  
24 shall keep written minutes of all its meetings. The minutes  
25 shall include at a minimum the date, time and place of the

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1 meeting, the names of members in attendance and those absent, the  
2 substance of the proposals considered and a record of any  
3 decisions and votes taken that show how each member voted. All  
4 minutes are open to public inspection. Draft minutes shall be  
5 prepared within ten working days after the meeting and shall be  
6 approved, amended or disapproved at the next meeting where a  
7 quorum is present. Minutes shall not become official until  
8 approved by the policymaking body.

9 H. The provisions of Subsections A, B and G of this  
10 section do not apply to:

11 (1) meetings pertaining to issuance, suspension,  
12 renewal or revocation of a license, except that a hearing at  
13 which evidence is offered or rebutted shall be open. All final  
14 actions on the issuance, suspension, renewal or revocation of a  
15 license shall be taken at an open meeting;

16 (2) limited personnel matters; provided that for  
17 purposes of the Open Meetings Act, "limited personnel matters"  
18 means the discussion of hiring, promotion, demotion, dismissal,  
19 assignment or resignation of or the investigation or  
20 consideration of complaints or charges against any individual  
21 public employee; provided further that this subsection is not to  
22 be construed as to exempt final actions on personnel from being  
23 taken at open public meetings, nor does it preclude an aggrieved  
24 public employee from demanding a public hearing. Judicial  
25 candidates interviewed by any commission shall have the right to

1 demand an open interview;

2 (3) deliberations by a public body in connection  
 3 with an administrative adjudatory proceeding. For purposes of  
 4 this paragraph, an "administrative adjudatory proceeding" means  
 5 a proceeding brought by or against a person before a public body  
 6 in which individual legal rights, duties or privileges are  
 7 required by law to be determined by the public body after an  
 8 opportunity for a trial-type hearing. Except as otherwise  
 9 provided in this section, the actual administrative adjudatory  
 10 proceeding at which evidence is offered or rebutted and any final  
 11 action taken as a result of the proceeding shall occur in an open  
 12 meeting;

13 (4) the discussion of personally identifiable  
 14 information about any individual student, unless the student, his  
 15 parent or guardian requests otherwise;

16 (5) meetings for the discussion of bargaining  
 17 strategy preliminary to collective bargaining negotiations  
 18 between the policymaking body and a bargaining unit representing  
 19 the employees of that policymaking body and collective bargaining  
 20 sessions at which the policymaking body and the representatives  
 21 of the collective bargaining unit are present;

22 (6) that portion of meetings at which a decision  
 23 concerning purchases in an amount exceeding two thousand five  
 24 hundred dollars (\$2,500) that can be made only from one source  
 25 and that portion of meetings at which the contents of competitive

1 sealed proposals solicited pursuant to the Procurement Code are  
2 discussed during the contract negotiation process. The actual  
3 approval of purchase of the item or final action regarding the  
4 selection of a contractor shall be made in an open meeting;

5 (7) meetings subject to the attorney-client  
6 privilege pertaining to threatened or pending litigation in which  
7 the public body is or may become a participant;

8 (8) meetings for the discussion of the purchase,  
9 acquisition or disposal of real property or water rights by the  
10 public body; ~~and~~

11 (9) those portions of meetings of committees or  
12 boards of public hospitals that receive less than fifty percent  
13 of their operating budget from direct public funds and  
14 appropriations where strategic and long-range business plans are  
15 discussed; and

16 ~~(10) that portion of a meeting of the gaming~~  
17 ~~control board dealing with information made confidential pursuant~~  
18 ~~to the provisions of the Gaming Control Act.~~

19 I. If any meeting is closed pursuant to the  
20 exclusions contained in Subsection H of this section, the  
21 closure:

22 (1) if made in an open meeting, shall be  
23 approved by a majority vote of a quorum of the policymaking body;  
24 the authority for the closure and the subject to be discussed  
25 shall be stated with reasonable specificity in the motion calling



1 for the vote on a closed meeting; the vote shall be taken in an  
 2 open meeting; and the vote of each individual member shall be  
 3 recorded in the minutes. Only those subjects announced or voted  
 4 upon prior to closure by the policymaking body may be discussed  
 5 in a closed meeting; and

6 (2) if called for when the policymaking body is  
 7 not in an open meeting, shall not be held until public notice,  
 8 appropriate under the circumstances, stating the specific  
 9 provision of the law authorizing the closed meeting and stating  
 10 with reasonable specificity the subject to be discussed is given  
 11 to the members and to the general public.

12 J. Following completion of any closed meeting, the  
 13 minutes of the open meeting that was closed or the minutes of the  
 14 next open meeting if the closed meeting was separately scheduled  
 15 shall state that the matters discussed in the closed meeting were  
 16 limited only to those specified in the motion for closure or in  
 17 the notice of the separate closed meeting. This statement shall  
 18 be approved by the public body under Subsection G of this section  
 19 as part of the minutes. "

20 Section 65. Section 30-19-1 NMSA 1978 (being Laws 1963,  
 21 Chapter 303, Section 19-1, as amended) is amended to read:

22 "30-19-1. DEFINITIONS RELATING TO GAMBLING. --As used in  
 23 Chapter 30, Article 19 NMSA 1978:

24 A. "antique gambling device" means a gambling device  
 25 twenty-five years of age or older and substantially in original

1 condition that is not used for gambling or commercial gambling or  
2 located in a gambling place;

3 B. "bet" means a bargain in which the parties agree  
4 that, dependent upon chance, even though accompanied by some  
5 skill, one stands to win or lose anything of value specified in  
6 the agreement. A bet does not include:

7 (1) bona fide business transactions that are  
8 valid under the law of contracts, including ~~[without limitation]~~:

9 (a) contracts for the purchase or sale, at a  
10 future date, of securities or other commodities; and

11 (b) agreements to compensate for loss caused  
12 by the happening of the chance, including ~~[without limitation]~~  
13 contracts for indemnity or guaranty and life or health and  
14 accident insurance;

15 (2) offers of purses, prizes or premiums to the  
16 actual contestants in any bona fide contest for the determination  
17 of skill, speed, strength or endurance or to the bona fide owners  
18 of animals or vehicles entered in such contest;

19 (3) a lottery as defined in this section; or

20 (4) betting otherwise permitted by law;

21 ~~[C. "lottery" means an enterprise other than the New~~  
22 ~~Mexico state lottery established and operated pursuant to the New~~  
23 ~~Mexico Lottery Act wherein, for a consideration, the participants~~  
24 ~~are given an opportunity to win a prize, the award of which is~~  
25 ~~determined by chance, even though accompanied by some skill. As~~

1 ~~used in this subsection, "consideration" means anything of~~  
 2 ~~pecuniary value required to be paid to the promoter in order to~~  
 3 ~~participate in such enterprise;~~

4 ~~D.]~~ C. "gambling device" means a contrivance other  
 5 than an antique gambling device that is not licensed for use  
 6 pursuant to the Gaming Control Act and that, for a consideration,  
 7 affords the player an opportunity to obtain anything of value,  
 8 the award of which is determined by chance, even though  
 9 accompanied by some skill, ~~[and]~~ whether or not the prize is  
 10 automatically paid by the device; ~~[and]~~

11 ~~[E.]~~ D. "gambling place" means ~~[any]~~ a building or  
 12 tent, ~~[any]~~ a vehicle, whether self-propelled or not, or ~~[any]~~ a  
 13 room within any of them that is not within the premises of a  
 14 person licensed as a lottery retailer or that is not licensed  
 15 pursuant to the Gaming Control Act, one of whose principal uses  
 16 is:

- 17 (1) making and settling of bets;
- 18 (2) receiving, holding, recording or forwarding
- 19 bets or offers to bet;
- 20 (3) conducting lotteries; or
- 21 (4) playing gambling devices; and

22 E. "lottery" means an enterprise wherein, for a  
 23 consideration, the participants are given an opportunity to win a  
 24 prize, the award of which is determined by chance, even though  
 25 accompanied by some skill. "Lottery" does not include the New

1 Mexico state lottery established and operated pursuant to the New  
2 Mexico Lottery Act or gaming that is licensed and operated  
3 pursuant to the Gaming Control Act. As used in this subsection,  
4 "consideration" means anything of pecuniary value required to be  
5 paid to the promoter in order to participate in a gambling or  
6 gaming enterprise. "

7 Section 66. A new section of Chapter 40, Article 3 NMSA  
8 1978 is enacted to read:

9 "[NEW MATERIAL] GAMBLING DEBTS ARE SEPARATE DEBTS OF  
10 SPOUSE INCURRING DEBT. --A gambling debt incurred by a married  
11 person as a result of legal gambling is a separate debt of the  
12 spouse incurring the debt. "

13 Section 67. Section 60-7A-19 NMSA 1978 (being Laws 1981,  
14 Chapter 39, Section 96) is amended to read:

15 "60-7A-19. COMMERCIAL GAMBLING ON LICENSED PREMISES. --

16 A. It is a violation of the Liquor Control Act for a  
17 licensee to knowingly allow commercial gambling on the licensed  
18 premises.

19 B. In addition to any criminal penalties, any person  
20 who violates Subsection A of this section may have his license  
21 suspended or revoked or a fine imposed, or both, pursuant to the  
22 Liquor Control Act.

23 C. [~~For purposes of~~] As used in this section:

24 (1) "commercial gambling" means:

25 [~~(1)~~] (a) participating in the earnings of

1 or operating a gambling place;

2 [~~(2)~~] (b) receiving, recording or forwarding  
3 bets or offers to bet;

4 [~~(3)~~] (c) possessing facilities with the  
5 intent to receive, record or forward bets or offers to bet;

6 [~~(4)~~] (d) for gain, becoming a custodian of  
7 anything of value bet or offered to be bet;

8 [~~(5)~~] (e) conducting a lottery where both  
9 the consideration and the prize are money, or whoever with intent  
10 to conduct a lottery possesses facilities to do so; or

11 [~~(6)~~] (f) setting up for use for the purpose  
12 of gambling, or collecting the proceeds of, any gambling device  
13 or game; and

14 (2) "commercial gambling" does not mean:

15 (a) activities authorized pursuant to the  
16 New Mexico Lottery Act;

17 (b) the conduct of activities pursuant to  
18 Subsection D of Section 30-19-6 NMSA 1978; and

19 (c) gaming authorized pursuant to the Gaming  
20 Control Act on the premises of a gaming operator licensee  
21 licensed pursuant to that act. "

22 Section 68. SEVERABILITY. -- If any part or application of  
23 the Gaming Control Act is held invalid, the remainder or its  
24 application to other situations or persons shall not be affected.

25 Section 69. DELAYED EFFECTIVE DATE. -- The provisions of the

Underscored material = new  
[bracketed material] = delete

1 Gaming Control Act shall be effective on the date that a tribal  
2 gaming compact agreed upon and executed by an Indian nation,  
3 tribe or pueblo and the state is approved pursuant to the  
4 provisions of the Indian Gaming Regulatory Act, 25 USCA Section  
5 2701, et seq.

6 Section 70. EMERGENCY.--It is necessary for the public  
7 peace, health and safety that this act take effect immediately.

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 21, 1997

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred  
HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE  
FOR HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE  
FOR HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HOUSE  
BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 399, as amended

has had it under consideration and reports same WITHOUT  
RECOMMENDATION.

Respectfully submitted,

Underscored material = new  
[bracketed material] = delete

HTRC/HJC/HBIC/HB 399

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Ben D. Altami rano, Chair man

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chi ef Clerk) (Chi ef Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 1 Against

Yes: 9

No: Lyons

Excused: Fi del

Absent: None

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Underscored material = new  
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HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR  
~~HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR~~  
~~HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR~~  
HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 399

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO GAMING; ENACTING THE INDIAN GAMING COMPACT;  
ENACTING A REVENUE-SHARING AGREEMENT TO PROVIDE FOR REVENUE-  
SHARING BETWEEN THE STATE AND AN INDIAN NATION, TRIBE OR  
PUEBLO CONDUCTING GAMING PURSUANT TO THE COMPACT; ENACTING THE  
GAMING CONTROL ACT TO PERMIT CERTAIN NONTRIBAL GAMING;  
PROVIDING PENALTIES; IMPOSING A GAMING TAX AND FEES; AMENDING  
AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN  
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] INDIAN GAMING COMPACT ENTERED  
INTO. --The Indian Gaming Compact is enacted into law and  
entered into with all Indian nations, tribes and pueblos in  
the state legally joining in it by enactment of a resolution  
pursuant to the requirements of applicable tribal and federal

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1 law. The compact is enacted and entered into in the form  
2 substantially as follows:

3 "INDIAN GAMING COMPACT

4 INTRODUCTION

5 The State is a sovereign State of the United States of  
6 America, having been admitted to the Union pursuant to the Act  
7 of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and  
8 is authorized by its constitution to enter into contracts and  
9 agreements, including this Compact, with the Tribe;

10 The Tribe is a sovereign federally recognized Indian  
11 tribe and its governing body has authorized the officials of  
12 the Tribe to enter into contracts and agreements of every  
13 description, including this Compact, with the State;

14 The Congress of the United States has enacted the Indian  
15 Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701-2721  
16 (hereinafter "IGRA"), which permits Indian tribes to conduct  
17 Class III Gaming on Indian Lands pursuant to a tribal-state  
18 compact entered into for that purpose;

19 The Tribe owns or controls Indian Lands and by Ordinance  
20 has adopted rules and regulations governing Class III games  
21 played and related activities at any Gaming Facility;

22 The State and the Tribe, in recognition of the sovereign  
23 rights of each party and in a spirit of cooperation to promote  
24 the best interests of the citizens of the State and the  
25 members of the Tribe, have engaged in good faith negotiations

1 recognizing and respecting the interests of each party and have  
2 agreed to this Compact.

3 NOW, THEREFORE, the State and the Tribe agree as follows:

4 TERMS AND CONDITIONS

5 SECTION 1. Purpose and Objectives.

6 The purpose and objectives of the State and the Tribe in  
7 making this Compact are as follows:

8 A. To evidence the good will and cooperative spirit between  
9 the State and the Tribe;

10 B. To continue the development of an effective government-  
11 to-government relationship between the State and the Tribe;

12 C. To provide for the regulation of Class III Gaming on  
13 Indian Lands as required by the IGRA;

14 D. To fulfill the purpose and intent of the IGRA by  
15 providing for tribal gaming as a means of generating tribal  
16 revenues, thereby promoting tribal economic development, tribal  
17 self-sufficiency, and strong tribal government;

18 E. To provide revenues to fund tribal government operations  
19 or programs, to provide for the general welfare of the tribal  
20 members and for other purposes allowed under the IGRA;

21 F. To provide for the effective regulation of Class III  
22 Gaming in which the Tribe shall have the sole proprietary  
23 interest and be the primary beneficiary; and

24 G. To address the State's interest in the establishment, by  
25 the Tribe, of rules and procedures for ensuring that Class III

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1 Gaming is conducted fairly and honestly by the owners, operators,  
2 employees and patrons of any Class III Gaming enterprise on  
3 Indian Lands.

4 SECTION 2. Definitions.

5 For purposes of this Compact, the following definitions  
6 pertain:

7 A. "Class III Gaming" means all forms of gaming as defined  
8 in 25 U. S. C. § 2703(8), and 25 C. F. R. § 502. 4.

9 B. "Compact" means this compact between the State and the  
10 Tribe.

11 C. "Gaming Enterprise" means the tribal entity created and  
12 designated by the Tribe as having authority to conduct Class III  
13 Gaming pursuant to this Compact.

14 D. "Gaming Facility" means the buildings or structures in  
15 which Class III Gaming is conducted on Indian Lands.

16 E. "Gaming Machine" means a mechanical, electromechanical  
17 or electronic contrivance or machine that, upon insertion of a  
18 coin, token or similar object, or upon payment of any  
19 consideration, is available to play or operate a game, whether  
20 the payoff is made automatically from the Gaming Machine or in  
21 any other manner.

22 F. "Indian Lands" means:

23 1. all lands within the exterior boundaries of the  
24 Tribe's reservation and its confirmed grants from prior  
25 sovereigns; or

1           2. any other lands title to which is either held in  
 2 trust by the United States for the exclusive benefit of the Tribe  
 3 or a member thereof or is held by the Tribe or a member thereof  
 4 subject to restrictions against alienation imposed by the United  
 5 States, and over which the Tribe exercises jurisdiction and  
 6 governmental authority, but not including any land within the  
 7 boundaries of a municipality that is outside of the boundaries of  
 8 the Tribe's reservation or confirmed Spanish grant, as those  
 9 boundaries existed on October 17, 1988.

10           G. "Key Employee" means that term as defined in 25 CFR  
 11 Section 502.14.

12           H. "Management Contract" means a contract within the  
 13 meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

14           I. "Management Contractor" means any person or entity that  
 15 has entered into a Management Contract with the Tribe.

16           J. "Ordinance" means the gaming ordinance and any  
 17 amendments thereto adopted by the Tribal Council of the Tribe.

18           K. "Primary Management Official" means that term as defined  
 19 in 25 CFR Section 502.19.

20           L. "State" means the State of New Mexico.

21           M. "State Gaming Representative" means that person  
 22 designated by the gaming control board pursuant to the Gaming  
 23 Control Act who will be responsible for actions of the State set  
 24 out in the Compact. The representative will be the single  
 25 contact with the Tribe and may be relied upon as such by the

1 Tribe. If the State Legislature enacts legislation to establish  
2 an agency of the State, such agency may assume the duties of the  
3 State Gaming Representative.

4 N. "Tribal Gaming Agency" means the tribal governmental  
5 agency which will be identified to the State Gaming  
6 Representative as the agency responsible for actions of the Tribe  
7 set out in the Compact. It will be the single contact with the  
8 State and may be relied upon as such by the State.

9 O. "Tribe" means any Indian Tribe or Pueblo located within  
10 the State of New Mexico entering into this Compact as provided  
11 for herein.

12 SECTION 3. Authorized Class III Gaming.

13 The Tribe may conduct, only on Indian Lands, subject to all  
14 of the terms and conditions of this Compact, any or all forms of  
15 casino-style gaming, including but not limited to slot machines  
16 and other forms of electronic gaming devices; all forms of poker,  
17 blackjack and other casino-style card games, both banked and  
18 unbanked; roulette; craps; keno; wheel of fortune; pai gow; and  
19 other games played in casino settings; and any form of a lottery.

20 Subject to the foregoing, the Tribe shall establish, in its  
21 discretion, by tribal law, such limitations as it deems  
22 appropriate on the number and type of Class III Gaming conducted,  
23 the location of Class III Gaming on Indian Lands, the hours and  
24 days of operation, and betting and pot limits, applicable to such  
25 gami ng.

1 SECTION 4. Regulation of Class III Gaming.

2 A. Tribal Gaming Agency. The Tribal Gaming Agency will  
3 assure that the Tribe will:

- 4 1. operate all Class III Gaming pursuant to this  
5 Compact, tribal law, the IGRA and other applicable  
6 Federal law;
- 7 2. provide for the physical safety of patrons in any  
8 Gaming Facility;
- 9 3. provide for the physical safety of personnel  
10 employed by the gaming enterprise;
- 11 4. provide for the physical safeguarding of assets  
12 transported to and from the Gaming Facility and  
13 cashier's cage department;
- 14 5. provide for the protection of the property of the  
15 patrons and the gaming enterprise from illegal  
16 activity;
- 17 6. participate in licensing of primary management  
18 officials and key employees of a Class III Gaming  
19 enterprise;
- 20 7. detain persons who may be involved in illegal acts  
21 for the purpose of notifying law enforcement  
22 authorities; and
- 23 8. record and investigate any and all unusual  
24 occurrences related to Class III Gaming within the  
25 Gaming Facility.

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1           B. Regulations. Without affecting the generality of the  
2 foregoing, the Tribe shall adopt laws:

- 3           1. prohibiting participation in any Class III Gaming  
4           by any person under the age of twenty-one (21);
- 5           2. prohibiting the employment of any person in Class  
6           III Gaming activities who is under the age of  
7           twenty-one (21) or who has not been licensed in  
8           accordance with Section 5, herein;
- 9           3. requiring the Tribe to take all necessary action  
10          to impose on its gaming operation standards and  
11          requirements equivalent to or more stringent than  
12          those contained in the federal Fair Labor  
13          Standards Act of 1938, the federal Occupational  
14          Safety and Health Act of 1970, and any other  
15          federal laws relating to wages, hours of work and  
16          conditions of work, and the regulations issued  
17          thereunder;
- 18          4. requiring that on any construction project  
19          involving any Gaming Facility or related structure  
20          that is funded in whole or in part by federal  
21          funds, all workers will be paid wages meeting or  
22          exceeding the standards established for New Mexico  
23          under the federal Davis-Bacon Act;
- 24          5. prohibiting the Tribe, the Gaming Enterprise and  
25          a Management Contractor from discriminating in the



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- employment of persons to work for the gaming Enterprise or in the Gaming Facility on the grounds of race, color, national origin, gender, sexual orientation, age or handicap;
- 6. providing to all employees of a gaming establishment employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave and medical and dental insurance as well as providing unemployment insurance and workers' compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable state programs;
  - 7. providing a grievance process for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee;
  - 8. permitting State Department of Environment inspectors to inspect Gaming Facilities' food service operations during normal Gaming Facility business hours to assure that standards and requirements equivalent to the State's Food Service Sanitation Act are maintained;
  - 9. prohibiting a gaming enterprise from cashing any paycheck or any type of government assistance

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- check, including Social Security, AFDC, pension and other similar checks, for any patron;
10. prohibiting a gaming enterprise from extending credit by accepting IOUs or markers from its patrons;
  11. requiring that odds be posted on each electronic and electromechanical gaming device;
  12. requiring that automatic teller machines on Gaming Facility premises be programmed so that the machines will not accept cards issued by the State to AFDC recipients for access to AFDC benefits;
  13. providing that each electronic or electromechanical gaming device in use at the Gaming Facility must pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than eighty percent (80%);
  14. providing that no later than ninety days after this Compact takes effect, all gaming machines on the premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual basis the activity of each gaming machine in use at the Gaming Facility, and that such data shall be electronically accessible to the State Gaming

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Representative upon entry of appropriate security codes;

15. enacting provisions that:

- (a) prohibit an employee of the Gaming Facility from selling, serving, giving or delivering an alcoholic beverage to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the Gaming Facility;
- (b) require Gaming Facility employees that dispense, sell, serve or deliver alcoholic beverages to attend Alcohol Server Education Classes similar to those classes provided for in the New Mexico Liquor Control Act; and
- (c) purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million dollars (\$1,000,000) per incident and two million dollars (\$2,000,000) aggregate per policy year;

16. prohibiting alcoholic beverages from being sold, served, delivered or consumed in that part of a Gaming Facility where gaming is allowed;

17. requiring the gaming enterprise to spend an amount that is no less than one-quarter of one percent

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(.25%) of its net win as that term is defined herein annually to fund or support programs for the treatment and assistance of compulsive gamblers and for the prevention of compulsive gambling;

- 18. governing any Management Contract regarding its Class III Gaming activity such that it conforms to the requirements of tribal law and the IGRA and the regulations issued thereunder;
- 19. prohibiting the operation of any Class III Gaming for at least four (4) consecutive hours daily, Mondays through Thursdays (except federal holidays);
- 20. prohibiting a Tribal Gaming Enterprise and the Tribe from providing, allowing, contracting to provide or arranging to provide alcoholic beverages, food or lodging for no charge or at reduced prices at a Gaming Facility or lodging facility as an incentive or enticement for patrons to game; and
- 21. prohibiting the Tribe, the Tribal Gaming Agency or a Management Contractor from contributing directly, or through an agent, representative or employee, revenue from a Gaming Enterprise owned by the Tribe, or anything of value acquired with

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1           that revenue, to a candidate, political committee  
2           or person holding an office elected or to be  
3           elected at an election covered by the State's  
4           Campaign Reporting Act.

5           The Tribal Gaming Agency will provide true copies of all  
6           tribal laws and regulations affecting Class III Gaming conducted  
7           under the provisions of this Compact to the State Gaming  
8           Representative within thirty (30) days after the effective date  
9           of this Compact, and will provide true copies of any amendments  
10          thereto or additional laws or regulations affecting gaming within  
11          thirty (30) days after their enactment (or approval, if any).

12          C. Audit and Financial Statements. The Tribal Gaming  
13          Agency shall require all books and records relating to Class III  
14          Gaming to be maintained in accordance with generally accepted  
15          accounting principles. All such books and records shall be  
16          retained for a period of at least six (6) years from the date of  
17          creation. Not less than annually, the Tribal Gaming Agency shall  
18          require an audit and a certified financial statement covering all  
19          financial activities of the gaming enterprise by an independent  
20          certified public accountant licensed by the State. The financial  
21          statement shall be prepared in accordance with generally accepted  
22          accounting principles and shall be submitted to the Tribal Gaming  
23          Agency within one hundred twenty (120) days of the close of the  
24          Tribe's fiscal year. Copies of the financial statement and the  
25          audit shall be furnished to the State Gaming Representative and

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1 the state treasurer by the Tribal Gaming Agency within one  
2 hundred twenty days of the agency's receipt of the documents.  
3 The Tribe will maintain the following records for not less than  
4 six (6) years:

- 5 1. revenues, expenses, assets, liabilities and equity  
6 for each Gaming Facility;
- 7 2. daily cash transactions for each Class III Gaming  
8 activity at each Gaming Facility, including but  
9 not limited to transactions relating to each  
10 gaming table bank, game dropbox and gaming room  
11 bank;
- 12 3. all markers, IOUs, returned checks, hold check or  
13 other similar credit instruments;
- 14 4. individual and statistical game records (except  
15 card games) to reflect statistical drop and  
16 statistical win; for electronic, computer, or  
17 other technologically assisted games, analytic  
18 reports which show the total amount of cash  
19 wagered and the total amount of prizes won;
- 20 5. contracts, correspondence and other transaction  
21 documents relating to all vendors and contractors;
- 22 6. records of all tribal gaming enforcement  
23 activities;
- 24 7. audits prepared by or on behalf of the Tribe; and  
25 8. personnel information on all Class III Gaming

1 employees or agents, including rotation sheets,  
2 hours worked, employee profiles and background  
3 checks.

4 D. Violations. The agents of the Tribal Gaming Agency  
5 shall have unrestricted access to the Gaming Facility during all  
6 hours of Class III Gaming activity, and shall have immediate and  
7 unrestricted access to any and all areas of the Gaming Facility  
8 for the purpose of ensuring compliance with the provisions of  
9 this Compact and the Ordinance. The agents shall report  
10 immediately to the Tribal Gaming Agency any suspected violation  
11 of this Compact, the Ordinance, or regulations of the Tribal  
12 Gaming Agency by the gaming enterprise, Management Contractor, or  
13 any person, whether or not associated with Class III Gaming.

14 E. State Gaming Representative.

- 15 1. Upon written request by the State to the Tribe,  
16 the Tribe will provide information on primary  
17 management officials, key employees and suppliers,  
18 sufficient to allow the State to conduct its own  
19 background investigations, as it may deem  
20 necessary, so that it may make an independent  
21 determination as to the suitability of such  
22 individuals, consistent with the standards set  
23 forth in Section 5, hereinafter. The Tribe shall  
24 consider any information or recommendations  
25 provided to it by the State as to any such person

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or entity, but the Tribe shall have the final say with respect to the hiring or licensing of any such person or entity.

2. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements, the State Gaming Representative authorized in writing by the Governor of the State or by legislation duly enacted by the State Legislature shall have the right to inspect a Gaming Facility, Class III Gaming activity, and all records relating to Class III Gaming (including those set forth in Section 5, hereinafter) of the Tribe, subject to the following conditions:

- (a) with respect to public areas of a Gaming Facility, at any time without prior notice during normal Gaming Facility business hours;
- (b) with respect to private areas of a Gaming Facility not accessible to the public, at any time during normal Gaming Facility business hours, immediately after notifying the Tribal Gaming Agency and Gaming Facility of his or her presence on the premises and presenting proper identification, and requesting access to the non-public areas of the Gaming

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Facility. The Tribe, in its sole discretion, may require an employee of the Gaming Facility or the Tribal Gaming Agency to accompany the State Gaming Representative at all times that the State Gaming Representative is on the premises of a Gaming Facility, but if the Tribe imposes such a requirement, the Tribe shall require such an employee of the Gaming Facility or the Tribal Gaming Agency to be available at all times for such purposes;

(c) with respect to inspection and copying of all management records relating to Class III Gaming, at any time without prior notice between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding official holidays. The reasonable costs of copying will be borne by the State; and

(d) whenever the State Gaming Representative, or his designee, enters the premises of the Gaming Facility for any such inspection, such Representative, or designee, shall identify himself to security or supervisory personnel of the Gaming Facility.

3. Gaming Enterprise and gaming operations

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1 information that is provided to the State Gaming  
2 Representative shall be considered public  
3 information and subject to the Inspection of  
4 Public Records Act. Trade secrets, information  
5 relating to security and surveillance systems,  
6 cash handling and accounting procedures, building  
7 layout, gaming machine payouts, investigations  
8 into alleged violations of laws or regulations,  
9 personnel records and proprietary information  
10 regarding the gaming enterprise of the Tribe,  
11 Class III Gaming conducted by the Tribe, or the  
12 operation thereof, shall not be deemed public  
13 records as a matter of state law, and shall not be  
14 disclosed to any member of the public, without the  
15 prior written approval of a duly authorized  
16 representative of the Tribe. These prohibitions  
17 shall not be construed to prohibit:

- 18 (a) the furnishing of any information to a law  
19 enforcement or regulatory agency of the  
20 Federal Government;
- 21 (b) the State from making known the names of  
22 persons, firms, or corporations conducting  
23 Class III Gaming pursuant to the terms of  
24 this Compact, locations at which such  
25 activities are conducted, or the dates on

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- which such activities are conducted;
- (c) publishing the terms of this Compact;
- (d) disclosing information as necessary to audit, investigate, prosecute or arbitrate violations of this Compact or other applicable laws or to defend suits against the State; and
- (e) complying with subpoenas or court orders issued by courts of competent jurisdiction.

- 4. To the fullest extent allowed by State law, the Tribe shall have the right to inspect State records concerning all Class III Gaming conducted by the Tribe; the Tribe shall have the right to copy such State records, with the Tribe bearing the reasonable cost of copying.
- 5. For every year or part thereof in which the Tribe is actually engaged in Class III Gaming hereunder, the Tribe shall reimburse the State for the costs the State incurs in carrying out any functions authorized by the terms of this Compact. All calculations of amounts due shall be based upon the operations of the Gaming Enterprise on the final day of operation of each quarter of the calendar year. Payments due the State shall be made no later than the twenty-fifth day of the

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1 month following the end of a quarter to the State  
2 Treasurer for deposit into the General Fund of the  
3 State ("State General Fund"). The amount of the  
4 regulatory fee each quarter shall be the sum of  
5 six thousand two hundred fifty dollars (\$6,250)  
6 per Gaming Facility plus three hundred dollars  
7 (\$300) per gaming machine plus seven hundred fifty  
8 dollars (\$750) per gaming table or device other  
9 than a Gaming Machine. These amounts shall  
10 increase by five percent (5%) each year beginning  
11 on the first day of January occurring after the  
12 Compact has been in effect for at least twelve  
13 months.

14 6. In the event the State believes that the Tribe is  
15 not administering and enforcing the regulatory  
16 requirements set forth herein, it may invoke the  
17 procedures set forth in Section 7 of this Compact.

18 F. The Tribe shall comply with all applicable provisions  
19 of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C.  
20 §§ 5311-5314, and all reporting requirements of the Internal  
21 Revenue Service.

22 SECTION 5. Licensing Requirements.

23 A. License Required. The Gaming Facility operator (but  
24 not including the Tribe), including its principals, primary  
25 management officials, and key employees, the Management

1 Contractor and its principals, primary management officials, and  
2 key employees (if the Tribe hires a Management Contractor); any  
3 person, corporation, or other entity that has supplied or  
4 proposes to supply any gaming device to the Tribe or the  
5 Management Contractor; and any person, corporation or other  
6 entity providing gaming services within or without a Gaming  
7 Facility, shall apply for and receive a license from the Tribal  
8 Gaming Agency before participating in any way in the operation or  
9 conduct of any Class III Gaming on Indian Lands.

10 B. License Application. Each applicant for a license  
11 shall file with the Tribal Gaming Agency a written application in  
12 the form prescribed by the Tribal Gaming Agency, along with the  
13 applicant's fingerprint card, current photograph and the fee  
14 required by the Tribal Gaming Agency.

- 15 1. The following Notice ("Privacy Act Notice") shall  
16 be placed on the application form for a principal,  
17 key employee or a primary management official  
18 before that form is filled out by an applicant:

19 "In compliance with the Privacy Act of 1974,  
20 the following information is provided:

21 Solicitation of the information on this form  
22 is authorized by 25 U. S. C. §§ 2701-2721. The  
23 purpose of the requested information is to  
24 determine the eligibility of individuals to be  
25 employed in a gaming enterprise. The

1 information will be used by members and staff  
2 of the Tribal Gaming Agency and the National  
3 Indian Gaming Commission who have need for the  
4 information in the performance of their  
5 official duties. The information may be  
6 disclosed to appropriate federal, tribal,  
7 state, local or foreign law enforcement and  
8 regulatory agencies when relevant to civil,  
9 criminal or regulatory investigations or  
10 prosecutions or when, pursuant to a  
11 requirement by a Tribe, or the National Indian  
12 Gaming Commission, the information is relevant  
13 to the hiring or firing of an employee, the  
14 issuance or revocation of a gaming license or  
15 investigations of activities while associated  
16 with a Tribe or a gaming enterprise. Failure  
17 to consent to the disclosures indicated in  
18 this Notice will result in a Tribe being  
19 unable to hire you in a primary management  
20 official or key employee position with a  
21 tribal gaming enterprise.  
22 The disclosure of your Social Security Number  
23 (SSN) is voluntary. However, failure to  
24 supply an SSN may result in errors in  
25 processing your application. "

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- 2. Existing principals, key employees and primary management officials shall be notified, in writing, that they shall either:
  - (a) complete a new application form that contains a Privacy Act Notice; or
  - (b) sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that Notice.
  
- 3. The following Notice ("False Statement Notice") shall be placed on the application form for a principal, key employee or a primary management official before that form is filled out by an applicant:

"A false statement on any part of your application may be grounds for not hiring you or for firing you after you begin work. Also, you may be punished by fine or imprisonment. See 18 U.S.C. § 1001."
  
- 4. The Tribal Gaming Agency shall notify, in writing, existing principals, key employees and primary management officials that they shall either:
  - (a) complete a new application form that contains a False Statement Notice; or
  - (b) sign a statement that contains the False Statement Notice.

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- 1           5. The Tribal Gaming Agency shall request from each  
2           applicant, and from each principal, primary  
3           management official and key employee of each  
4           applicant, all of the following information:
- 5           (a) full name, other names used (oral or  
6           written), Social Security Number(s), birth  
7           date, place of birth, citizenship, gender and  
8           all languages spoken or written;
- 9           (b) currently, and for the previous ten (10)  
10          years, business and employment positions  
11          held, ownership interests in those  
12          businesses, business and residence addresses  
13          and driver's license numbers; provided, that  
14          any applicant who is a principal, primary  
15          management official, key employee, Management  
16          Contractor, manufacturer or supplier of  
17          gaming devices, and/or a person providing  
18          gaming services, must provide such  
19          information currently, and from the age of  
20          eighteen (18);
- 21          (c) the names and current addresses of at least  
22          three (3) personal references, including one  
23          (1) personal reference who was acquainted  
24          with the applicant during each period of  
25          residence listed in Paragraph B. 5. (b) of this

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- section;
- (d) current business and residence telephone numbers;
- (e) a description of any existing and previous business relationships with a Tribe, including ownership interests in those businesses, and a description of any potential or actual conflict of interests between such businesses and a Tribe;
- (f) a description of any existing and previous business relationships in the gaming industry, including, but not limited to, ownership interests in those businesses;
- (g) the name and address of any licensing or regulatory agency with which the applicant has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- (h) for each felony for which there is an ongoing prosecution or a conviction, the charge, the date of the charge, the name and address of the court involved and the disposition, if any;
- (i) for each misdemeanor for which there is an ongoing prosecution or conviction (excluding

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- minor traffic violations), the charge, the date of the charge, the name and address of the court involved and the disposition, if any;
- (j) for each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is not otherwise listed pursuant to Paragraph B. 5. (h) or B. 5. (i) of this section, the criminal charge, the date of the charge, the name and address of the court involved and the disposition, if any;
- (k) the name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, as an applicant, principal, primary management official or key employee, and whether or not such license or permit was granted;
- (l) a current photograph;
- (m) fingerprints, which shall be taken by officers of the tribal police department or by another law enforcement agency and forwarded directly to the tribal police department. Pursuant to a Memorandum of

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1 Understanding between the Tribe and the  
2 National Indian Gaming Commission  
3 ("Commission"), tribal police officers shall  
4 forward the fingerprint cards directly to the  
5 Commission;

6 (n) the fee required by the Tribal Gaming Agency;  
7 and

8 (o) any other information the Tribal Gaming  
9 Agency deems relevant.

10 C. Background Investigations.

11 1. Upon receipt of a completed application and  
12 required fee for licensing, the Tribal Gaming  
13 Agency shall conduct or cause to be conducted a  
14 background investigation to ensure that the  
15 applicant is qualified for licensing.

16 2. Background checks of applicants will be performed  
17 pursuant to the following procedures:

18 (a) The Tribal Gaming Agency will provide  
19 applications to potential applicants upon  
20 request and shall collect and maintain the  
21 applications.

22 (b) Pursuant to a Memorandum of Understanding  
23 between the Tribe and the Commission, tribal  
24 police officers will collect fingerprints  
25 from all applicants and forward the

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fingerprint cards directly to the Commission.  
The Commission will obtain a criminal history record from the Federal Bureau of Investigation on each applicant and forward such information to the Tribal Gaming Agency.

(c) The Tribal Gaming Agency shall investigate the information provided in the applications.

This investigation shall include:

- (1) contacting persons or entities identified in the application and verifying by written or oral communication that the information contained in the application is accurate;
- (2) interviewing a sufficient number of knowledgeable people, such as former employers, partners, business associates, and others referred to in the application, to provide a basis for the Tribal Gaming Agency to make a determination concerning whether the applicant meets applicable eligibility requirements;
- (3) reviewing relevant financial records of the applicant for the three (3) years preceding the application; and
- (4) contacting any state, federal or other

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government agency that is referred to in the application.

(d) The Tribal Gaming Agency shall document any information it obtains that calls into question whether the applicant would meet the eligibility requirements under the Ordinance. The Tribal Gaming Agency shall then document in detail the disposition of these problem areas, indicating the follow-up investigations performed on the problem areas and the result of such investigations.

(e) The Tribal Gaming Agency will review the results of the investigation. This review will include a determination as to the scope of the investigation and whether sufficient information was obtained and verified. If such information is found not sufficient, the Tribal Gaming Agency will perform additional investigations.

(f) Once the investigation is complete, the Tribal Gaming Agency will decide whether the applicant meets the eligibility criteria under the Ordinance.

3. In conducting a background investigation, the Tribal Gaming Agency and its agents shall keep

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confidential the identity of each person interviewed in the course of the investigation.

4. Within twenty (20) days of the receipt of a completed application for licensing, and upon request of an applicant, the Tribal Gaming Agency may issue a temporary license to the applicant, unless the background investigation undertaken discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant are apparent on the face of the application. The temporary license shall become void and be of no effect upon either:
  - (a) the issuance of the license;
  - (b) the issuance of a notice of denial; or
  - (c) ninety (90) days after the temporary license is issued, whichever occurs first.
  
5. The Tribal Gaming Agency shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility or suitability of an applicant, or a principal, key employee or primary management official of an applicant, for employment or involvement in a gaming enterprise. After such consultation, the Tribal Gaming Agency shall either issue a license or deny the

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1 application. If the Tribal Gaming Agency  
2 determines that employment or involvement of the  
3 applicant poses a threat to the public interest or  
4 to the effective regulation of Class III Gaming or  
5 creates or enhances dangers of unsuitable, unfair  
6 or illegal practices, methods or activities in the  
7 conduct of Class III Gaming, the Tribal Gaming  
8 Agency shall deny the application.

9 6. The Tribal Gaming Agency shall retain the right to  
10 conduct additional background investigations of any  
11 person required to be licensed at any time while  
12 the license is valid.

13 D. Procedure for Forwarding Applications and Reports.

14 Procedures for forwarding applications and investigative reports  
15 to the Commission and State Gaming Representative:

16 1. When a key employee or primary management official  
17 begins work at a gaming enterprise authorized by  
18 this Compact, the Tribal Gaming Agency shall  
19 forward to the Commission and the State Gaming  
20 Representative a completed application for  
21 employment.

22 2. The Tribal Gaming Agency shall forward the report  
23 referred to in Paragraph D. 4. of this section to  
24 the Commission and the State Gaming Representative  
25 within sixty (60) days after an employee begins

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work, or within sixty (60) days of the approval of this Compact by the Secretary of the Interior.

3. A key employee or primary management official who does not have a license shall not be employed after ninety (90) days.
4. The Tribal Gaming Agency shall prepare and forward to the Commission and the State Gaming Representative a report on each background investigation ("Investigative Report"). An Investigative Report shall include all of the following:
  - (a) steps taken in conducting the background investigation;
  - (b) results obtained;
  - (c) conclusions reached; and
  - (d) the basis for those conclusions.
5. The Tribal Gaming Agency shall submit with the Investigative Report a copy of the eligibility determination made under Paragraph C. 5. of this section.
6. If a license is not issued to an applicant, the Tribal Gaming Agency shall notify the Commission and the State Gaming Representative.
7. With respect to principals, key employees and primary management officials, the Tribal Gaming

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1 Agency shall retain applications for employment and  
2 Investigative Reports (if any) for no less than  
3 three (3) years from the date of termination of  
4 employment.

5 E. Granting a Gaming License.

- 6 1. If within thirty (30) days after it receives an  
7 Investigative Report, neither the Commission nor  
8 the State Gaming Representative has notified the  
9 Tribal Gaming Agency that it has an objection to  
10 the issuance of a license pursuant to a license  
11 application filed by a principal, key employee or  
12 primary management official, the Tribal Gaming  
13 Agency may issue a license to such applicant.
- 14 2. The Tribal Gaming Agency shall respond to any  
15 request for additional information from the  
16 Commission or the State Gaming Representative  
17 concerning a principal, key employee or primary  
18 management official who is the subject of an  
19 Investigative Report. Such a request shall suspend  
20 the thirty-day (30-day) period under Paragraph E. 1.  
21 of this section until the Commission or the State  
22 Gaming Representative receives the additional  
23 information; however, in no event shall a request  
24 for additional information by the State Gaming  
25 Representative extend the thirty-day (30-day)

1 period under Paragraph E. 1. of this section for a  
2 total period of more than sixty (60) days from the  
3 date the State Gaming Representative received the  
4 Investigative Report.

- 5 3. If, within the thirty-day (30-day) period described  
6 above, the Commission or the State Gaming  
7 Representative provides the Tribal Gaming Agency  
8 with a statement itemizing objections to the  
9 issuance of a license to a principal, key employee  
10 or primary management official for whom the Tribal  
11 Gaming Agency has provided an application and  
12 Investigative Report, the Tribal Gaming Agency  
13 shall reconsider the application, taking into  
14 account the objections itemized by the Commission  
15 and/or the State Gaming Representative, and make a  
16 final decision whether to issue a license to such  
17 applicant.

18 F. Management Contract.

- 19 1. If the Tribe chooses to enter into a Management  
20 Contract, the Tribal Gaming Agency shall require  
21 that all principals, primary management officials  
22 and key employees of the Management Contractor be  
23 licensed.  
24 2. The Tribe may enter into a Management Contract only  
25 if the Management Contract:

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- (a) provides that all Class III Gaming covered by the Management Contract will be conducted in accordance with the IGRA, the Ordinance and this Compact;
- (b) enumerates the responsibilities of each of the parties for each identifiable function, including:
  - (1) maintaining and improving the Gaming Facility;
  - (2) providing operating capital;
  - (3) establishing operating days and hours;
  - (4) hiring, firing, training and promoting employees;
  - (5) maintaining the gaming enterprise's books and records;
  - (6) preparing the gaming enterprise's financial statements and reports;
  - (7) paying for the services of the independent auditor engaged pursuant to 25 C. F. R. § 571.12;
  - (8) hiring and supervising security personnel;
  - (9) providing fire protection services;
  - (10) setting an advertising budget and placing advertising;
  - (11) paying bills and expenses;

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- 1 (12) establishing and administering employment
- 2 practices;
- 3 (13) obtaining and maintaining insurance
- 4 coverage, including coverage of public
- 5 liability and property loss or damage;
- 6 (14) complying with all applicable provisions
- 7 of the Internal Revenue Code of 1986, as
- 8 amended;
- 9 (15) paying the cost of public safety services;
- 10 and
- 11 (16) if applicable, supplying the Commission
- 12 with all information necessary for the
- 13 Commission to comply with the National
- 14 Environmental Policy Act of 1969;
- 15 (c) provides for the establishment and maintenance
- 16 of satisfactory accounting systems and
- 17 procedures that shall, at a minimum:
- 18 (1) include an adequate system of internal
- 19 controls;
- 20 (2) permit the preparation of financial
- 21 statements in accordance with generally
- 22 accepted accounting principles;
- 23 (3) be susceptible to audit;
- 24 (4) permit the calculation and payment of the
- 25 Management Contractor's fee; and

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- (5) provide for the allocation of operating expenses or overhead expenses among the Tribe, the Management Contractor and any other user of a shared Gaming Facility and services;
- (d) requires the Management Contractor to provide the Tribe, not less frequently than monthly, verifiable financial reports or all information necessary to prepare such reports;
- (e) requires the Management Contractor to provide immediate access to the Gaming Facility, including its books and records, by appropriate officials of the Tribe, who shall have:
  - (1) the right to verify the daily gross revenues and income from the gaming enterprise; and
  - (2) access to any other gaming-related information the Tribe deems appropriate;
- (f) provides for a minimum guaranteed monthly payment to the Tribe in a sum certain that has preference over the retirement of development and construction costs;
- (g) provides an agreed upon maximum dollar amount for the recoupment of development and construction costs;

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- (h) provides for a term not to exceed the period allowed by the IGRA;
- (i) details the method of compensating and reimbursing the Management Contractor. If a Management Contract provides for a percentage fee, such fee shall be either:
  - (1) not more than thirty percent (30%) of the net revenues of the gaming enterprise if the Chairman of the Commission determines that such percentage is reasonable considering the circumstances; or
  - (2) not more than forty percent (40%) of the net revenues if the Chairman of the Commission is satisfied that the capital investment required and income projections for the gaming enterprise require the additional fee;
- (j) provides the grounds and mechanisms for modifying or terminating the Management Contract;
- (k) contains a mechanism to resolve disputes between:
  - (1) the Management Contractor and customers, consistent with the procedures in the Ordinance;

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- 1 (2) the Management Contractor and the Tribe;  
2 and  
3 (3) the Management Contractor and the gaming  
4 enterprise employees;
- 5 (l) indicates whether and to what extent contract  
6 assignments and subcontracting are permissible;
- 7 (m) indicates whether and to what extent changes in  
8 the ownership interest in the Management  
9 Contract require advance approval by the Tribe;  
10 and  
11 (n) states that the Management Contract shall not  
12 be effective unless and until it is approved by  
13 the Chairman of the Commission, date of  
14 signature of the parties notwithstanding.
- 15 3. The Tribe shall not enter into any Management  
16 Contract if the Tribal Gaming Agency determines  
17 that the Management Contractor or any principal,  
18 primary management official or key employee of the  
19 Management Contractor is not licensed or is  
20 ineligible to be licensed.

21 G. Confidentiality of Records. Any and all background  
22 Investigative Reports on employees or contractors, supporting  
23 documents acquired or generated in connection therewith, and any  
24 other Investigative Reports or documents acquired or generated in  
25 the course of investigations performed by the Tribe or the Tribal

1 Gaming Agency, that are provided to the State Gaming  
2 Representative or any other agency or official of the State by  
3 the Tribal Gaming Agency or the Tribe pursuant to the provisions  
4 of this Compact, shall not be deemed public records of the State  
5 and shall not be disclosed to any member of the public without  
6 the prior express written authorization of an authorized  
7 representative of the Tribe; provided, that nothing herein shall  
8 preclude any State agency or official from providing information  
9 to a federal agency or official having responsibility relative to  
10 Indian Gaming or from compliance with any valid order of a court  
11 having jurisdiction.

12 SECTION 6. Providers of Class III Gaming Equipment or Devices or  
13 Supplies.

14 A. Within thirty (30) days after the effective date of  
15 this Compact, if it has not already done so, the Tribal Gaming  
16 Agency will adopt standards for any and all Class III Gaming  
17 equipment, devices or supplies to be purchased, leased or  
18 otherwise acquired by the Tribe after the effective date of this  
19 Compact for use in any Gaming Facility, which standards shall be  
20 at least as strict as the comparable standards applicable to  
21 Class III Gaming equipment, devices or supplies within the State  
22 of Nevada. Any and all Class III Gaming equipment, devices or  
23 supplies acquired by the Tribe after the date of this Compact  
24 shall meet or exceed the standards thereby adopted, and any and  
25 all Class III Gaming equipment, devices or supplies used by the



1 Tribe in its Gaming Facilities as of the effective date of this  
2 Compact shall be upgraded or replaced, if necessary, so as to  
3 comply with such standards, by no later than one (1) year after  
4 the effective date of this Compact.

5 B. Prior to entering into any future lease or purchase  
6 agreement for Class III Gaming equipment, devices or supplies,  
7 the Tribe shall obtain sufficient information and identification  
8 from the proposed seller or lessor and all persons holding any  
9 direct or indirect financial interest in the lessor or the  
10 lease/purchase agreement to permit the Tribe to license those  
11 persons in accordance with Section 5, hereof.

12 C. The seller, lessor, ~~manufacturer~~ or distributor shall  
13 provide, assemble and install all Class III Gaming equipment,  
14 devices or supplies in a ~~manner~~ approved and licensed by the  
15 Tribe.

16 SECTION 7. Dispute Resolution.

17 A. In the event either party believes that the other party  
18 has failed to comply with or has otherwise breached any provision  
19 of this Compact, such party may invoke the following procedure:

- 20 1. The party asserting noncompliance shall serve  
21 written notice on the other party. The notice  
22 shall identify the specific Compact provision  
23 believed to have been violated and shall specify  
24 the factual and legal basis for the alleged  
25 noncompliance. The notice shall specifically

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1 identify the date, time and nature of the alleged  
2 noncompliance. Representatives of the State and  
3 Tribe shall thereafter meet within thirty (30) days  
4 in an effort to resolve the dispute.

5 2. In the event an allegation by the complaining party  
6 is not resolved to the satisfaction of such party  
7 within ninety (90) days after service of the notice  
8 set forth in Paragraph A. 1. of this section, the  
9 complaining party may serve upon the other party a  
10 notice to cease conduct of the particular game(s)  
11 or activities alleged by the complaining party to  
12 be in noncompliance. Upon receipt of such notice,  
13 the responding party may elect to stop the game(s)  
14 or activities specified in the notice or invoke  
15 arbitration and continue the game(s) or activities  
16 pending the results of arbitration. The responding  
17 party shall act upon one of the foregoing options  
18 within thirty (30) days of receipt of notice from  
19 the complaining party.

20 3. Arbitration under this authority shall be conducted  
21 under the Commercial Arbitration Rules of the  
22 American Arbitration Association, except that the  
23 arbitrators shall be attorneys who are licensed  
24 members in good standing of the State Bar of New  
25 Mexico or of the bar of another state. The State

1 will select one arbitrator, the Tribe a second  
 2 arbitrator, and the two so chosen shall select a  
 3 third arbitrator. If the third arbitrator is not  
 4 chosen in this manner within ten (10) days after  
 5 the second arbitrator is selected, the third  
 6 arbitrator will be chosen in accordance with the  
 7 rules of the American Arbitration Association.

- 8 4. All parties shall bear their own costs of  
 9 arbitration and attorney fees.
- 10 5. The results of arbitration shall be enforceable by  
 11 an action for injunctive or mandatory injunctive  
 12 relief against the State and the Tribe in any court  
 13 of competent jurisdiction. For purposes of any  
 14 such action, the State and the Tribe acknowledge  
 15 that any action or failure to act on the part of  
 16 any agent or employee of the State or the Tribe,  
 17 contrary to a decision of the arbitrators in an  
 18 arbitration proceeding conducted under the  
 19 provisions of this section, occurring after such  
 20 decision, shall be wholly unauthorized and ultra  
 21 vires acts, not protected by the sovereign immunity  
 22 of the State or the Tribe.

23 B. Nothing in Subsection 7A. shall be construed to waive,  
 24 limit or restrict any remedy that is otherwise available to  
 25 either party to enforce or resolve disputes concerning the

1 provisions of this Compact. Nothing in this Compact shall be  
2 deemed a waiver of the Tribe's sovereign immunity. Nothing in  
3 this Compact shall be deemed a waiver of the State's sovereign  
4 immunity.

5 SECTION 8. Protection of Visitors.

6 A. Liability to Visitors. The safety and protection of  
7 visitors to a Gaming Facility and uniformity and application of  
8 laws and jurisdiction of claims is directly related to and  
9 necessary for the regulation of Tribal gaming activities in this  
10 state. To that end, the general civil laws of New Mexico and  
11 concurrent civil jurisdiction in the State courts and the Tribal  
12 courts shall apply to a visitor's claim of liability for bodily  
13 injury or property damage proximately caused by the conduct of  
14 the Gaming Enterprise and:

- 15 1. occurring at a Gaming Facility, other premises,  
16 structures, on grounds or involving vehicles and  
17 mobile equipment used by a Gaming Enterprise;
- 18 2. arising out of a condition at the Gaming Facility  
19 or on premises or roads and passageways immediately  
20 adjoining it;
- 21 3. occurring outside of the Gaming Facility but  
22 arising from the activities of the Gaming  
23 Enterprise;
- 24 4. as a result of a written contract that directly  
25 relates to the ownership, maintenance or use of a

1 Gaming Facility or when the liability of others is  
2 assumed by the Gaming Enterprise; or

3 5. on a road or other passageway on Indian lands while  
4 the visitor is traveling to or from the Gaming  
5 Facility.

6 B. Insurance Coverage for Claims Required. The Gaming  
7 Enterprise shall maintain in effect policies of liability  
8 insurance insuring the Tribe, its agents and employees against  
9 claims, demands or liability for bodily injury and property  
10 damages by a visitor arising from an occurrence described in  
11 Subsection A of this section. The policies shall provide bodily  
12 injury and property damage coverage in an amount of a least one  
13 million dollars (\$1,000,000) per person and ten million dollars  
14 (\$10,000,000) per occurrence. The Tribe shall provide the State  
15 Gaming Representative annually a certificate of insurance showing  
16 that the Tribe, its agents and employees are insured to the  
17 required extent and in the circumstances described in this  
18 section.

19 C. Limitation on Time to Bring Claim. Claims brought  
20 pursuant to the provisions of this section must be commenced by  
21 filing an action in court or a demand for arbitration within  
22 three years of the date the claim accrues.

23 D. Specific Waiver of Immunity. The Tribe, by entering  
24 into this Compact and agreeing to the provisions of this section,  
25 waives its defense of sovereign immunity in connection with any

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1 claims for compensatory damages up to the amount of one million  
2 dollars (\$1,000,000) per injured person and ten million dollars  
3 (\$10,000,000) per occurrence asserted as provided in this  
4 section. This is a limited waiver and does not waive the tribe's  
5 immunity from suit for any other purpose. The Tribe shall ensure  
6 that a policy of insurance that it acquires to fulfill the  
7 requirements of this section shall include a provision under  
8 which the insurer agrees not to assert the defense of sovereign  
9 immunity on behalf of the insured.

10 E. Election by Visitor. A visitor having a claim  
11 described in this section may pursue that claim in the State  
12 court of general jurisdiction for such claims or the Tribal court  
13 or, at the option of the visitor, may proceed to enforce the  
14 claim in binding arbitration. The visitor shall make a written  
15 election that is final and binding upon the visitor.

16 F. Arbitration. Arbitration shall be conducted pursuant  
17 to an election by a visitor as provided in Subsection E of this  
18 section as follows:

- 19 1. the visitor shall submit a written demand for  
20 arbitration to the Gaming Enterprise, by certified  
21 mail, return receipt requested;
- 22 2. the visitor and the Gaming Enterprise shall each  
23 designate an arbitrator within thirty (30) days of  
24 the date of receipt of the demand, and the two  
25 arbitrators shall select a third arbitrator;

- 1           3. the arbitration panel shall permit the parties to
- 2           engage in reasonable discovery, and shall establish
- 3           other procedures to ensure a full, fair and
- 4           expeditious hearing on the claim; and
- 5           4. the award of the arbitration panel shall be final
- 6           and binding.

7           G. Public Health and Safety. The Tribe shall establish for  
8           its Gaming Facility health, safety and construction standards  
9           that are at least as stringent as the current editions of the  
10          National Electrical Code, the Uniform Building Code, the Uniform  
11          Mechanical Code, the Uniform Fire Code and the Uniform Plumbing  
12          Code, and any and all Gaming Facilities or additions thereto  
13          constructed by the Tribe hereafter shall be constructed and all  
14          facilities shall be maintained so as to comply with such  
15          standards. Inspections will be conducted with respect to these  
16          standards at least annually. If the State Gaming Representative  
17          requests sufficiently in advance of an annual inspection, the  
18          State Gaming Representative may be present during such  
19          inspection. The Tribe agrees to correct any deficiencies noted  
20          in such inspections within a time agreed upon between the State  
21          and Tribe. The Tribal Gaming Agency will provide copies of such  
22          inspection reports to the State Gaming Representative, if  
23          requested to do so in writing.

24          SECTION 9. Effective Date. This Compact shall be effective  
25          immediately upon the occurrence of the last of the following:

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- 1           A. execution by the Tribe's Governor after approval of the
- 2 Tribal Council;
- 3           B. execution by the Governor of the State;
- 4           C. approval by the Secretary of the Interior; and
- 5           D. publication in the Federal Register.

6           The Governor is authorized to execute compacts with an  
7 individual Tribe that has also entered into revenue-sharing  
8 agreements and has passed resolutions described herein, in  
9 substantially the same form as set forth herein. Upon signature  
10 by the Governor and the Tribe, the Compact shall be transmitted  
11 to the Secretary of the Interior for approval.

12 SECTION 10. Criminal Jurisdiction.

13           A. The Tribe and the State acknowledge that under the  
14 provisions of § 23 of the IGRA, especially that portion codified  
15 at 18 U.S.C. § 1166(d), jurisdiction to prosecute violations of  
16 State gambling laws made applicable by that section to Indian  
17 country is vested exclusively within the United States, unless  
18 the Tribe and the State agree in a compact entered into pursuant  
19 to the IGRA to transfer such jurisdiction to the State.

20           B. The Tribe and the State hereby agree that, in the event  
21 of any violation of any State gambling law on Indian Lands or any  
22 other crime against the Gaming Enterprise or any employee thereof  
23 or that occurs on the premises of the Tribal Gaming Facility,  
24 that is committed by any person who is not a member of the Tribe,  
25 the State shall have and may exercise jurisdiction, concurrent



1 with that of the United States, to prosecute such person, under  
2 its laws and in its courts.

3 C. Immediately upon becoming aware of any such suspected  
4 crime by a nonmember of the Tribe, the Gaming Enterprise or the  
5 Tribal Gaming Agency shall notify the state attorney general and  
6 the district attorney for the district in which the Gaming  
7 Facility is located, supplying all particulars available to the  
8 tribal entity at the time. The Tribe agrees that its law  
9 enforcement and gaming agencies shall perform such additional  
10 investigation or take such other steps in furtherance of the  
11 investigation and prosecution of the violation as the district  
12 attorney may reasonably request, and otherwise cooperate fully  
13 with the district attorney and any state law enforcement agencies  
14 with respect to the matter, but once notice of a suspected  
15 violation has been given to the district attorney, the matter  
16 shall be deemed to be under the jurisdiction of the State (except  
17 that in the event of emergency circumstances involving a possible  
18 violation, the Tribe and its constituent agencies shall have the  
19 discretion to act as they see fit, and to call upon such other  
20 agencies or entities as they deem reasonable or necessary, in  
21 order to protect against any immediate threat to lives or  
22 property). The State may, in its discretion, refer the matter to  
23 federal authorities, but it shall notify the Tribal Gaming Agency  
24 upon doing so.

25 D. The State agrees that no less frequently than annually

1 it will provide the Tribal Gaming Agency with a written report of  
2 the status and disposition of each matter referred to it under  
3 the provisions of this section that is still pending. In the  
4 event the district attorney to whom a matter is referred under  
5 the provisions of this section decides not to prosecute such  
6 matter, the district attorney shall promptly notify the Tribal  
7 Gaming Agency of such decision in writing. The Tribal Gaming  
8 Agency may in that event ask the attorney general of the state to  
9 pursue the matter.

10 E. The district attorney for the district in which the  
11 Gaming Facility is situated may decline to accept referrals of  
12 cases under the provisions of this section unless and until the  
13 Tribe has entered into a Memorandum of Understanding with the  
14 office of the district attorney to which Memorandum of  
15 Understanding the United States Attorney for the District of New  
16 Mexico may also be a party addressing such matters as the  
17 specific procedures by which cases are to be referred,  
18 participation of the Tribal Gaming Agency and tribal law  
19 enforcement personnel in the investigation and prosecution of any  
20 such case, payments by the Tribe to the office of the district  
21 attorney to defray the costs of handling cases referred under the  
22 provisions of this section, and related matters.

23 SECTION 11. Binding Effect and Duration.

24 A. This Compact shall be binding upon the State and Tribe  
25 for a term of ten (10) years from the date it becomes effective

1 and may renew for an additional period.

2 B. Before the date that is one (1) year prior to the  
3 expiration of the ten-year (10-year) initial term, and/or before  
4 the date that is one (1) year prior to the expiration of the  
5 renewal period, either party may serve written notice on the  
6 other of its desire to renegotiate this Compact.

7 C. In the event that either party gives written notice to  
8 the other of its desire to renegotiate this Compact pursuant to  
9 Subsection B. of this section, the Tribe may, pursuant to the  
10 procedures of the IGRA, request the State to enter into  
11 negotiations for a new compact governing the conduct of Class III  
12 Gaming. If the parties are unable to conclude a successor  
13 compact, this Compact shall terminate.

14 D. Notwithstanding the foregoing, at any time while this  
15 Compact remains in effect, either party may, by written notice to  
16 the other party, request reopening of negotiations with respect  
17 to any provision of this Compact, or with respect to any issue  
18 not addressed in the Compact, specifying such provision or issue  
19 in such notice. No such request shall be unreasonably refused,  
20 but neither party shall be required to agree to any change in the  
21 Compact, and no agreement to supplement or amend this Compact in  
22 any respect shall have any validity until the same shall have  
23 been approved in writing by the Tribe, the State and the  
24 Secretary of the Interior and notice of such approval published  
25 in the Federal Register.

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1           E. The Tribe may operate Class III Gaming only while this  
2 Compact or any renegotiated compact is in effect.

3 SECTION 12. Notice to Parties.

4           Unless otherwise indicated, all notices, payments, requests,  
5 reports, information or demand that any party hereto may desire  
6 or may be required to give to the other party hereto, shall be in  
7 writing and shall be personally delivered or sent by first-class  
8 mail sent to the other party at the address provided in writing  
9 by the other party. Every notice, payment, request, report,  
10 information or demand so given shall be deemed effective upon  
11 receipt or, if mailed, upon receipt or the expiration of the  
12 third day following the day of mailing, whichever occurs first,  
13 except that any notice of change of address shall be effective  
14 only upon receipt by the party to whom said notice is addressed.

15 SECTION 13. Entire Agreement.

16           This Compact is the entire agreement between the parties and  
17 supersedes all prior agreements, whether written or oral, with  
18 respect to the subject matter hereof. Neither this Compact nor  
19 any provision herein may be changed, waived, discharged or  
20 terminated orally, but only by an instrument, in writing, signed  
21 by the Tribe and the State and approved by the Secretary of the  
22 Interior. This Compact shall not be amended without the express  
23 approval of the Tribe, the Governor of the State and the State  
24 Legislature.

25 SECTION 14. Filing of Compact with State Records Center.

1           Upon the effective date of this Compact, a copy shall be  
2 filed by the Governor with the New Mexico Records Center. Any  
3 subsequent amendment or modification of this Compact shall be  
4 filed with the New Mexico Records Center.

5 SECTION 15. Counterparts.

6           This Compact may be executed by the parties in any number of  
7 separate counterparts with the same effect as if the signatures  
8 were upon the same instrument. All such counterparts shall  
9 together constitute one and the same document. "

10           Section 2. [NEW MATERIAL] REVENUE SHARING OF TRIBAL GAMING  
11 REVENUE. --The governor is authorized to execute a revenue-sharing  
12 agreement in the form substantially set forth in this section  
13 with any New Mexico Indian nation, tribe or pueblo that has also  
14 entered into an Indian gaming compact as provided by law.  
15 Execution of an Indian gaming compact is conditioned upon  
16 execution of a revenue-sharing agreement. The consideration for  
17 the Indian entity entering into the revenue-sharing agreement is  
18 the condition of the agreement providing limited exclusivity of  
19 gaming activities to the tribal entity. The revenue-sharing  
20 agreement shall be in substantially the following form and is  
21 effective when executed by the governor on behalf of the state  
22 and the appropriate official of the Indian entity:

23   "REVENUE- SHARING AGREEMENT

24           1. Summary and consideration. The Tribe shall agree to  
25 contribute a portion of its Class III Gaming revenues identified

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[bracketed material] = delete

1 in and under procedures of this Revenue-Sharing Agreement, in  
2 return for which the State agrees that the Tribe:

3 A. has the exclusive right within the State to provide  
4 all types of Class III Gaming described in the Indian Gaming  
5 Compact, with the sole exception of the use of Gaming Machines,  
6 which the State may permit on a limited basis for racetracks and  
7 veterans' and fraternal organizations; and

8 B. will only share that part of its revenue arising  
9 from the use of Gaming Machines and all other gaming revenue is  
10 exclusively the Tribe's.

11 2. Revenue to State. The parties agree that, after the  
12 effective date hereof, the Tribe shall make the quarterly  
13 payments provided for in Paragraph 3 of the Revenue Sharing  
14 Agreement to the state treasurer for deposit into the General  
15 Fund of the State ("State General Fund").

16 3. Calculation of Revenue to State.

17 A. As used in this Revenue-Sharing Agreement, "net  
18 win" means the annual total amount wagered at a Gaming Facility  
19 on Gaming Machines less the following amounts:

20 (1) the annual amount paid out in prizes from  
21 gaming on Gaming Machines;

22 (2) the actual amount of regulatory fees paid to  
23 the state; and

24 (3) the sum of two hundred fifty thousand dollars  
25 (\$250,000) per year as an amount representing tribal regulatory

1 fees, with these amounts increasing by five percent (5%) each  
2 year beginning on the first day of January occurring after the  
3 Compact has been in effect for at least twelve months.

4 B. The Tribe shall pay the state sixteen percent (16%)  
5 of the net win.

6 C. For purposes of these payments, all calculations of  
7 amounts due shall be based upon the quarterly activity of the  
8 gaming facility. Quarterly payments due to the State pursuant to  
9 these terms shall be paid no later than twenty-five (25) days  
10 after the last day of each calendar quarter. Any payments due  
11 and owing from the Tribe in the quarter the Compact is approved,  
12 or the final quarter the Compact is in force, shall reflect the  
13 net win, but only for the portion of the quarter the Compact is  
14 in effect.

15 4. Limitations. The Tribe's obligation to make the  
16 payments provided for in Paragraphs 2 and 3 of this section shall  
17 apply and continue only so long as there is a binding Indian  
18 Gaming Compact in effect between the Tribe and the State, which  
19 Compact provides for the play of Class III Gaming, but shall  
20 terminate in the event of any of the following conditions:

21 A. If the State passes, amends, or repeals any law, or  
22 takes any other action, which would directly or indirectly  
23 attempt to restrict, or has the effect of restricting, the scope  
24 of Indian gaming.

25 B. If the State permits any expansion of nontribal

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1 Class III Gaming in the State. Notwithstanding this general  
2 prohibition against permitted expansion of gaming activities, the  
3 State may permit: (1) the enactment of a State lottery, (2) any  
4 fraternal, veterans or other nonprofit membership organization to  
5 operate such electronic gaming devices lawfully, but only for the  
6 benefit of such organization's members, (3) limited fundraising  
7 activities conducted by nonprofit tax exempt organizations  
8 pursuant to Section 30-19-6 NMSA 1978, and (4) any horse  
9 racetracks to operate electronic gaming devices on days on which  
10 live or simulcast horse racing occurs.

11 5. Effect of Variance. In the event the acts or omissions  
12 of the State cause the Tribe's obligation to make payments under  
13 Paragraph 3 of this section to terminate under the provisions of  
14 Paragraph 4 of this section, such cessation of obligation to pay  
15 will not adversely affect the validity of the Compact, but the  
16 amount that the Tribe agrees to reimburse the State for  
17 regulatory fees under the Compact shall automatically increase by  
18 twenty percent (20%).

19 6. Third-Party Beneficiaries. This Agreement is not  
20 intended to create any third-party beneficiaries and is entered  
21 into solely for the benefit of the Tribe and the State."

22 Section 3. [NEW MATERIAL] SHORT TITLE. -- Sections 3  
23 through 63 of this act may be cited as the "Gaming Control Act".

24 Section 4. [NEW MATERIAL] POLICY. -- It is the state's  
25 policy on gaming that:



1           A. limited gaming activities should be allowed in the  
2 state if those activities are strictly regulated to ensure honest  
3 and competitive gaming that is free from criminal and corruptive  
4 elements and influences; and

5           B. the holder of any license issued by the state in  
6 connection with the regulation of gaming activities has a  
7 revocable privilege only and has no property right or vested  
8 interest in the license.

9           Section 5. [NEW MATERIAL] DEFINITIONS. --As used in the  
10 Gaming Control Act:

11           A. "affiliate" means a person who, directly or  
12 indirectly through one or more intermediaries, controls, is  
13 controlled by or is under common control with a specified person;

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

17           (2) is involved in gaming activities or involved  
18 in the ownership of property on which gaming is conducted;

19           C. "applicant" means a person who has applied for a  
20 license or for approval of an act or transaction for which  
21 approval is required or allowed pursuant to the provisions of the  
22 Gaming Control Act;

23           D. "application" means a request for the issuance of  
24 a license or for approval of an act or transaction for which  
25 approval is required or allowed pursuant to the provisions of the

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1 Gaming Control Act, but "application" does not include a  
2 supplemental form or information that may be required with the  
3 application;

4 E. "associated equipment" means equipment or a  
5 mechanical, electromechanical or electronic contrivance,  
6 component or machine used in connection with gaming;

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

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

10 H. "certified technician" means a person certified by  
11 a manufacturer licensee to repair and service gaming devices, but  
12 who is prohibited from programming gaming devices;

13 I. "company" means a corporation, partnership,  
14 limited partnership, trust, association, joint stock company,  
15 joint venture, limited liability company or other form of  
16 business organization that is not a natural person;

17 J. "distributor" means a person who supplies gaming  
18 devices to a gaming operator but does not manufacture gaming  
19 devices;

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

22 (1) voting stock or similar security;

23 (2) a security convertible into voting stock or  
24 similar security, with or without consideration, or a security  
25 carrying a warrant or right to subscribe to or purchase voting

1 stock or similar security;

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

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

6 L. "executive director" means the chief  
7 administrative officer appointed by the board pursuant to Section  
8 9 of the Gaming Control Act;

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

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

19 O. "gaming" means offering a game for play;

20 P. "gaming activity" means any endeavor associated  
21 with the manufacture or distribution of gaming devices or the  
22 conduct of gaming;

23 Q. "gaming device" means associated equipment or a  
24 gaming machine and includes a system for processing information  
25 that can alter the normal criteria of random selection that

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1 affects the operation of a game or determines the outcome of a  
2 game; "gaming device" does not include a system or device that  
3 affects a game solely by stopping its operation so that the  
4 outcome remains undetermined;

5 R. "gaming employee" means a person connected  
6 directly with a gaming activity; "gaming employee" does not  
7 include:

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

10 (2) secretarial or janitorial personnel;

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

12 (4) other nongaming personnel;

13 S. "gaming establishment" means the premises on or in  
14 which gaming is conducted;

15 T. "gaming machine" means a mechanical,  
16 electromechanical or electronic contrivance or machine that, upon  
17 insertion of a coin, token or similar object, or upon payment of  
18 any consideration, is available to play or operate a game,  
19 whether the payoff is made automatically from the machine or in  
20 any other manner;

21 U. "gaming operator" means a person who conducts  
22 gaming;

23 V. "holding company" means a company that directly or  
24 indirectly owns or has the power or right to control a company  
25 that is an applicant or licensee, but a company that does not

1 have a beneficial ownership of more than ten percent of the  
2 equity securities of a publicly traded corporation is not a  
3 holding company;

4 W. "immediate family" means natural persons who are  
5 related to a specified natural person by affinity or  
6 consanguinity in the first through the third degree;

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

12 Y. "institutional investor" means a state or federal  
13 government pension plan or a person that meets the requirements  
14 of a qualified institutional buyer as defined in Rule 144A of the  
15 federal Securities Act of 1933, and is:

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

18 (2) an insurance company as defined in Section  
19 2(a)(17) of the federal Investment Company Act of 1940;

20 (3) an investment company registered under  
21 Section 8 of the federal Investment Company Act of 1940;

22 (4) an investment adviser registered under  
23 Section 203 of the federal Investment Advisers Act of 1940;

24 (5) collective trust funds as defined in Section  
25 3(c)(11) of the federal Investment Company Act of 1940;

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1                   (6) an employee benefit plan or pension fund  
2 that is subject to the federal Employee Retirement Income  
3 Security Act of 1974, excluding an employee benefit plan or  
4 pension fund sponsored by a publicly traded corporation  
5 registered with the board; or

6                   (7) a group comprised entirely of persons  
7 specified in Paragraphs (1) through (6) of this subsection;

8                   Z. "intermediary company" means a company that:

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

11                   (2) is a subsidiary with respect to any holding  
12 company;

13                   AA. "key executive" means an executive of a licensee  
14 or other person having the power to exercise significant  
15 influence over decisions concerning any part of the licensed  
16 operations of the licensee or whose compensation exceeds an  
17 amount established by the board in a regulation;

18                   BB. "license" means an authorization required by the  
19 board for engaging in gaming activities;

20                   CC. "licensee" means a person to whom a valid license  
21 has been issued;

22                   DD. "manufacturer" means a person who manufactures,  
23 fabricates, assembles, produces, programs or makes modifications  
24 to any gaming device for use or play in New Mexico or for sale,  
25 lease or distribution outside New Mexico from any location within

1 New Mexico;

2 EE. "net take" means the total of the following, less  
3 the total of all cash paid out as losses to winning patrons and  
4 those amounts paid to purchase annuities to fund losses paid to  
5 winning patrons over several years by independent administrators:

6 (1) cash received from patrons for playing a  
7 game;

8 (2) cash received in payment for credit extended  
9 by a licensee to a patron for playing a game; and

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

12 FF. "nonprofit organization" means:

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

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

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1 GG. "person" means a legal entity;

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

5 II. "progressive jackpot" means a prize that  
6 increases over time or as gaming machines that are linked to a  
7 progressive system are played and upon conditions established by  
8 the board may be paid by an annuity;

9 JJ. "progressive system" means one or more gaming  
10 machines linked to one or more common progressive jackpots;

11 KK. "publicly traded corporation" means a corporation  
12 that:

13 (1) has one or more classes of securities  
14 registered pursuant to the securities laws of the United States  
15 or New Mexico;

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

18 (3) has one or more classes of securities  
19 registered or is an issuer pursuant to applicable foreign laws  
20 that the board finds provide protection for institutional  
21 investors that is comparable to or greater than the stricter of  
22 the securities laws of the United States or New Mexico;

23 LL. "registration" means a board action that  
24 authorizes a company to be a holding company with respect to a  
25 company that holds or applies for a license or that relates to



1 other persons required to be registered pursuant to the Gaming  
2 Control Act;

3 MM "subsidiary" means a company, all or a part of  
4 whose outstanding equity securities are owned, subject to a power  
5 or right of control or held, with power to vote, by a holding  
6 company or intermediary company; and

7 NN. "work permit" means a card, certificate or permit  
8 issued by the board, whether denominated as a work permit,  
9 registration card or otherwise, authorizing the employment of the  
10 holder as a gaming employee.

11 Section 6. [NEW MATERIAL] LIMITED GAMING ACTIVITY  
12 PERMITTED. -- Gaming activity is permitted in New Mexico only if it  
13 is conducted in compliance with and pursuant to:

- 14 A. the Gaming Control Act; or  
15 B. a state or federal law other than the Gaming  
16 Control Act that expressly permits the activity or exempts it  
17 from the application of the state criminal law, or both.

18 Section 7. [NEW MATERIAL] GAMING CONTROL BOARD CREATED. --

19 A. The "gaming control board" is created and consists  
20 of five members. Three members are appointed by the governor  
21 with the advice and consent of the senate, and two members are ex  
22 officio: the chairman of the state racing commission and the  
23 chairman of the board of the New Mexico lottery authority. All  
24 members of the board shall be residents of New Mexico and  
25 citizens of the United States. One appointed member of the board

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1 shall have a minimum of five years of previous employment in a  
2 supervisory and administrative position in a law enforcement  
3 agency; one appointed member of the board shall be a certified  
4 public accountant in New Mexico who has had at least five years  
5 of experience in public accountancy; and one appointed member of  
6 the board shall be an attorney who has been admitted to practice  
7 before the supreme court of New Mexico.

8 B. The appointed members of the board shall be  
9 appointed for terms of five years, except, of the members who are  
10 first appointed, the member with law enforcement experience shall  
11 be appointed for a term of five years; the member who is a  
12 certified public accountant shall be appointed for a term of four  
13 years; and the member who is an attorney shall be appointed for  
14 a term of three years. Thereafter, all members shall be  
15 appointed for terms of five years. No person shall serve as a  
16 board member for more than two consecutive terms or ten years  
17 total.

18 C. No person appointed to the board may be employed  
19 in any other capacity or shall in any manner receive compensation  
20 for services rendered to any person or entity other than the  
21 board while a member of the board.

22 D. A vacancy on the board of an appointed member  
23 shall be filled within thirty days by the governor with the  
24 advice and consent of the senate for the unexpired portion of the  
25 term in which the vacancy occurs. A person appointed to fill a

1 vacancy shall meet all qualification requirements of the office  
2 established in this section.

3 E. The governor shall choose a chairman annually from  
4 the board's appointed membership.

5 F. No more than three members of the board shall be  
6 from the same political party.

7 G. The appointed members of the board shall be full-  
8 time state officials and shall receive a salary set by the  
9 governor.

10 H. The department of public safety shall conduct  
11 background investigations of all members of the board prior to  
12 confirmation by the senate. To assist the department in the  
13 background investigation, a prospective board member shall  
14 furnish a disclosure statement to the department on a form  
15 provided by the department containing that information deemed by  
16 the department as necessary for completion of a detailed and  
17 thorough background investigation. The required information  
18 shall include at least:

19 (1) a full set of fingerprints made by a law  
20 enforcement agency on forms supplied by the department;

21 (2) complete information and details with  
22 respect to the prospective board member's antecedents, habits,  
23 immediate family, character, criminal record, business  
24 activities, financial affairs and business associates covering at  
25 least a ten-year period immediately preceding the date of

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1 submitting the disclosure statement;

2 (3) complete disclosure of any equity interest  
3 held by the prospective board member or a member of his immediate  
4 family in a company that is an applicant or licensee or an  
5 affiliate, affiliated company, intermediary company or holding  
6 company in respect to an applicant or licensee; and

7 (4) the names and addresses of members of the  
8 immediate family of the prospective board member.

9 I. No person may be appointed or confirmed as a  
10 member of the board if that person or member of his immediate  
11 family holds an equity interest in a company that is an applicant  
12 or licensee or an affiliate, affiliated company, intermediary  
13 company or holding company in respect to an applicant or  
14 licensee.

15 J. A prospective board member shall provide  
16 assistance and information requested by the department of public  
17 safety or the governor and shall cooperate in any inquiry or  
18 investigation of the prospective board member's fitness or  
19 qualifications to hold the office to which he is appointed. The  
20 senate shall not confirm a prospective board member if it has  
21 reasonable cause to believe that the prospective board member  
22 has:

23 (1) knowingly misrepresented or omitted a  
24 material fact required in a disclosure statement;

25 (2) been convicted of a felony, a gaming related

1 offense or a crime involving fraud, theft or moral turpitude  
2 within ten years immediately preceding the date of submitting a  
3 disclosure statement required pursuant to the provisions of  
4 Subsection H of this section;

5 (3) exhibited a history of willful disregard for  
6 the gaming laws of this or any other state or the United States;  
7 or

8 (4) had a permit or license issued pursuant to  
9 the gaming laws of this or any other state or the United States  
10 permanently suspended or revoked for cause.

11 K. At the time of taking office, each board member  
12 shall file with the secretary of state a sworn statement that he  
13 is not disqualified under the provisions of Subsection I of this  
14 section.

15 Section 8. [NEW MATERIAL] BOARD- - MEETINGS- - QUORUM -  
16 RECORDS. - -

17 A. A majority of the qualified membership of the  
18 board then in office constitutes a quorum. No action may be  
19 taken by the board unless at least three members concur.

20 B. Written notice of the time and place of each board  
21 meeting shall be given to each member of the board at least ten  
22 days prior to the meeting.

23 C. Meetings of the board shall be open and public in  
24 accordance with the Open Meetings Act, except that the board may  
25 close a meeting to hear confidential security and investigative

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1 information and other information made confidential by the  
2 provisions of the Gaming Control Act.

3 D. All proceedings of the board shall be recorded by  
4 audiotape or other equivalent verbatim audio recording device.

5 E. The chairman of the board, the executive director  
6 or a majority of the members of the board then in office may call  
7 a special meeting of the board upon at least five days' prior  
8 written notice to all members of the board and the executive  
9 director.

10 Section 9. [NEW MATERIAL] BOARD'S POWERS AND DUTIES. --

11 A. The board shall implement the state's policy on  
12 gaming consistent with the provisions of the Gaming Control Act.  
13 It has the duty to fulfill all responsibilities assigned to it  
14 pursuant to that act, and it has all authority necessary to carry  
15 out those responsibilities. It may delegate authority to the  
16 executive director, but it retains accountability. The board is  
17 an adjunct agency.

18 B. The board shall:

19 (1) employ the executive director;

20 (2) make the final decision on issuance, denial,  
21 suspension and revocation of all licenses pursuant to and  
22 consistent with the provisions of the Gaming Control Act;

23 (3) develop, adopt and promulgate all  
24 regulations necessary to implement and administer the provisions  
25 of the Gaming Control Act;

1 (4) conduct itself, or employ a hearing officer  
2 to conduct, all hearings required by the provisions of the Gaming  
3 Control Act and other hearings it deems appropriate to fulfill  
4 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 any  
10 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 twenty-five  
14 thousand dollars (\$25,000) for the first violation and fifty  
15 thousand dollars (\$50,000) for subsequent violations of any  
16 prohibitory provision of the Gaming Control Act or any  
17 prohibitory provision of a regulation adopted pursuant to that  
18 act;

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 any 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 adopted

1 pursuant to its provisions;

2 (5) administer oaths and take depositions to the  
3 same extent and subject to the same limitations as would apply if  
4 the deposition were pursuant to discovery rules in a civil action  
5 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 of applicants, licensees and  
11 persons affiliated with licensees;

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

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

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

23 (12) summarily seize, remove and impound from  
24 places inspected any gaming devices, property connected with  
25 gaming, documents or records for the purpose of examination or



1 inspection;

2 (13) inspect, examine, photocopy and audit all  
3 documents and records of any affiliate of an applicant or  
4 licensee who the board knows or reasonably suspects is involved  
5 in the financing, operation or management of the applicant or  
6 licensee. The inspection, examination, photocopying and audit  
7 shall be in the presence of a representative of the affiliate or  
8 its agent when practicable; and

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

13 D. The board shall monitor all activity authorized in  
14 an Indian Gaming Compact between the state and an Indian nation,  
15 tribe or pueblo. The board shall appoint the state gaming  
16 representative for the purposes of the compact.

17 Section 10. [NEW MATERIAL] BOARD REGULATIONS--  
18 DISCRETIONARY REGULATIONS-- PROCEDURE-- REQUIRED PROVISIONS. --

19 A. The board may adopt any regulation:

20 (1) consistent with the provisions of the Gaming  
21 Control Act; and

22 (2) it decides is necessary to implement the  
23 provisions of the Gaming Control Act.

24 B. No regulation shall be adopted, amended or  
25 repealed without a public hearing on the proposed action before

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1 the board or a hearing officer designated by it. The public  
2 hearing shall be held in Santa Fe. Notice of the subject matter  
3 of the regulation, the action proposed to be taken, the time and  
4 place of the hearing, the manner in which interested persons may  
5 present their views and the method by which copies of the  
6 proposed regulation, amendment or repeal may be obtained shall be  
7 published once at least thirty days prior to the hearing date in  
8 a newspaper of general circulation and mailed at least thirty  
9 days prior to the hearing date to all persons who have made a  
10 written request for advance notice of hearing. All regulations  
11 and actions taken on regulations shall be filed in accordance  
12 with the State Rules Act.

13 C. The board shall adopt regulations:

- 14 (1) prescribing the method and form of  
15 application to be followed by an applicant;
- 16 (2) prescribing the information to be furnished  
17 by an applicant or licensee concerning his antecedents, immediate  
18 family, habits, character, associates, criminal record, business  
19 activities and financial affairs, past or present;
- 20 (3) prescribing the manner and procedure of all  
21 hearings conducted by the board or a hearing officer;
- 22 (4) prescribing the manner and method of  
23 collection and payment of fees;
- 24 (5) prescribing the manner and method of the  
25 issuance of licenses, permits, registrations, certificates and

1 other actions of the board not elsewhere prescribed in the Gaming  
2 Control Act;

3 (6) defining the area, games and gaming devices  
4 allowed and the methods of operation of the games and gaming  
5 devices for authorized gaming;

6 (7) prescribing under what conditions the  
7 nonpayment of winnings is grounds for suspension or revocation of  
8 a license of a gaming operator;

9 (8) governing the manufacture, sale,  
10 distribution, repair and servicing of gaming devices;

11 (9) prescribing accounting procedures, security,  
12 collection and verification procedures required of licensees and  
13 matters regarding financial responsibility of licensees;

14 (10) prescribing what shall be considered to be  
15 an unsuitable method of operating gaming activities;

16 (11) restricting access to confidential  
17 information obtained pursuant to the provisions of the Gaming  
18 Control Act and ensuring that the confidentiality of that  
19 information is maintained and protected;

20 (12) prescribing financial reporting and  
21 internal control requirements for licensees;

22 (13) prescribing the manner in which winnings,  
23 compensation from gaming activities and net take shall be  
24 computed and reported by a gaming operator licensee;

25 (14) prescribing the frequency of and the

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1 matters to be contained in audits of and periodic financial  
2 reports from a gaming operator licensee consistent with standards  
3 prescribed by the board;

4 (15) prescribing the procedures to be followed  
5 by a gaming operator licensee for the exclusion of persons from  
6 gaming establishments;

7 (16) establishing criteria and conditions for  
8 the operation of progressive systems;

9 (17) establishing criteria and conditions for  
10 approval of procurement by the board of personal property valued  
11 in excess of twenty thousand dollars (\$20,000), including  
12 background investigation requirements for a person submitting a  
13 bid or proposal; and

14 (18) establishing an applicant fee schedule for  
15 processing applications that is based on costs of the application  
16 review incurred by the board whether directly or through payment  
17 by the board for costs charged for investigations of applicants  
18 by state departments and agencies other than the board, which  
19 regulation shall set a maximum fee of one hundred thousand  
20 dollars (\$100,000).

21 Section 11. [NEW MATERIAL] EXECUTIVE DIRECTOR--  
22 EMPLOYMENT-- QUALIFICATIONS. --

23 A. The executive director shall be employed by,  
24 report directly to and serve at the pleasure of the board.

25 B. The executive director shall have had at least

1 five years of responsible supervisory administrative experience  
2 in a governmental gaming regulatory agency.

3 C. The executive director shall receive an annual  
4 salary to be set by the board, but not to exceed eighty-five  
5 thousand dollars (\$85,000) per year.

6 Section 12. [NEW MATERIAL] EXECUTIVE DIRECTOR-- POWERS--  
7 DUTIES.--

8 A. The executive director shall implement the  
9 policies of the board.

10 B. The executive director shall employ all personnel  
11 who work for the board. The employees shall be covered employees  
12 pursuant to the provisions of the Personnel Act. Among those  
13 personnel he shall employ and designate an appropriate number of  
14 individuals as law enforcement officers subject to proper  
15 certification pursuant to the Law Enforcement Training Act.

16 C. The executive director shall establish  
17 organizational units he determines are appropriate to administer  
18 the provisions of the Gaming Control Act.

19 D. The executive director:

20 (1) may delegate authority to subordinates as he  
21 deems necessary and appropriate, clearly delineating the  
22 delegated authority and the limitations on it, if any;

23 (2) shall take administrative action by issuing  
24 orders and instructions consistent with the Gaming Control Act  
25 and regulations of the board to assure implementation of and

1 compliance with the provisions of that act and those regulations;

2 (3) may conduct research and studies that will  
3 improve the operations of the board and the provision of services  
4 to the citizens of the state;

5 (4) may provide courses of instruction and  
6 practical training for employees of the board and other persons  
7 involved in the activities regulated by the board with the  
8 objectives of improving operations of the board and achieving  
9 compliance with the law and regulations;

10 (5) shall prepare an annual budget for the board  
11 and submit it to the board for approval; and

12 (6) shall make recommendations to the board of  
13 proposed regulations and any legislative changes needed to  
14 provide better administration of the Gaming Control Act and fair  
15 and efficient regulation of gaming activities in the state.

16 Section 13. [NEW MATERIAL] INVESTIGATION OF EXECUTIVE  
17 DIRECTOR CANDIDATES AND EMPLOYEES. --

18 A. A person who is under consideration in the final  
19 selection process for appointment as the executive director shall  
20 file a disclosure statement pursuant to the requirements of this  
21 section, and the board shall not make an appointment of a person  
22 as executive director until a background investigation is  
23 completed by the department of public safety and a report is made  
24 to the board.

25 B. A person who has reached the final selection

1 process for employment by the executive director shall file a  
2 disclosure statement pursuant to the requirements of this section  
3 if the executive director or the board has directed the person do  
4 so. The person shall not be further considered for employment  
5 until a background investigation is completed by the department  
6 of public safety and a report is made to the executive director.

7 C. Forms for the disclosure statements required by  
8 this section shall be developed by the board in cooperation with  
9 the department of public safety. At least the following  
10 information shall be required of a person submitting a statement:

11 (1) a full set of fingerprints made by a law  
12 enforcement agency on forms supplied by the board;

13 (2) complete information and details with  
14 respect to the person's antecedents, habits, immediate family,  
15 character, criminal record, business activities and business  
16 associates, covering at least a ten-year period immediately  
17 preceding the date of submitting the disclosure statement; and

18 (3) a complete description of any equity  
19 interest held in a business connected with the gaming industry.

20 D. In preparing an investigative report, the  
21 department of public safety may request and receive criminal  
22 history information from the federal bureau of investigation or  
23 any other law enforcement agency or organization. The department  
24 of public safety shall maintain confidentiality regarding  
25 information received from a law enforcement agency that may be

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1 imposed by the agency as a condition for providing the  
2 information to the department.

3 E. A person required to file a disclosure statement  
4 shall provide any assistance or information requested by the  
5 department of public safety or the board and shall cooperate in  
6 any inquiry or investigation.

7 F. If information required to be included in a  
8 disclosure statement changes or if information is added after  
9 the statement is filed, the person required to file it shall  
10 provide that information in writing to the person requesting the  
11 investigation. The supplemental information shall be provided  
12 within thirty days after the change or addition.

13 G. The board shall not appoint a person as executive  
14 director, and the executive director shall not employ a person,  
15 if the board or the executive director has reasonable cause to  
16 believe that the person has:

17 (1) knowingly misrepresented or omitted a  
18 material fact required in a disclosure statement;

19 (2) been convicted of a felony, a gaming related  
20 offense or a crime involving fraud, theft or moral turpitude  
21 within ten years immediately preceding the date of submitting a  
22 disclosure statement required pursuant to this section;

23 (3) exhibited a history of willful disregard for  
24 the gaming laws of this or any other state or the United States;

25 or



1 (4) had a permit or license issued pursuant to  
2 the gaming laws of this or any other state or the United States  
3 permanently suspended or revoked for cause.

4 H. Both the board and the executive director may  
5 exercise absolute discretion in exercising their respective  
6 appointing and employing powers.

7 Section 14. [NEW MATERIAL] CONFLICTS OF INTEREST-- BOARD--  
8 EXECUTIVE DIRECTOR. --

9 A. In addition to all other provisions of New Mexico  
10 law regarding conflicts of interest of state officials and  
11 employees, a member of the board, the executive director, or a  
12 person in the immediate family of or residing in the household of  
13 any of the foregoing persons, shall not:

14 (1) directly or indirectly, as a proprietor or  
15 as a member, stockholder, director or officer of a company, have  
16 an interest in a business engaged in gaming activities in this or  
17 another jurisdiction; or

18 (2) accept or agree to accept any economic  
19 opportunity, gift, loan, gratuity, special discount, favor,  
20 hospitality or service having an aggregate value of one hundred  
21 dollars (\$100) or more in any calendar year from a licensee or  
22 applicant.

23 B. If a member of the board, the executive director  
24 or a person in the immediate family of or residing in the  
25 household of a member of the board or the executive director

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1 violates a provision of this section, the member of the board or  
2 executive director shall be removed from office. A board member  
3 shall be removed by the governor, and the executive director  
4 shall be removed from his position by the board.

5 Section 15. [NEW MATERIAL] ACTIVITIES REQUIRING  
6 LICENSING. --

7 A. A person shall not conduct gaming unless he is  
8 licensed as a gaming operator.

9 B. A person shall not sell, supply or distribute any  
10 gaming device or associated equipment for use or play in this  
11 state or for use or play outside of this state from a location  
12 within this state unless he is licensed as a distributor or  
13 manufacturer, but a gaming operator licensee may sell or trade in  
14 a gaming device or associated equipment to a gaming operator  
15 licensee, distributor licensee or manufacturer licensee.

16 C. A person shall not manufacture, fabricate,  
17 assemble, program or make modifications to a gaming device or  
18 associated equipment for use or play in this state or for use or  
19 play outside of this state from any location within this state  
20 unless he is a manufacturer licensee. A manufacturer licensee  
21 may sell, supply or distribute only the gaming devices or  
22 associated equipment that he manufactures, fabricates, assembles,  
23 programs or modifies.

24 D. A gaming operator licensee or a person other than  
25 a manufacturer licensee or distributor licensee shall not possess

1 or control a place where there is an unlicensed gaming machine.  
2 Any unlicensed gaming machine, except one in the possession of a  
3 licensee while awaiting transfer to a gaming operator licensee  
4 for licensure of the machine, is subject to forfeiture and  
5 confiscation by any law enforcement agency or peace officer.

6 E. A person shall not service or repair a gaming  
7 device or associated equipment unless he is licensed as a  
8 manufacturer, is employed by a manufacturer licensee or is a  
9 technician certified by a manufacturer and employed by a  
10 distributor licensee or a gaming operator licensee.

11 F. A person shall not engage in any activity for  
12 which the board requires a license or permit without obtaining  
13 the license or permit.

14 G. Except as provided in Subsection B of this  
15 section, a person shall not purchase, lease or acquire possession  
16 of a gaming device or associated equipment except from a licensed  
17 distributor or manufacturer.

18 H. A distributor licensee may receive a percentage of  
19 the amount wagered, the net take or other measure related to the  
20 operation of a gaming machine as a payment pursuant to a lease or  
21 other arrangement for furnishing a gaming machine, but the board  
22 shall adopt a regulation setting the maximum allowable  
23 percentage.

24 Section 16. [NEW MATERIAL] LICENSURE- - APPLICATION. - -

25 A. The board shall establish and issue the following

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1 categories of licenses:

- 2 (1) manufacturer;
- 3 (2) distributor;
- 4 (3) gaming operator; and
- 5 (4) gaming machine.

6 B. The board shall issue certifications of findings  
7 of suitability for key executives and other persons for whom  
8 certification is required.

9 C. The board shall issue work permits for gaming  
10 employees.

11 D. A licensee shall not be issued more than one type  
12 of license, but this provision does not prohibit a licensee from  
13 owning, leasing, acquiring or having in his possession licensed  
14 gaming machines if that activity is otherwise allowed by the  
15 provisions of the Gaming Control Act. A licensee shall not own a  
16 majority interest in, manage or otherwise control a holder of  
17 another type of license issued pursuant to the provisions of that  
18 act.

19 E. Applicants shall apply on forms provided by the  
20 board and furnish all information requested by the board.  
21 Submission of an application constitutes consent to a credit  
22 check of the applicant and all persons having a substantial  
23 interest in the applicant and any other background investigations  
24 required pursuant to the Gaming Control Act or deemed necessary  
25 by the board.

1 F. All licenses issued by the board pursuant to the  
2 provisions of this section shall be reviewed for renewal annually  
3 unless revoked, suspended, canceled or terminated.

4 G. A license shall not be transferred or assigned.

5 H. The application for a license shall include:

6 (1) the name of the applicant;

7 (2) the location of the proposed operation;

8 (3) the gaming devices to be operated,  
9 manufactured, distributed or serviced;

10 (4) the names of all persons having a direct or  
11 indirect interest in the business of the applicant and the nature  
12 of such interest; and

13 (5) such other information and details as the  
14 board may require.

15 I. The board shall furnish to the applicant  
16 supplemental forms that the applicant shall complete and file  
17 with the application. Such supplemental forms shall require  
18 complete information and details with respect to the applicant's  
19 antecedents, habits, immediate family, character, criminal  
20 record, business activities, financial affairs and business  
21 associates, covering at least a ten-year period immediately  
22 preceding the date of filing of the application.

23 Section 17. [NEW MATERIAL] LICENSE, CERTIFICATION AND  
24 WORK PERMIT FEES. --

25 A. License and other fees shall be established by

1 board regulation but shall not exceed the following amounts:

2 (1) manufacturer's license, twenty thousand  
3 dollars (\$20,000) for the initial license and five thousand  
4 dollars (\$5,000) for annual renewal;

5 (2) distributor's license, ten thousand dollars  
6 (\$10,000) for the initial license and one thousand dollars  
7 (\$1,000) for annual renewal;

8 (3) gaming operator's license for a racetrack,  
9 fifty thousand dollars (\$50,000) for the initial license and ten  
10 thousand dollars (\$10,000) for annual renewal;

11 (4) gaming operator's license for a nonprofit  
12 organization, one thousand dollars (\$1,000) for the initial  
13 license and two hundred dollars (\$200) for annual renewal;

14 (5) for each separate gaming machine licensed to  
15 a person holding an operator's license, five hundred dollars  
16 (\$500) for the initial license and one hundred dollars (\$100) for  
17 annual renewal; and

18 (6) work permit, one hundred dollars (\$100)  
19 annually.

20 B. The board shall establish the fee for  
21 certifications or other actions by regulation, but no fee  
22 established by the board shall exceed one thousand dollars  
23 (\$1,000), except for fees established pursuant to Paragraph (18)  
24 of Subsection C of Section 10 of the Gaming Control Act.

25 C. All license, certification or work permit fees

1 shall be paid to the board at the time and in the manner  
2 established by regulations of the board.

3 Section 18. [NEW MATERIAL] ACTION BY BOARD ON  
4 APPLICATIONS. --

5 A. A person that the board determines is qualified to  
6 receive a license pursuant to the provisions of the Gaming  
7 Control Act may be issued a license. The burden of proving  
8 qualifications is on the applicant.

9 B. A license shall not be issued unless the board is  
10 satisfied that the applicant is:

11 (1) a person of good moral character, honesty  
12 and integrity;

13 (2) a person whose prior activities, criminal  
14 record, reputation, habits and associations do not pose a threat  
15 to the public interest or to the effective regulation and control  
16 of gaming or create or enhance the dangers of unsuitable, unfair  
17 or illegal practices, methods and activities in the conduct of  
18 gaming or the carrying on of the business and financial  
19 arrangements incidental thereto; and

20 (3) in all other respects qualified to be  
21 licensed consistent with the laws of this state.

22 C. A license shall not be issued unless the applicant  
23 has satisfied the board that:

24 (1) the applicant has adequate business probity,  
25 competence and experience in business and gaming;

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1           (2) the proposed financing of the applicant is  
2 adequate for the nature of the proposed license and from a  
3 suitable source; any lender or other source of money or credit  
4 that the board finds does not meet the standards set forth in  
5 Subsection B of this section shall be deemed unsuitable; and

6           (3) the applicant is sufficiently capitalized  
7 under standards set by the board to conduct the business covered  
8 by the license.

9           D. An application to receive a license, certification  
10 or work permit constitutes a request for a determination of the  
11 applicant's general moral character, integrity and ability to  
12 participate or engage in or be associated with gaming. Any  
13 written or oral statement made in the course of an official  
14 proceeding of the board or by a witness testifying under oath  
15 that is relevant to the purpose of the proceeding is absolutely  
16 privileged and does not impose liability for defamation or  
17 constitute a ground for recovery in any civil action.

18           E. The board shall not issue a license or  
19 certification to an applicant who has been denied a license or  
20 certification in this state or another state, who has had a  
21 certification, permit or license issued pursuant to the gaming  
22 laws of a state or the United States permanently suspended or  
23 revoked for cause or who is currently under suspension or subject  
24 to any other limiting action in this state or another state  
25 involving gaming activities or licensure for gaming activities.



1 F. The board shall investigate the qualifications of  
 2 each applicant before a license, certification or work permit is  
 3 issued by the board and shall continue to observe and monitor the  
 4 conduct of all licensees, work permit holders, persons certified  
 5 as being suitable and the persons having a material involvement  
 6 directly or indirectly with a licensee.

7 G. The board has the authority to deny an application  
 8 or limit, condition, restrict, revoke or suspend a license,  
 9 certification or permit for any cause.

10 H. After issuance, a license, certification or permit  
 11 shall continue in effect upon proper payment of the initial and  
 12 renewal fees, subject to the power of the board to revoke,  
 13 suspend, condition or limit licenses, certifications and permits.

14 I. The board has full and absolute power and  
 15 authority to deny an application for any cause it deems  
 16 reasonable. If an application is denied, the board shall prepare  
 17 and file its written decision on which its order denying the  
 18 application is based.

19 Section 19. [NEW MATERIAL] INVESTIGATION FOR LICENSES,  
 20 CERTIFICATIONS AND PERMITS. --The board shall initiate an  
 21 investigation of the applicant within thirty days after an  
 22 application is filed and supplemental information that the board  
 23 may require is received.

24 Section 20. [NEW MATERIAL] ELIGIBILITY REQUIREMENTS FOR  
 25 COMPANIES. --In order to be eligible to receive a license, a

1 company shall:

2 A. be incorporated or otherwise organized and in good  
3 standing in this state or incorporated or otherwise organized in  
4 another state, qualified to do business in this state and in good  
5 standing in this state and in the state of incorporation;

6 B. comply with all of the requirements of the laws of  
7 this state pertaining to the company;

8 C. maintain a ledger in the principal office of the  
9 company in this state, which shall:

10 (1) at all times reflect the ownership according  
11 to company records of every class of security issued by the  
12 company; and

13 (2) be available for inspection by the board at  
14 all reasonable times without notice; and

15 D. file notice of all changes of ownership of all  
16 classes of securities issued by the company with the board within  
17 thirty days of the change.

18 Section 21. [NEW MATERIAL] REGISTRATION WITH BOARD BY  
19 COMPANY APPLICANTS--REQUIRED INFORMATION.--A company applicant  
20 shall provide the following information to the board on forms  
21 provided by the board:

22 A. the organization, financial structure and nature  
23 of the business to be operated, including the names and personal  
24 histories of all officers, directors and key executives;

25 B. the rights and privileges acquired by the holders

1 of different classes of authorized securities;

2 C. the terms and conditions of all outstanding loans,  
3 mortgages, trust deeds, pledges or any other indebtedness or  
4 security interest evidenced by a security instrument pertaining  
5 to the proposed gaming operation or other licensed activity in  
6 this state and the name and address of the person who is  
7 servicing the loan, mortgage, trust deed, pledge or other  
8 indebtedness or security interest;

9 D. remuneration to persons, other than directors,  
10 officers and key executives, exceeding fifty thousand dollars  
11 (\$50,000) per year;

12 E. bonus and profit-sharing arrangements within the  
13 company;

14 F. management and service contracts pertaining to the  
15 proposed gaming activity in this state;

16 G. balance sheets and profit and loss statements for  
17 at least the three preceding fiscal years, or, if the company has  
18 not been in business for a period of three years, balance sheets  
19 and profit and loss statements from the time of its commencement  
20 of business operations and projected for three years from the  
21 time of its commencement of business operations. All balance  
22 sheets and profit and loss statements shall be certified by  
23 independent certified public accountants; and

24 H. any further financial data that the board deems  
25 necessary or appropriate.

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1           Section 22. [NEW MATERIAL] INDIVIDUAL CERTIFICATION OF  
2 OFFICERS, DIRECTORS AND OTHER PERSONS. --An officer, director,  
3 equity security holder of five percent or more, partner, general  
4 partner, limited partner, trustee or beneficiary of the company  
5 that holds or has applied for a license shall be certified  
6 individually, according to the provisions of the Gaming Control  
7 Act, and if in the judgment of the board the public interest is  
8 served by requiring any or all of the company's key executives to  
9 be certified, the company shall require those persons to apply  
10 for certification. A person who is required to be certified  
11 pursuant to this section shall apply for certification within  
12 thirty days after becoming an officer, director, equity security  
13 holder of five percent or more, partner, general partner, limited  
14 partner of five percent or more, trustee, beneficiary or key  
15 executive. A person who is required to be certified pursuant to  
16 a decision of the board shall apply for certification within  
17 thirty days after the board so requests.

18           Section 23. [NEW MATERIAL] REQUIREMENTS IF COMPANY IS OR  
19 BECOMES A SUBSIDIARY-- INVESTIGATIONS-- RESTRICTIONS ON UNSUITABLE  
20 PERSONS-- OTHER REQUIREMENTS. --

21           A. If the company applicant or licensee is or becomes  
22 a subsidiary, each nonpublicly traded holding company and  
23 intermediary company with respect to the subsidiary company  
24 shall:

- 25                   (1) qualify to do business in New Mexico; and

1                   (2) register with the board and furnish to the  
2 board the following information:

3                   (a) a complete list of all beneficial owners  
4 of five percent or more of its equity securities, which shall be  
5 updated within thirty days after any change;

6                   (b) the names of all company officers and  
7 directors within thirty days of their appointment or election;

8                   (c) its organization, financial structure  
9 and nature of the business it operates;

10                  (d) the terms, position, rights and  
11 privileges of the different classes of its outstanding  
12 securities;

13                  (e) the terms on which its securities are to  
14 be, and during the preceding three years have been, offered;

15                  (f) the holder of and the terms and  
16 conditions of all outstanding loans, mortgages, trust deeds,  
17 pledges or any other indebtedness or security interest pertaining  
18 to the applicant or licensee;

19                  (g) the extent of the securities holdings or  
20 other interest in the holding company or intermediary company of  
21 all officers, directors, key executives, underwriters, partners,  
22 principals, trustees or any direct or beneficial owners, and the  
23 amount of any remuneration paid them as compensation for their  
24 services in the form of salary, wages, fees or by contract  
25 pertaining to the licensee;

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1 (h) remuneration to persons other than  
2 directors, officers and key executives exceeding fifty thousand  
3 dollars (\$50,000) per year;

4 (i) bonus and profit-sharing arrangements  
5 within the holding company or intermediary company;

6 (j) management and service contracts  
7 pertaining to the licensee or applicant;

8 (k) options existing or to be created in  
9 respect to the company's securities or other interests;

10 (l) balance sheets and profit and loss  
11 statements, certified by independent certified public  
12 accountants, for not more than the three preceding fiscal years,  
13 or, if the holding company or intermediary company has not been  
14 in existence more than three years, balance sheets and profit and  
15 loss statements from the time of its establishment, together with  
16 projections for three years from the time of its establishment;

17 (m) any further financial statements  
18 necessary or appropriate to assist the board in making its  
19 determinations; and

20 (n) a current annual profit and loss  
21 statement, a current annual balance sheet and a copy of the  
22 company's most recent federal income tax return within thirty  
23 days after the return is filed.

24 B. All holders of five percent or more of the equity  
25 security of a holding company or intermediary company shall apply

1 for a finding of suitability.

2 C. The board may in its discretion perform the  
3 investigations concerning the officers, directors, key  
4 executives, underwriters, security holders, partners, principals,  
5 trustees or direct or beneficial owners of any interest in any  
6 holding company or intermediary company as it deems necessary,  
7 either at the time of initial registration or at any time  
8 thereafter.

9 D. If at any time the board finds that any person  
10 owning, controlling or holding with power to vote all or any part  
11 of any class of securities of, or any interest in, any holding  
12 company or intermediary company is unsuitable to be connected  
13 with a licensee, it shall so notify both the unsuitable person  
14 and the holding company or intermediary company. The unsuitable  
15 person shall immediately offer the securities or other interest  
16 to the issuing company for purchase. The company shall purchase  
17 the securities or interest offered upon the terms and within the  
18 time period ordered by the board.

19 E. Beginning on the date when the board serves notice  
20 that a person has been found to be unsuitable pursuant to  
21 Subsection D of this section, it is unlawful for the unsuitable  
22 person to:

23 (1) receive any dividend or interest upon any  
24 securities held in the holding company or intermediary company,  
25 or any dividend, payment or distribution of any kind from the

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1 holding company or intermediary company;

2 (2) exercise, directly or indirectly or through  
3 a proxy, trustee or nominee, any voting right conferred by the  
4 securities or interest; or

5 (3) receive remuneration in any form from the  
6 licensee, or from any holding company or intermediary company  
7 with respect to that licensee, for services rendered or  
8 otherwise.

9 F. A holding company or intermediary company subject  
10 to the provisions of Subsection A of this section shall not make  
11 any public offering of any of its equity securities unless such  
12 public offering has been approved by the board.

13 G. This section does not apply to a holding company  
14 or intermediary company that is a publicly traded corporation,  
15 the stock of which is traded on recognized stock exchanges, which  
16 shall instead comply with the provisions of Section 24 of the  
17 Gaming Control Act.

18 Section 24. [NEW MATERIAL] REGISTRATION AND CERTIFICATION  
19 OF PUBLICLY TRADED CORPORATIONS. --

20 A. If a company applicant or company licensee is or  
21 becomes a publicly traded corporation, it shall register with the  
22 board and provide the following information:

23 (1) as of the date the company became a publicly  
24 traded corporation, and on any later date when the information  
25 changes, the names of all stockholders of record who hold five



1 percent or more of the outstanding shares of any class of equity  
2 securities issued by the publicly traded corporation;

3 (2) the names of all officers within thirty days  
4 of their respective appointments;

5 (3) the names of all directors within thirty  
6 days of their respective elections or appointments;

7 (4) the organization, financial structure and  
8 nature of the businesses the publicly traded corporation  
9 operates;

10 (5) the terms, position, rights and privileges  
11 of the different classes of securities outstanding as of the date  
12 the company became a publicly traded corporation;

13 (6) the terms on which the company's securities  
14 were issued during the three years preceding the date on which  
15 the company became a publicly traded corporation and the terms on  
16 which the publicly traded corporation's securities are to be  
17 offered to the public as of the date the company became a  
18 publicly traded corporation;

19 (7) the terms and conditions of all outstanding  
20 indebtedness and evidence of security pertaining directly or  
21 indirectly to the publicly traded corporation;

22 (8) remuneration exceeding fifty thousand  
23 dollars (\$50,000) per year paid to persons other than directors,  
24 officers and key executives who are actively and directly engaged  
25 in the administration or supervision of the gaming activities of

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1 the publicly traded corporation;

2 (9) bonus and profit-sharing arrangements within  
3 the publicly traded corporation directly or indirectly relating  
4 to its gaming activities;

5 (10) management and service contracts of the  
6 corporation pertaining to its gaming activities;

7 (11) options existing or to be created pursuant  
8 to its equity securities;

9 (12) balance sheets and profit and loss  
10 statements, certified by independent certified public  
11 accountants, for not less than the three fiscal years preceding  
12 the date the company became a publicly traded corporation;

13 (13) any further financial statements deemed  
14 necessary or appropriate by the board; and

15 (14) a description of the publicly traded  
16 corporation's affiliated companies and intermediary companies and  
17 gaming licenses, permits and approvals held by those entities.

18 B. The board shall consider the following criteria in  
19 determining whether to certify a publicly traded corporation:

20 (1) the business history of the publicly traded  
21 corporation, including its record of financial stability,  
22 integrity and success of its gaming operations in other  
23 jurisdictions;

24 (2) the current business activities and  
25 interests of the applicant, as well as those of its officers,

1 promoters, lenders and other sources of financing, or any other  
2 persons associated with it;

3 (3) the current financial structure of the  
4 publicly traded corporation as well as changes that could  
5 reasonably be expected to occur to its financial structure as a  
6 consequence of its proposed action;

7 (4) the present and proposed compensation  
8 arrangements between the publicly traded corporation and its  
9 directors, officers, key executives, securities holders, lenders  
10 or other sources of financing;

11 (5) the equity investment, commitment or  
12 contribution of present or prospective directors, key executives,  
13 investors, lenders or other sources of financing; and

14 (6) the dealings and arrangements, prospective  
15 or otherwise, between the publicly traded corporation and its  
16 investment bankers, promoters, finders or lenders and other  
17 sources of financing.

18 C. The board may issue a certification upon receipt  
19 of a proper application and consideration of the criteria set  
20 forth in Subsection B of this section if it finds that the  
21 certification would not be contrary to the public interest or the  
22 policy set forth in the Gaming Control Act.

23 Section 25. [NEW MATERIAL] FINDING OF SUITABILITY  
24 REQUIRED FOR DIRECTORS, OFFICERS AND KEY EXECUTIVES-- REMOVAL FROM  
25 POSITION IF FOUND UNSUITABLE-- SUSPENSION OF SUITABILITY BY

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1 BOARD. --

2 A. Each officer, director and key executive of a  
3 holding company, intermediary company or publicly traded  
4 corporation that the board determines is or is to become actively  
5 and directly engaged in the administration or supervision of, or  
6 any other significant involvement with, the activities of the  
7 subsidiary licensee or applicant shall apply for a finding of  
8 suitability.

9 B. If any officer, director or key executive of a  
10 holding company, intermediary company or publicly traded  
11 corporation required to be found suitable pursuant to Subsection  
12 A of this section fails to apply for a finding of suitability  
13 within thirty days after being requested to do so by the board,  
14 or is not found suitable by the board, or if his finding of  
15 suitability is revoked after appropriate findings by the board,  
16 the holding company, intermediary company or publicly traded  
17 corporation shall immediately remove that officer, director or  
18 key executive from any office or position in which the person is  
19 engaged in the administration or supervision of, or any other  
20 involvement with, the activities of the certified subsidiary  
21 until the person is thereafter found to be suitable. If the  
22 board suspends the finding of suitability of any officer,  
23 director or key executive, the holding company, intermediary  
24 company or publicly traded corporation shall immediately and for  
25 the duration of the suspension suspend that officer, director or

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1 key executive from performance of any duties in which he is  
 2 actively and directly engaged in the administration or  
 3 supervision of, or any other involvement with, the activities of  
 4 the subsidiary licensee.

5 Section 26. [NEW MATERIAL] SUITABILITY OF INDIVIDUALS  
 6 ACQUIRING BENEFICIAL OWNERSHIP OF VOTING SECURITY IN PUBLICLY  
 7 TRADED CORPORATION--REPORT OF ACQUISITION--APPLICATION--  
 8 PROHIBITION.--

9 A. Each person who, individually or in association  
 10 with others, acquires, directly or indirectly, beneficial  
 11 ownership of five percent or more of any voting securities in a  
 12 publicly traded corporation registered with the board may be  
 13 required to be found suitable if the board has reason to believe  
 14 that the acquisition of the ownership would otherwise be  
 15 inconsistent with the declared policy of this state.

16 B. Each person who, individually or in association  
 17 with others, acquires, directly or indirectly, beneficial  
 18 ownership of five percent or more of any class of voting  
 19 securities of a publicly traded corporation certified by the  
 20 board shall notify the board within ten days after acquiring such  
 21 interest.

22 C. Each person who, individually or in association  
 23 with others, acquires, directly or indirectly, the beneficial  
 24 ownership of more than ten percent of any class of voting  
 25 securities of a publicly traded corporation certified by the

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1 board shall apply to the board for a finding of suitability  
2 within thirty days after acquiring such interest.

3 D. Institutional investors that have been exempted  
4 from or have received a waiver of suitability requirements  
5 pursuant to regulations adopted by the board are not required to  
6 comply with this section.

7 E. Any person required by the board or by the  
8 provisions of this section to be found suitable shall apply for a  
9 finding of suitability within thirty days after the board  
10 requests that he do so.

11 F. Any person required by the board or the provisions  
12 of this section to be found suitable who subsequently is found  
13 unsuitable by the board shall not hold directly or indirectly the  
14 beneficial ownership of any security of a publicly traded  
15 corporation that is registered with the board beyond that period  
16 of time prescribed by the board.

17 G. The board may, but is not required to, deem a  
18 person qualified to hold a license or be found suitable as  
19 required by this section if the person currently holds a valid  
20 license issued by, or has been found suitable by, gaming  
21 regulatory authorities in another jurisdiction, provided that the  
22 board finds that the other jurisdiction has conducted a thorough  
23 investigation of the applicant and has criteria substantially  
24 similar to those of the board to determine when a person is to be  
25 found suitable or to obtain a license.

1 Section 27. [NEW MATERIAL] REPORT OF PROPOSED ISSUANCE OR  
2 TRANSFER OF SECURITIES-- REPORT OF CHANGE IN CORPORATE OFFICERS  
3 AND DIRECTORS-- APPROVAL OF BOARD. --

4 A. Before a company licensee, other than a publicly  
5 traded corporation, may issue or transfer five percent or more of  
6 its securities to any person, it shall file a report of its  
7 proposed action with the board, which report shall request the  
8 approval of the board. The board shall have ninety days within  
9 which to approve or deny the request. If the board fails to act  
10 in ninety days, the request is deemed approved. If the board  
11 denies the request, the company shall not issue or transfer five  
12 percent or more of its securities to the person about whom the  
13 request was made.

14 B. A company licensee shall file a report of each  
15 change of the corporate officers and directors with the board  
16 within thirty days of the change. The board shall have ninety  
17 days from the date the report is filed within which to approve or  
18 disapprove such change. During the ninety-day period and  
19 thereafter, if the board does not disapprove the change, an  
20 officer or director is entitled to exercise all powers of the  
21 office to which he was elected or appointed.

22 C. A company licensee shall report to the board in  
23 writing any change in company personnel who have been designated  
24 as key executives. The report shall be made no later than thirty  
25 days after the change.

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1           D. The board may require that a company licensee  
2 furnish the board with a copy of its federal income tax return  
3 within thirty days after the return is filed.

4           Section 28. [NEW MATERIAL] GAMING OPERATOR LICENSEES--  
5 GENERAL PROVISIONS--BUSINESS PLAN--PLAYER AGE LIMIT--  
6 RESTRICTIONS.--

7           A. An applicant for licensure as a gaming operator  
8 shall submit with the application a plan for assisting in the  
9 prevention, education and treatment of compulsive gambling. The  
10 plan shall include regular educational training sessions for  
11 employees. Plan approval is a condition of issuance of the  
12 license.

13           B. An applicant for licensure as a gaming operator  
14 shall submit with the application a proposed business plan. The  
15 plan shall include at least:

- 16                   (1) a floor plan of the area to be used for  
17 gaming machine operations;  
18                   (2) an advertising and marketing plan;  
19                   (3) the proposed placement and number of gaming  
20 machines;  
21                   (4) a financial control plan;  
22                   (5) a security plan;  
23                   (6) a staffing plan for gaming machine  
24 operations; and  
25                   (7) details of any proposed progressive systems.



1 C. A gaming operator licensee shall be granted a  
2 license to operate a specific number of machines at a gaming  
3 establishment identified in the license application and shall be  
4 granted a license for each gaming machine.

5 D. A gaming operator licensee who desires to change  
6 the number of machines in operation at a gaming establishment  
7 shall apply to the board for an amendment to his license  
8 authorizing a change in the number of machines.

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

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

20 G. A gaming operator licensee shall not have  
21 automated teller machines in the area restricted pursuant to  
22 Subsection F of this section.

23 H. A gaming operator licensee shall not provide,  
24 allow, contract or arrange to provide alcohol or food for no  
25 charge or at reduced prices as an incentive or enticement for

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1 patrons to game.

2 I. Only a racetrack licensed by the state racing  
3 commission or a nonprofit organization may apply for or be issued  
4 a gaming operator's license. No other persons are qualified to  
5 apply for or be issued a gaming operator's license pursuant to  
6 the Gaming Control Act.

7 Section 29. [NEW MATERIAL] GAMING OPERATOR LICENSEES--  
8 SPECIAL CONDITIONS FOR RACETRACKS--NUMBER OF GAMING MACHINES--  
9 DAYS AND HOURS OF OPERATIONS. --

10 A. A racetrack licensed by the state racing  
11 commission pursuant to the Horse Racing Act to conduct live horse  
12 races or simulcast races may be issued a gaming operator's  
13 license to operate gaming machines on its premises where live  
14 racing is conducted.

15 B. A racetrack's gaming operator's license shall  
16 automatically become void if:

17 (1) the racetrack no longer holds an active  
18 license to conduct pari-mutuel wagering; or

19 (2) the racetrack fails to maintain a minimum of  
20 three live race days a week with at least nine live races on each  
21 race day during its licensed race meet in the 1997 calendar year  
22 and in the 1998 and subsequent calendar years, four live race  
23 days a week with at least nine live races on each race day during  
24 its licensed race meet.

25 C. A gaming operator licensee that is a racetrack may

1 have up to three hundred licensed gaming machines, and may upon  
2 specific approval of the board have up to five hundred machines,  
3 but the number of gaming machines to be located on the licensee's  
4 premises shall be specified in the gaming operator's license.

5 D. Gaming machines on a racetrack gaming operator  
6 licensee's premises may be played only on days when the racetrack  
7 is either conducting live horse races or simulcasting horse race  
8 meets and during times established by regulation of the board,  
9 but the regulations shall provide for a minimum of twelve hours a  
10 day but not to exceed sixteen hours a day.

11 E. Alcoholic beverages shall not be sold, served,  
12 delivered or consumed in the area restricted pursuant to  
13 Subsection F of Section 28 of the Gaming Control Act.

14 Section 30. [NEW MATERIAL] GAMING OPERATOR LICENSEES--  
15 SPECIAL CONDITIONS FOR NONPROFIT ORGANIZATIONS--NUMBER OF GAMING  
16 MACHINES--DAYS AND HOURS OF OPERATIONS.--

17 A. A nonprofit organization may be issued a gaming  
18 operator's license to operate licensed gaming machines on its  
19 premises to be played only by active and auxiliary members.

20 B. No more than fifteen gaming machines may be  
21 offered for play on the premises of a nonprofit organization  
22 gaming operator licensee.

23 C. No gaming machine on the premises of a nonprofit  
24 organization gaming operator licensee may award a prize that  
25 exceeds four thousand dollars (\$4,000).

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1           D. Gaming machines may be played on the premises of a  
2 nonprofit organization gaming operator licensee from 12:00 noon  
3 until 12:00 midnight every day.

4           E. Alcoholic beverages shall not be sold, served,  
5 delivered or consumed in the area where gaming machines are  
6 installed and operated on the premises of a nonprofit  
7 organization gaming operator licensee.

8           Section 31. [NEW MATERIAL] LICENSING OF MANUFACTURERS OF  
9 GAMING DEVICES-- EXCEPTION-- DISPOSITION OF GAMING DEVICES. --

10           A. It is unlawful for any person to operate, carry  
11 on, conduct or maintain any form of manufacturing of any gaming  
12 device or associated equipment for use or play in New Mexico or  
13 any form of manufacturing of any gaming device or associated  
14 equipment in New Mexico for use or play outside of New Mexico  
15 without first obtaining and maintaining a manufacturer's license.

16           B. If the board revokes a manufacturer's license:

17               (1) no new gaming device manufactured by the  
18 manufacturer may be approved for use in this state;

19               (2) any previously approved gaming device  
20 manufactured by the manufacturer is subject to revocation of  
21 approval if the reasons for the revocation of the license also  
22 apply to that gaming device;

23               (3) no new gaming device or associated equipment  
24 made by the manufacturer may be distributed, sold, transferred or  
25 offered for use or play in New Mexico; and

1                   (4) any association or agreement between the  
2 manufacturer and a distributor licensee or gaming operator  
3 licensee in New Mexico shall be terminated.

4                   C. An agreement between a manufacturer licensee and a  
5 distributor licensee or a gaming operator licensee in New Mexico  
6 shall be deemed to include a provision for its termination  
7 without liability for the termination on the part of either party  
8 upon a finding by the board that either party is unsuitable.  
9 Failure to include that condition in the agreement is not a  
10 defense in any action brought pursuant to this section to  
11 terminate the agreement.

12                   D. A gaming device shall not be used and offered for  
13 play by a gaming operator licensee unless it is identical in all  
14 material aspects to a model that has been specifically tested and  
15 approved by:

- 16                               (1) the board;  
17                               (2) a laboratory selected by the board; or  
18                               (3) gaming officials in Nevada or New Jersey for  
19 current use.

20                   E. The board may inspect every gaming device that is  
21 manufactured:

- 22                               (1) for use in New Mexico; or  
23                               (2) in New Mexico for use outside of New Mexico.

24                   F. The board may inspect every gaming device that is  
25 offered for play within New Mexico by a gaming operator licensee.

1           G. The board may inspect all associated equipment  
2 that is manufactured and sold for use in New Mexico or  
3 manufactured in New Mexico for use outside of New Mexico.

4           H. In addition to all other fees and charges imposed  
5 pursuant to the Gaming Control Act, the board may determine,  
6 charge and collect from each manufacturer an inspection fee,  
7 which shall not exceed the actual cost of inspection and  
8 investigation.

9           I. The board may prohibit the use of a gaming device  
10 by a gaming operator licensee if it finds that the gaming device  
11 does not meet the requirements of this section.

12           Section 32. [NEW MATERIAL] LICENSING OF DISTRIBUTORS OF  
13 GAMING DEVICES. --

14           A. It is unlawful for any person to operate, carry  
15 on, conduct or maintain any form of distribution of any gaming  
16 device for use or play in New Mexico without first obtaining and  
17 maintaining a distributor's or manufacturer's license.

18           B. If the board revokes a distributor's license:

19               (1) no new gaming device distributed by the  
20 person may be approved;

21               (2) any previously approved gaming device  
22 distributed by the distributor is subject to revocation of  
23 approval if the reasons for the revocation of the license also  
24 apply to that gaming device;

25               (3) no new gaming device or associated equipment

1 distributed by the distributor may be distributed, sold,  
2 transferred or offered for use or play in New Mexico; and

3 (4) any association or agreement between the  
4 distributor and a gaming operator licensee shall be terminated.  
5 An agreement between a distributor licensee and a gaming operator  
6 licensee shall be deemed to include a provision for its  
7 termination without liability on the part of either party upon a  
8 finding by the board that the other party is unsuitable. Failure  
9 to include that condition in the agreement is not a defense in  
10 any action brought pursuant to this section to terminate the  
11 agreement.

12 C. The board may inspect every gaming device that is  
13 distributed for use in New Mexico.

14 D. In addition to all other fees and charges imposed  
15 by the Gaming Control Act, the board may determine, charge and  
16 collect from each distributor an inspection fee, which shall not  
17 exceed the actual cost of inspection and investigation.

18 Section 33. [NEW MATERIAL] SUITABILITY OF CERTAIN PERSONS  
19 FURNISHING SERVICES OR PROPERTY OR DOING BUSINESS WITH GAMING  
20 OPERATORS-- TERMINATION OF ASSOCIATION. --

21 A. The board may determine the suitability of any  
22 person who furnishes services or property to a gaming operator  
23 licensee under any arrangement pursuant to which the person  
24 receives compensation based on earnings, profits or receipts from  
25 gaming. The board may require the person to comply with the

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1 requirements of the Gaming Control Act and with the regulations  
2 of the board. If the board determines that the person is  
3 unsuitable, it may require the arrangement to be terminated.

4 B. The board may require a person to apply for a  
5 finding of suitability to be associated with a gaming operator  
6 licensee if the person:

7 (1) does business on the premises of a gaming  
8 establishment; or

9 (2) provides any goods or services to a gaming  
10 operator licensee for compensation that the board finds to be  
11 grossly disproportionate to the value of the goods or services.

12 C. If the board determines that a person is  
13 unsuitable to be associated with a gaming operator licensee, the  
14 association shall be terminated. Any agreement that entitles a  
15 business other than gaming to be conducted on the premises of a  
16 gaming establishment, or entitles a person other than a licensee  
17 to conduct business with the gaming operator licensee, is subject  
18 to termination upon a finding of unsuitability of the person  
19 seeking association with a gaming operator licensee. Every  
20 agreement shall be deemed to include a provision for its  
21 termination without liability on the part of the gaming operator  
22 licensee upon a finding by the board of the unsuitability of the  
23 person seeking or having an association with the gaming operator  
24 licensee. Failure to include that condition in the agreement is  
25 not a defense in any action brought pursuant to this section to



1 terminate the agreement. If the application is not presented to  
2 the board within thirty days following demand or the unsuitable  
3 association is not terminated, the board may pursue any remedy or  
4 combination of remedies provided in the Gaming Control Act.

5 Section 34. [NEW MATERIAL] REASONS FOR INVESTIGATIONS BY  
6 BOARD--COMPLAINT BY BOARD-- BOARD TO APPOINT HEARING EXAMINER--  
7 REVIEW BY BOARD-- ORDER OF BOARD. --

8 A. The board shall make appropriate investigations  
9 to:

10 (1) determine whether there has been any  
11 violation of the Gaming Control Act or of any regulations adopted  
12 pursuant to that act;

13 (2) determine any facts, conditions, practices  
14 or matters that it deems necessary or proper to aid in the  
15 enforcement of the Gaming Control Act or regulations adopted  
16 pursuant to that act;

17 (3) aid in adopting regulations;

18 (4) secure information as a basis for  
19 recommending legislation relating to the Gaming Control Act; or

20 (5) determine whether a licensee is able to meet  
21 its financial obligations, including all financial obligations  
22 imposed by the Gaming Control Act, as they become due.

23 B. If after an investigation the board is satisfied  
24 that a license, registration, finding of suitability or prior  
25 approval by the board of any transaction for which approval was

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1 required by the provisions of the Gaming Control Act should be  
2 limited, conditioned, suspended or revoked, or that a fine should  
3 be levied, the board shall initiate a hearing by filing a  
4 complaint and transmitting a copy of it to the licensee, together  
5 with a summary of evidence in its possession bearing on the  
6 matter and the transcript of testimony at any investigative  
7 hearing conducted by or on behalf of the board. The complaint  
8 shall be a written statement of charges that sets forth in  
9 ordinary and concise language the acts or omissions with which  
10 the respondent is charged. It shall specify the statutes or  
11 regulations that the respondent is alleged to have violated but  
12 shall not consist merely of charges raised in the language of the  
13 statutes or regulations. The summary of the evidence shall be  
14 confidential and made available only to the respondent until such  
15 time as it is offered into evidence at any public hearing on the  
16 matter.

17 C. The respondent shall file an answer within thirty  
18 days after service of the complaint.

19 D. Upon filing the complaint the board shall appoint  
20 a hearing examiner to conduct further proceedings.

21 E. The hearing examiner shall conduct proceedings in  
22 accordance with the Gaming Control Act and the regulations  
23 adopted by the board. At the conclusion of the proceedings, the  
24 hearing examiner may recommend that the board take any  
25 appropriate action, including revocation, suspension, limitation

1 or conditioning of a license or imposition of a fine not to  
2 exceed fifty thousand dollars (\$50,000) for each violation or any  
3 combination or all of the foregoing actions.

4 F. The hearing examiner shall prepare a written  
5 decision containing his recommendation to the board and shall  
6 serve it on all parties. Any respondent who disagrees with the  
7 hearing examiner's recommendation may request the board, within  
8 ten days of service of the recommendation, to review the  
9 recommendation.

10 G. Upon proper request, the board shall review the  
11 recommendation. The board may remand the case to the hearing  
12 examiner for the presentation of additional evidence upon a  
13 showing of good cause why such evidence could not have been  
14 presented at the previous hearing.

15 H. The board shall by a majority vote accept, reject  
16 or modify the recommendation.

17 I. If the board limits, conditions, suspends or  
18 revokes any license or imposes a fine or limits, conditions,  
19 suspends or revokes any registration, finding of suitability or  
20 prior approval, it shall issue a written order specifying its  
21 action.

22 J. The board's order is effective unless and until  
23 reversed upon judicial review, except that the board may stay its  
24 order pending a rehearing or judicial review upon such terms and  
25 conditions as it deems proper.

1 Section 35. [NEW MATERIAL] EMERGENCY ORDERS OF BOARD. --

2 The board may issue an emergency order for suspension, limitation  
3 or conditioning of a license, registration, finding of  
4 suitability or work permit or may issue an emergency order  
5 requiring a gaming operator licensee to exclude an individual  
6 licensee from the premises of the gaming operator licensee's  
7 gaming establishment or not to pay an individual licensee any  
8 remuneration for services or any profits, income or accruals on  
9 his investment in the licensed gaming establishment in the  
10 following manner:

11 A. an emergency order may be issued only when the  
12 board believes that:

13 (1) a licensee has willfully failed to report,  
14 pay or truthfully account for and pay over any fee imposed by the  
15 provisions of the Gaming Control Act or willfully attempted in  
16 any manner to evade or defeat any fee or payment thereof;

17 (2) a licensee or gaming employee has cheated at  
18 a game; or

19 (3) the emergency order is necessary for the  
20 immediate preservation of the public peace, health, safety,  
21 morals, good order or general welfare;

22 B. the emergency order shall set forth the grounds  
23 upon which it is issued, including a statement of facts  
24 constituting the alleged emergency necessitating such action;

25 C. the emergency order is effective immediately upon

1 issuance and service upon the licensee or resident agent of the  
 2 licensee or gaming employee or, in cases involving registration  
 3 or findings of suitability, upon issuance and service upon the  
 4 person or entity involved or resident agent of the entity  
 5 involved; the emergency order may suspend, limit, condition or  
 6 take other action in relation to the license of one or more  
 7 persons in an operation without affecting other individual  
 8 licenses or the gaming operator licensee. The emergency order  
 9 remains effective until further order of the board or final  
 10 disposition of the case; and

11 D. within five days after issuance of an emergency  
 12 order, the board shall cause a complaint to be filed and served  
 13 upon the person or entity involved; thereafter, the person or  
 14 entity against whom the emergency order has been issued and  
 15 served is entitled to a hearing before the board and to judicial  
 16 review of the decision and order of the board in accordance with  
 17 the provisions of the board's regulations.

18 Section 36. [NEW MATERIAL] EXCLUSION OR EJECTION OF  
 19 CERTAIN PERSONS FROM GAMING ESTABLISHMENTS-- PERSONS INCLUDED. --

20 A. The board shall by regulation provide for the  
 21 establishment of a list of persons who are to be excluded or  
 22 ejected from a gaming establishment. The list may include any  
 23 person whose presence in the gaming establishment is determined  
 24 by the board to pose a threat to the public interest or licensed  
 25 gaming activities.

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1           B. In making the determination in Subsection A of  
2 this section, the board may consider a:

3           (1) prior conviction for a crime that is a  
4 felony under state or federal law, a crime involving moral  
5 turpitude or a violation of the gaming laws of any jurisdiction;

6           (2) violation or conspiracy to violate the  
7 provisions of the Gaming Control Act relating to:

8           (a) the failure to disclose an interest in a  
9 gaming activity for which the person must obtain a license; or

10           (b) willful evasion of fees or taxes;

11           (3) notorious or unsavory reputation that would  
12 adversely affect public confidence and trust that the gaming  
13 industry is free from criminal or corruptive influences; or

14           (4) written order of any other governmental  
15 agency in this state or any other state that authorizes the  
16 exclusion or ejection of the person from an establishment at  
17 which gaming is conducted.

18           C. A gaming operator licensee has the right, without  
19 a list established by the board, to exclude or eject a person  
20 from its gaming establishment who poses a threat to the public  
21 interest or for any business reason.

22           D. Race, color, creed, national origin or ancestry,  
23 age, disability or sex shall not be grounds for placing the name  
24 of a person on the list or for exclusion or ejection under  
25 Subsection A or C of this section.

1           Section 37. [NEW MATERIAL] INTERNAL CONTROL SYSTEMS. --

2           A. Each gaming operator licensee shall adopt internal  
3 control systems that shall include provisions for:

4                   (1) safeguarding its assets and revenues,  
5 especially the recording of cash and evidences of indebtedness;

6                   (2) making and maintaining reliable records,  
7 accounts and reports of transactions, operations and events,  
8 including reports to the board; and

9                   (3) a system by which the amount wagered on each  
10 gaming machine and the amount paid out by each gaming machine is  
11 recorded on a daily basis, which results may be obtained by the  
12 board by appropriate means as described in regulations adopted by  
13 the board; all manufacturers are required to have such a system  
14 available for gaming operators for the gaming machines that it  
15 supplies for use in New Mexico, and all distributors shall make  
16 such a system available to gaming operators.

17           B. The internal control system shall be designed to  
18 reasonably ensure that:

19                   (1) assets are safeguarded;  
20                   (2) financial records are accurate and reliable;

21                   (3) transactions are performed only in  
22 accordance with management's general or specific authorization;

23                   (4) transactions are recorded adequately to  
24 permit proper reporting of gaming revenue and of fees and taxes  
25 and to maintain accountability of assets;

1 (5) access to assets is allowed only in  
2 accordance with management's specific authorization;

3 (6) recorded accountability for assets is  
4 compared with actual assets at reasonable intervals and  
5 appropriate action is taken with respect to any discrepancies;  
6 and

7 (7) functions, duties and responsibilities are  
8 appropriately segregated and performed in accordance with sound  
9 accounting and management practices by competent, qualified  
10 personnel.

11 C. A gaming operator licensee and an applicant for a  
12 gaming operator's license shall describe, in the manner the board  
13 may approve or require, its administrative and accounting  
14 procedures in detail in a written system of internal control. A  
15 gaming operator licensee and an applicant for a gaming operator's  
16 license shall submit a copy of its written system to the board.  
17 Each written system shall include:

18 (1) an organizational chart depicting  
19 appropriate segregation of functions and responsibilities;

20 (2) a description of the duties and  
21 responsibilities of each position shown on the organizational  
22 chart;

23 (3) a detailed, narrative description of the  
24 administrative and accounting procedures designed to satisfy the  
25 requirements of Subsection A of this section;



1 (4) a written statement signed by the licensee's  
2 chief financial officer and either the licensee's chief executive  
3 officer or a licensed owner attesting that the system satisfies  
4 the requirements of this section;

5 (5) if the written system is submitted by an  
6 applicant, a letter from an independent certified public  
7 accountant stating that the applicant's written system has been  
8 reviewed by the accountant and complies with the requirements of  
9 this section; and

10 (6) other items as the board may require.

11 D. The board shall adopt and publish minimum  
12 standards for internal control procedures.

13 Section 38. [NEW MATERIAL] GAMING EMPLOYEES--ISSUANCE OF  
14 WORK PERMITS--REVOCATION OF WORK PERMITS.--

15 A. A person shall not be employed as a gaming  
16 employee unless the person holds a valid work permit issued by  
17 the board.

18 B. A work permit shall be issued and may be revoked  
19 by the board as provided in regulations adopted by the board.

20 C. Any person whose work permit has been denied or  
21 revoked may seek judicial review.

22 Section 39. [NEW MATERIAL] AGE REQUIREMENT FOR PATRONS  
23 AND GAMING EMPLOYEES.--A person under the age of twenty-one years  
24 shall not:

25 A. play, be allowed to play, place wagers on or

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1 collect winnings from, whether personally or through an agent,  
2 any game authorized or offered to play pursuant to the Gaming  
3 Control Act; or

4 B. be employed as a gaming employee.

5 Section 40. [NEW MATERIAL] CALCULATION OF NET TAKE--  
6 CERTAIN EXPENSES NOT DEDUCTIBLE. --In calculating net take from  
7 gaming machines, the actual cost to the licensee of any personal  
8 property distributed to a patron as the result of a legitimate  
9 wager may be deducted as a loss, except for travel expenses,  
10 food, refreshments, lodging or services. For the purposes of  
11 this section, "as the result of a legitimate wager" means that  
12 the patron must make a wager prior to receiving the personal  
13 property, regardless of whether the receipt of the personal  
14 property is dependent on the outcome of the wager.

15 Section 41. [NEW MATERIAL] LIMITATIONS ON TAXES AND  
16 LICENSE FEES. --A political subdivision of the state shall not  
17 impose a license fee or tax on any licensee licensed pursuant to  
18 the Gaming Control Act except for the imposition of property  
19 taxes, local option gross receipts taxes with respect to receipts  
20 not subject to the gaming tax and the distribution provided for  
21 and determined pursuant to Subsection C of Section 60-1-15 and  
22 Section 60-1-15.2 NMSA 1978.

23 Section 42. [NEW MATERIAL] USE OF CHIPS, TOKENS OR LEGAL  
24 TENDER REQUIRED FOR ALL GAMING. --All gaming shall be conducted  
25 with chips, tokens or other similar objects approved by the board

1 or with the legal currency of the United States.

2 Section 43. [NEW MATERIAL] COMMUNICATION OR DOCUMENT OF  
3 APPLICANT OR LICENSEE ABSOLUTELY CONFIDENTIAL- - CONFIDENTIALITY  
4 NOT WAIVED- - DISCLOSURE OF CONFIDENTIAL INFORMATION PROHIBITED. - -

5 A. Any communication or document of an applicant or  
6 licensee is confidential and does not impose liability for  
7 defamation or constitute a ground for recovery in any civil  
8 action if it is required by:

- 9 (1) law or the regulations of the board; or
- 10 (2) a subpoena issued by the board to be made or  
11 transmitted to the board.

12 B. The confidentiality created pursuant to Subsection  
13 A of this section is not waived or lost because the document or  
14 communication is disclosed to the board.

15 C. Notwithstanding the powers granted to the board by  
16 the Gaming Control Act, the board:

- 17 (1) may release or disclose any confidential  
18 information, documents or communications provided by an applicant  
19 or licensee only with the prior written consent of the applicant  
20 or licensee or pursuant to a lawful court order after timely  
21 notice of the proceedings has been given to the applicant or  
22 licensee;

- 23 (2) shall maintain all confidential information,  
24 documents and communications in a secure place accessible only to  
25 members of the board; and

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[bracketed material] = delete

1 (3) shall adopt procedures and regulations to  
2 protect the confidentiality of information, documents and  
3 communications provided by an applicant or licensee.

4 Section 44. [NEW MATERIAL] MOTION FOR RELEASE OF  
5 CONFIDENTIAL INFORMATION. -- An application to a court for an order  
6 requiring the board to release any information declared by law to  
7 be confidential shall be made only by petition in district court.  
8 A hearing shall be held on the petition not less than ten days  
9 and not more than twenty days after the date of service of the  
10 petition on the board, the attorney general and all persons who  
11 may be affected by the entry of that order. A copy of the  
12 petition, all papers filed in support of it and a notice of  
13 hearing shall be served.

14 Section 45. [NEW MATERIAL] GAMING MACHINE CENTRAL  
15 SYSTEM -- The board shall develop and operate a central system  
16 into which all licensed gaming machines are connected. The  
17 central system shall be capable of:

18 A. monitoring continuously, retrieving and auditing  
19 the operations, financial data and program information of the  
20 network;

21 B. disabling from operation or play any gaming  
22 machine in the network that does not comply with the provisions  
23 of the Gaming Control Act or the regulations of the board;

24 C. communicating, through program modifications or  
25 other means equally effective, with all gaming machines licensed

1 by the board;

2 D. interacting, reading, communicating and linking  
3 with gaming machines from a broad spectrum of manufacturers and  
4 associated equipment; and

5 E. providing linkage to each gaming machine in the  
6 network at a reasonable and affordable cost to the state and the  
7 gaming operator licensee and allowing for program modifications  
8 and system updating at a reasonable cost.

9 Section 46. [NEW MATERIAL] MACHINE SPECIFICATIONS. --To be  
10 eligible for licensure, each gaming machine shall meet all  
11 specifications established by regulations of the board and:

12 A. be unable to be manipulated in a manner that  
13 affects the random probability of winning plays or in any other  
14 manner determined by the board to be undesirable;

15 B. have at least one mechanism that accepts coins or  
16 currency, but does not accept bills of denominations greater than  
17 twenty dollars (\$20.00);

18 C. be capable of having play suspended through the  
19 central system by the executive director until he resets the  
20 gaming machine;

21 D. house nonresettable mechanical and electronic  
22 meters within a readily accessible locked area of the gaming  
23 machine that maintain a permanent record of all money inserted  
24 into the machine, all cash payouts of winnings, all refunds of  
25 winnings, all credits played for additional games and all credits

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1 won by players;

2 E. be capable of printing out, at the request of the  
3 executive director, readings on the electronic meters of the  
4 machine;

5 F. for machines that do not dispense coins or tokens  
6 directly to players, be capable of printing a ticket voucher  
7 stating the value of a cash prize won by the player at the  
8 completion of each game, the date and time of day the game was  
9 played in a twenty-four-hour format showing hours and minutes,  
10 the machine serial number, the sequential number of the ticket  
11 voucher and an encrypted validation number for determining the  
12 validity of a winning ticket voucher;

13 G. be capable of being linked to the board's central  
14 system for the purpose of being monitored continuously as  
15 required by the board;

16 H. provide for a payback value for each credit  
17 wagered, determined over time, of not less than eighty percent or  
18 more than ninety-six percent;

19 I. meet the standards and specifications set by laws  
20 or regulations of the states of Nevada and New Jersey for gaming  
21 machines, whichever are more stringent;

22 J. offer only games authorized and examined by the  
23 board; and

24 K. display the gaming machine license issued for that  
25 machine in an easily accessible place, before and during the time

1 that a machine is available for use.

2 Section 47. [NEW MATERIAL] POSTING OF GAMING MACHINE  
3 ODDS. --The odds of winning on each gaming machine shall be posted  
4 on or near each gaming machine. The board shall provide the  
5 manner in which the odds shall be determined and posted by  
6 regulation.

7 Section 48. [NEW MATERIAL] EXAMINATION OF GAMING  
8 DEVICES-- COST ALLOCATION. --

9 A. The board shall examine prototypes of gaming  
10 devices of manufacturers seeking a license as required.

11 B. The board by regulation shall require a  
12 manufacturer to pay the anticipated actual costs of the  
13 examination of a gaming device in advance and, after the  
14 completion of the examination, shall refund overpayments or  
15 charge and collect amounts sufficient to reimburse the board for  
16 underpayment of actual costs.

17 C. The board may contract for the examination of  
18 gaming devices to meet the requirements of this section.

19 Section 49. [NEW MATERIAL] GAMING TAX--IMPOSITION--  
20 ADMINISTRATION. --

21 A. An excise tax is imposed on the privilege of  
22 engaging in gaming activities in the state. This tax shall be  
23 known as the "gaming tax".

24 B. The gaming tax is an amount equal to ten percent  
25 of the gross receipts of manufacturer licensees from the sale,

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1 lease or other transfer of gaming devices in or into the state,  
2 except receipts of a manufacturer from the sale, lease or other  
3 transfer to a licensed distributor for subsequent sale or lease  
4 may be excluded from gross receipts; ten percent of the gross  
5 receipts of distributor licensees from the sale, lease or other  
6 transfer of gaming devices in or into the state; and twenty-five  
7 percent of the net take of every gaming operator licensee.

8 C. The gaming tax imposed on a licensee is in lieu of  
9 all state and local gross receipts taxes on that portion of the  
10 licensee's gross receipts attributable to gaming activities.

11 D. The gaming tax shall be administered and collected  
12 by the taxation and revenue department in cooperation with the  
13 board. The provisions of the Tax Administration Act apply to the  
14 collection and administration of the tax.

15 E. In addition to the gaming tax, a gaming operator  
16 licensee that is a racetrack shall pay twenty percent of the net  
17 take to purses to be distributed in accordance with regulations  
18 adopted by the state racing commission. A racetrack gaming  
19 operator licensee shall spend no less than one-fourth of one  
20 percent of the net take of its gaming machines to fund or support  
21 programs for the treatment and assistance of compulsive gamblers.

22 F. A nonprofit gaming operator licensee shall  
23 distribute at least eighty-eight percent of the balance of net  
24 take, after payment of the gaming tax and any income taxes, for  
25 charitable or educational purposes.



1           Section 50.   ~~[NEW MATERIAL]~~   CIVIL ACTIONS TO RESTRAIN  
2 VIOLATIONS OF GAMING CONTROL ACT. --

3           A.   The attorney general, at the request of the board,  
4 may institute a civil action in any court of this state against  
5 any person to enjoin a violation of a prohibitory provision of  
6 the Gaming Control Act.

7           B.   An action brought against a person pursuant to  
8 this section shall not preclude a criminal action or  
9 administrative proceeding against that person.

10           Section 51.   ~~[NEW MATERIAL]~~   TESTIMONIAL IMMUNITY. --

11           A.   The board may order a person to answer a question  
12 or produce evidence and confer immunity pursuant to this section.  
13 If, in the course of an investigation or hearing conducted  
14 pursuant to the Gaming Control Act, a person refuses to answer a  
15 question or produce evidence on the ground that he will be  
16 exposed to criminal prosecution by doing so, then the board may  
17 by approval of three members, after the written approval of the  
18 attorney general, issue an order to answer or to produce evidence  
19 with immunity.

20           B.   If a person complies with an order issued pursuant  
21 to Subsection A of this section, he shall be immune from having a  
22 responsive answer given or responsive evidence produced, or  
23 evidence derived from either, used to expose him to criminal  
24 prosecution, except that the person may be prosecuted for any  
25 perjury committed in the answer or production of evidence and may

1 also be prosecuted for contempt for failing to act in accordance  
2 with the order of the board. An answer given or evidence  
3 produced pursuant to the grant of immunity authorized by this  
4 section may be used against the person granted immunity in a  
5 prosecution of the person for perjury or a proceeding against him  
6 for contempt.

7 Section 52. [NEW MATERIAL] CRIME--MANIPULATION OF GAMING  
8 DEVICE WITH INTENT TO CHEAT.--A person who manipulates, with the  
9 intent to cheat, any component of a gaming device in a manner  
10 contrary to the designed and normal operational purpose of the  
11 component, including varying the pull of the handle of a slot  
12 machine with knowledge that the manipulation affects the outcome  
13 of the game or with knowledge of any event that affects the  
14 outcome of the game, is guilty of a fourth degree felony and  
15 shall be sentenced pursuant to the provisions of Section 31-18-15  
16 NMSA 1978.

17 Section 53. [NEW MATERIAL] CRIME--USE OF COUNTERFEIT OR  
18 UNAPPROVED TOKENS, CURRENCY OR DEVICES--POSSESSION OF CERTAIN  
19 DEVICES, EQUIPMENT, PRODUCTS OR MATERIALS.--

20 A. A person who, in playing any game designed to be  
21 played with, to receive or to be operated by tokens approved by  
22 the board or by lawful currency of the United States, knowingly  
23 uses tokens other than those approved by the board, uses currency  
24 that is not lawful currency of the United States or uses currency  
25 not of the same denomination as the currency intended to be used

1 in that game is guilty of a third degree felony and shall be  
2 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
3 1978.

4 B. A person who knowingly has on his person or in his  
5 possession within a gaming establishment any device intended to  
6 be used by him to violate the provisions of the Gaming Control  
7 Act is guilty of a third degree felony and shall be sentenced  
8 pursuant to the provisions of Section 31-18-15 NMSA 1978.

9 C. A person, other than a duly authorized employee of  
10 a gaming operator acting in furtherance of his employment within  
11 a gaming establishment, who knowingly has on his person or in his  
12 possession within a gaming establishment any key or device known  
13 by him to have been designed for the purpose of and suitable for  
14 opening, entering or affecting the operation of any game, dropbox  
15 or any electronic or mechanical device connected to the game or  
16 dropbox or for removing money or other contents from them is  
17 guilty of a third degree felony and shall be sentenced pursuant  
18 to the provisions of Section 31-18-15 NMSA 1978.

19 D. A person who knowingly and with intent to use them  
20 for cheating has on his person or in his possession any  
21 paraphernalia for manufacturing slugs is guilty of a third degree  
22 felony and shall be sentenced pursuant to the provisions of  
23 Section 31-18-15 NMSA 1978. As used in this subsection,  
24 "paraphernalia for manufacturing slugs" means the equipment,  
25 products and materials that are intended for use or designed for

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1 use in manufacturing, producing, fabricating, preparing, testing,  
2 analyzing, packaging, storing or concealing a counterfeit  
3 facsimile of tokens approved by the board or a lawful coin of the  
4 United States, the use of which is unlawful pursuant to the  
5 Gaming Control Act. The term includes:

- 6 (1) lead or lead alloy;
- 7 (2) molds, forms or similar equipment capable of  
8 producing a likeness of a gaming token or coin;
- 9 (3) melting pots or other receptacles;
- 10 (4) torches; and
- 11 (5) tongs, trimming tools or other similar  
12 equipment.

13 E. Possession of more than two items of the  
14 equipment, products or material described in Subsection D of this  
15 section permits a rebuttable inference that the possessor  
16 intended to use them for cheating.

17 Section 54. [NEW MATERIAL] CRIME--CHEATING. -- A person who  
18 knowingly cheats at any game is guilty of a fourth degree felony  
19 and upon conviction shall be sentenced pursuant to the provisions  
20 of Section 31-18-15 NMSA 1978.

21 Section 55. [NEW MATERIAL] CRIME--POSSESSION OF GAMING  
22 DEVICE MANUFACTURED, SOLD OR DISTRIBUTED IN VIOLATION OF LAW. -- A  
23 person who knowingly possesses any gaming device that has been  
24 manufactured, sold or distributed in violation of the Gaming  
25 Control Act is guilty of a fourth degree felony and shall be

1 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
2 1978.

3 Section 56. [NEW MATERIAL] CRIME--REPORTING AND RECORD  
4 VIOLATIONS--PENALTY. --A person who, in an application, book or  
5 record required to be maintained by the Gaming Control Act or by  
6 a regulation adopted under that act or in a report required to be  
7 submitted by that act or a regulation adopted under that act,  
8 knowingly makes a statement or entry that is false or misleading  
9 or fails to maintain or make an entry the person knows is  
10 required to be maintained or made is guilty of a fourth degree  
11 felony and shall be sentenced pursuant to the provisions of  
12 Section 31-18-15 NMSA 1978.

13 Section 57. [NEW MATERIAL] CRIME--UNLAWFUL MANUFACTURE,  
14 SALE, DISTRIBUTION, MARKING, ALTERING OR MODIFICATION OF DEVICES  
15 ASSOCIATED WITH GAMING--UNLAWFUL INSTRUCTION--PENALTY. --

16 A. A person who manufactures, sells or distributes a  
17 device that is intended by him to be used to violate any  
18 provision of the Gaming Control Act is guilty of a fourth degree  
19 felony and shall be sentenced pursuant to the provisions of  
20 Section 31-18-15 NMSA 1978.

21 B. A person who marks, alters or otherwise modifies  
22 any gaming device in a manner that affects the result of a wager  
23 by determining win or loss or alters the normal criteria of  
24 random selection that affects the operation of a game or that  
25 determines the outcome of a game is guilty of a fourth degree

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1 felony and shall be sentenced pursuant to the provisions of  
2 Section 31-18-15 NMSA 1978.

3 Section 58. [NEW MATERIAL] UNDERAGE GAMING--PENALTY FOR  
4 PERMITTING OR PARTICIPATION. --

5 A. A person who knowingly permits an individual who  
6 the person knows is younger than twenty-one years of age to  
7 participate in gaming is guilty of a fourth degree felony and  
8 shall be sentenced pursuant to the provisions of Section 31-18-15  
9 NMSA 1978.

10 B. An individual who participates in gaming when he  
11 is younger than twenty-one years of age at the time of  
12 participation is guilty of a misdemeanor and shall be sentenced  
13 pursuant to the provisions of Section 31-19-1 NMSA 1978.

14 Section 59. [NEW MATERIAL] CRIME--GENERAL PENALTIES FOR  
15 VIOLATION OF ACT.--A person who willfully violates, attempts to  
16 violate or conspires to violate any of the provisions of the  
17 Gaming Control Act specifying prohibited acts, the classification  
18 of which is not specifically stated in that act, is guilty of a  
19 fourth degree felony and shall be sentenced pursuant to the  
20 provisions of Section 31-18-15 NMSA 1978.

21 Section 60. [NEW MATERIAL] DETENTION AND QUESTIONING OF A  
22 PERSON SUSPECTED OF VIOLATING ACT--LIMITATIONS ON LIABILITY--  
23 POSTING OF NOTICE. --

24 A. A gaming operator licensee or its officers,  
25 employees or agents may question a person in its gaming

1 establishment suspected of violating any of the provisions of the  
 2 Gaming Control Act. No gaming operator licensee or any of its  
 3 officers, employees or agents is criminally or civilly liable:

- 4 (1) on account of any such questioning; or
- 5 (2) for reporting to the board or law

6 enforcement authorities the person suspected of the violation.

7 B. A gaming operator licensee or any of its officers,  
 8 employees or agents who has reasonable cause for believing that  
 9 there has been a violation of the Gaming Control Act in the  
 10 gaming establishment by a person may detain that person in the  
 11 gaming establishment in a reasonable manner and for a reasonable  
 12 length of time. Such a detention does not render the gaming  
 13 operator licensee or his officers, employees or agents criminally  
 14 or civilly liable unless it is established by clear and  
 15 convincing evidence detention was unreasonable under the  
 16 circumstances.

17 C. No gaming operator licensee or its officers,  
 18 employees or agents are entitled to the immunity from liability  
 19 provided for in Subsection B of this section unless there is  
 20 displayed in a conspicuous place in the gaming establishment a  
 21 notice in boldface type clearly legible and in substantially this  
 22 form:

23 "Any gaming operator licensee or any of his officers,  
 24 employees or agents who have reasonable cause for  
 25 believing that any person has violated any provision

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1 of the Gaming Control Act prohibiting cheating in  
2 gaming may detain that person in the establishment. "

3 Section 61. [NEW MATERIAL] ADMINISTRATIVE APPEAL OF BOARD  
4 ACTION. --

5 A. Any person aggrieved by an action taken by the  
6 board or one of its agents may request and receive a hearing for  
7 the purpose of reviewing the action. To obtain a hearing the  
8 aggrieved person shall file a request for hearing with the board  
9 within thirty days after the date the action is taken. Failure  
10 to file the request within the specified time is an irrevocable  
11 waiver of the right to a hearing, and the action complained of  
12 shall be final with no further right to review, either  
13 administratively or by a court.

14 B. The board shall adopt procedural regulations to  
15 govern the procedures to be followed in administrative hearings  
16 pursuant to the provisions of this section. At a minimum, the  
17 regulations shall provide:

- 18 (1) for the hearings to be public;
- 19 (2) for the appointment of a hearing officer to  
20 conduct the hearing and make his recommendation to the board not  
21 more than ten days after the completion of the hearing;
- 22 (3) procedures for discovery;
- 23 (4) assurance that procedural due process  
24 requirements are satisfied;
- 25 (5) for the maintenance of a record of the



1 hearing proceedings and assessment of costs of any transcription  
2 of testimony that is required for judicial review purposes; and

3 (6) for the hearing to be held in Santa Fe for  
4 enforcement hearings and hearings on actions of statewide  
5 application, and to be held in the place or area affected for  
6 enforcement hearings and hearings on actions of limited local  
7 concern.

8 C. Actions taken by the board after a hearing  
9 pursuant to the provisions of this section shall be:

10 (1) written and shall state the reasons for the  
11 action;

12 (2) made public when taken;

13 (3) communicated to all persons who have made a  
14 written request for notification of the action taken; and

15 (4) taken not more than thirty days after the  
16 submission of the hearing officer's report to the board.

17 Section 62. [NEW MATERIAL] JUDICIAL REVIEW OF  
18 ADMINISTRATIVE ACTIONS. --

19 A. Any person adversely affected by an action taken  
20 by the board after review pursuant to the provisions of Section  
21 61 of the Gaming Control Act may appeal the action to the court  
22 of appeals. The appeal shall be on the record made at the  
23 hearing. To support his appeal, the appellant shall make  
24 arrangements with the board for a sufficient number of  
25 transcripts of the record of the hearing on which the appeal is

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1 based. The appellant shall pay for the preparation of the  
2 transcripts.

3 B. On appeal, the court of appeals shall set aside  
4 the administrative action only if it is found to be:

5 (1) arbitrary, capricious or an abuse of  
6 discretion;

7 (2) not supported by substantial evidence in the  
8 whole record; or

9 (3) otherwise not in accordance with law.

10 Section 63. [NEW MATERIAL] LIEN ON WINNINGS FOR DEBT  
11 COLLECTED BY HUMAN SERVICES DEPARTMENT-- PAYMENT TO  
12 DEPARTMENT-- PROCEDURE. --

13 A. The human services department, acting as the  
14 state's child support enforcement agency pursuant to Title IV-D  
15 of the Social Security Act, shall periodically certify to the  
16 board the names and social security numbers of persons owing a  
17 debt to or collected by the human services department.

18 B. Prior to the payment of a gaming machine amount in  
19 excess of six hundred dollars (\$600), the board shall check the  
20 name of the winner against the list of names and social security  
21 numbers of persons owing a debt to or collected by the human  
22 services department.

23 C. If the winner is on the list of persons owing a  
24 debt to or collected by the agency, the board shall make a good-  
25 faith attempt to notify the human services department, and the

1 department then has a lien against the winnings in the amount of  
 2 the debt owed to or collected by the agency. The board has no  
 3 liability to the human services department or the person on whose  
 4 behalf the department is collecting the debt if the board fails  
 5 to match a winner's name to a name on the list or is unable to  
 6 notify the department of a match. The department shall provide  
 7 the board with written notice of a support lien promptly within  
 8 five working days after the board notifies the department of a  
 9 match.

10 D. If the amount won is to be paid directly by the  
 11 board, the amount of the debt owed to or collected by the human  
 12 services department shall be held by the board for a period of  
 13 thirty days from the board's confirmation of the amount of the  
 14 debt to allow the department to institute any necessary  
 15 garnishment or wage withholding proceedings. If a garnishment or  
 16 withholding proceeding is not initiated within the thirty-day  
 17 period, the board shall release the amount won to the winner.

18 E. The human services department, in its discretion,  
 19 may release or partially release the support lien upon written  
 20 notice to the board.

21 F. A support lien under this section is in addition  
 22 to any other lien created by law.

23 Section 64. Section 7-1-2 NMSA 1978 (being Laws 1965,  
 24 Chapter 248, Section 2, as amended) is amended to read:

25 "7-1-2. APPLICABILITY. -- The Tax Administration Act applies

1 to and governs:

2 A. the administration and enforcement of the  
3 following taxes or tax acts as they now exist or may hereafter be  
4 amended:

5 (1) Income Tax Act;

6 (2) Withholding Tax Act;

7 (3) Gross Receipts and Compensating Tax Act and  
8 any state gross receipts tax;

9 (4) Liquor Excise Tax Act;

10 (5) Local Liquor Excise Tax Act;

11 [~~(6)~~] ~~Banking and Financial Corporations Tax Act;~~

12 ~~(7)~~ (6) any municipal local option gross

13 receipts tax;

14 [~~(8)~~] (7) any county local option gross receipts

15 tax;

16 [~~(9)~~] (8) Special Fuels Supplier Tax Act;

17 [~~(10)~~] (9) Gasoline Tax Act;

18 [~~(11)~~] (10) petroleum products loading fee,

19 which fee shall be considered a tax for the purpose of the Tax  
20 Administration Act;

21 [~~(12)~~] (11) Alternative Fuel Tax Act;

22 [~~(13)~~] (12) Cigarette Tax Act;

23 [~~(14)~~] (13) Estate Tax Act;

24 [~~(15)~~] (14) Railroad Car Company Tax Act;

25 [~~(16)~~] (15) Investment Credit Act;

1                    [~~(17)~~] (16) Corporate Income and Franchise Tax  
2 Act;

3                    [~~(18)~~] (17) Uniform Division of Income for Tax  
4 Purposes Act;

5                    [~~(19)~~] (18) Multistate Tax Compact;

6                    [~~(20)~~] (19) Tobacco Products Tax Act;

7                    [~~(21)~~] (20) Filmmaker's Credit Act; and

8                    [~~(22)~~] (21) the telecommunications relay service  
9 surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge  
10 shall be considered a tax for the purposes of the Tax  
11 Administration Act;

12                    B. the administration and enforcement of the  
13 following taxes, surtaxes, advanced payments or tax acts as they  
14 now exist or may hereafter be amended:

- 15                    (1) Resources Excise Tax Act;
- 16                    (2) Severance Tax Act;
- 17                    (3) any severance surtax;
- 18                    (4) Oil and Gas Severance Tax Act;
- 19                    (5) Oil and Gas Conservation Tax Act;
- 20                    (6) Oil and Gas Emergency School Tax Act;
- 21                    (7) Oil and Gas Ad Valorem Production Tax Act;
- 22                    (8) Natural Gas Processors Tax Act;
- 23                    (9) Oil and Gas Production Equipment Ad Valorem  
24 Tax Act;
- 25                    (10) Copper Production Ad Valorem Tax Act; and

Underscored material = new  
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1                   (11) any advance payment required to be made by  
2 any act specified in this subsection, which advance payment shall  
3 be considered a tax for the purposes of the Tax Administration  
4 Act;

5                   C. the administration and enforcement of the  
6 following taxes, surcharges, fees or acts as they now exist or  
7 may hereafter be amended:

8                   (1) Weight Distance Tax Act;

9                   (2) Special Fuels Tax Act;

10                   (3) the workers' compensation fee authorized by  
11 Section 52-5-19 NMSA 1978, which fee shall be considered a tax  
12 for purposes of the Tax Administration Act;

13                   (4) Uniform Unclaimed Property Act;

14                   (5) 911 emergency surcharge and the network and  
15 database surcharge, which surcharges shall be considered taxes  
16 for purposes of the Tax Administration Act;

17                   (6) the solid waste assessment fee authorized by  
18 the Solid Waste Act, which fee shall be considered a tax for  
19 purposes of the Tax Administration Act; ~~and~~

20                   (7) the water conservation fee imposed by  
21 Section 74-1-13 NMSA 1978, which fee shall be considered a tax  
22 for the purposes of the Tax Administration Act; and

23                   (8) the gaming tax imposed pursuant to the  
24 Gaming Control Act; and

25                   D. the administration and enforcement of all other

1 laws, with respect to which the department is charged with  
 2 responsibilities pursuant to the Tax Administration Act, but only  
 3 to the extent that the other laws do not conflict with the Tax  
 4 Administration Act. "

5 Section 65. Section 10-15-1 NMSA 1978 (being Laws 1974,  
 6 Chapter 91, Section 1, as amended) is amended to read:

7 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN  
 8 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS. -

9 A. In recognition of the fact that a representative  
 10 government is dependent upon an informed electorate, it is  
 11 declared to be public policy of this state that all persons are  
 12 entitled to the greatest possible information regarding the  
 13 affairs of government and the official acts of those officers and  
 14 employees who represent them. The formation of public policy or  
 15 the conduct of business by vote shall not be conducted in closed  
 16 meeting. All meetings of any public body except the legislature  
 17 and the courts shall be public meetings, and all persons so  
 18 desiring shall be permitted to attend and listen to the  
 19 deliberations and proceedings. Reasonable efforts shall be made  
 20 to accommodate the use of audio and video recording devices.

21 B. All meetings of a quorum of members of any board,  
 22 commission, administrative adjudicatory body or other  
 23 policymaking body of any state agency, any agency or authority of  
 24 any county, municipality, district or any political subdivision,  
 25 held for the purpose of formulating public policy, including the

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1 development of personnel policy, rules, regulations or  
2 ordinances, discussing public business or for the purpose of  
3 taking any action within the authority of or the delegated  
4 authority of any board, commission or other policymaking body are  
5 declared to be public meetings open to the public at all times,  
6 except as otherwise provided in the constitution of New Mexico or  
7 the Open Meetings Act. No public meeting once convened that is  
8 otherwise required to be open pursuant to the Open Meetings Act  
9 shall be closed or dissolved into small groups or committees for  
10 the purpose of permitting the closing of the meeting.

11 C. If otherwise allowed by law or rule of the public  
12 body, a member of a public body may participate in a meeting of  
13 the public body by means of a conference telephone or other  
14 similar communications equipment when it is otherwise difficult  
15 or impossible for the member to attend the meeting in person,  
16 provided that each member participating by conference telephone  
17 can be identified when speaking, all participants are able to  
18 hear each other at the same time and members of the public  
19 attending the meeting are able to hear any member of the public  
20 body who speaks during the meeting.

21 D. Any meetings at which the discussion or adoption  
22 of any proposed resolution, rule, regulation or formal action  
23 occurs and at which a majority or quorum of the body is in  
24 attendance, and any closed meetings, shall be held only after  
25 reasonable notice to the public. The affected body shall



1 determine at least annually in a public meeting what notice for a  
2 public meeting is reasonable when applied to that body. That  
3 notice shall include broadcast stations licensed by the federal  
4 communications commission and newspapers of general circulation  
5 that have provided a written request for such notice.

6 E. A public body may recess and reconvene a meeting  
7 to a day subsequent to that stated in the meeting notice if,  
8 prior to recessing, the public body specifies the date, time and  
9 place for continuation of the meeting and, immediately following  
10 the recessed meeting, posts notice of the date, time and place  
11 for the reconvened meeting on or near the door of the place where  
12 the original meeting was held and in at least one other location  
13 appropriate to provide public notice of the continuation of the  
14 meeting. Only matters appearing on the agenda of the original  
15 meeting may be discussed at the reconvened meeting.

16 F. Meeting notices shall include an agenda containing  
17 a list of specific items of business to be discussed or  
18 transacted at the meeting or information on how the public may  
19 obtain a copy of such an agenda. Except in the case of an  
20 emergency, the agenda shall be available to the public at least  
21 twenty-four hours prior to the meeting. Except for emergency  
22 matters, a public body shall take action only on items appearing  
23 on the agenda. For purposes of this subsection, an "emergency"  
24 refers to unforeseen circumstances that, if not addressed  
25 immediately by the public body, will likely result in injury or

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1 damage to persons or property or substantial financial loss to  
2 the public body.

3 G. The board, commission or other policymaking body  
4 shall keep written minutes of all its meetings. The minutes  
5 shall include at a minimum the date, time and place of the  
6 meeting, the names of members in attendance and those absent, the  
7 substance of the proposals considered and a record of any  
8 decisions and votes taken that show how each member voted. All  
9 minutes are open to public inspection. Draft minutes shall be  
10 prepared within ten working days after the meeting and shall be  
11 approved, amended or disapproved at the next meeting where a  
12 quorum is present. Minutes shall not become official until  
13 approved by the policymaking body.

14 H. The provisions of Subsections A, B and G of this  
15 section do not apply to:

16 (1) meetings pertaining to issuance, suspension,  
17 renewal or revocation of a license, except that a hearing at  
18 which evidence is offered or rebutted shall be open. All final  
19 actions on the issuance, suspension, renewal or revocation of a  
20 license shall be taken at an open meeting;

21 (2) limited personnel matters; provided that for  
22 purposes of the Open Meetings Act, "limited personnel matters"  
23 means the discussion of hiring, promotion, demotion, dismissal,  
24 assignment or resignation of or the investigation or  
25 consideration of complaints or charges against any individual

1 public employee; provided further that this subsection is not to  
2 be construed as to exempt final actions on personnel from being  
3 taken at open public meetings, nor does it preclude an aggrieved  
4 public employee from demanding a public hearing. Judicial  
5 candidates interviewed by any commission shall have the right to  
6 demand an open interview;

7 (3) deliberations by a public body in connection  
8 with an administrative adjudicatory proceeding. For purposes of  
9 this paragraph, an "administrative adjudicatory proceeding" means  
10 a proceeding brought by or against a person before a public body  
11 in which individual legal rights, duties or privileges are  
12 required by law to be determined by the public body after an  
13 opportunity for a trial-type hearing. Except as otherwise  
14 provided in this section, the actual administrative adjudicatory  
15 proceeding at which evidence is offered or rebutted and any final  
16 action taken as a result of the proceeding shall occur in an open  
17 meeting;

18 (4) the discussion of personally identifiable  
19 information about any individual student, unless the student, his  
20 parent or guardian requests otherwise;

21 (5) meetings for the discussion of bargaining  
22 strategy preliminary to collective bargaining negotiations  
23 between the policymaking body and a bargaining unit representing  
24 the employees of that policymaking body and collective bargaining  
25 sessions at which the policymaking body and the representatives

1 of the collective bargaining unit are present;

2 (6) that portion of meetings at which a decision  
3 concerning purchases in an amount exceeding two thousand five  
4 hundred dollars (\$2,500) that can be made only from one source  
5 and that portion of meetings at which the contents of competitive  
6 sealed proposals solicited pursuant to the Procurement Code are  
7 discussed during the contract negotiation process. The actual  
8 approval of purchase of the item or final action regarding the  
9 selection of a contractor shall be made in an open meeting;

10 (7) meetings subject to the attorney-client  
11 privilege pertaining to threatened or pending litigation in which  
12 the public body is or may become a participant;

13 (8) meetings for the discussion of the purchase,  
14 acquisition or disposal of real property or water rights by the  
15 public body; ~~and~~

16 (9) those portions of meetings of committees or  
17 boards of public hospitals that receive less than fifty percent  
18 of their operating budget from direct public funds and  
19 appropriations where strategic and long-range business plans are  
20 discussed; and

21 (10) that portion of a meeting of the gaming  
22 control board dealing with information made confidential pursuant  
23 to the provisions of the Gaming Control Act.

24 I. If any meeting is closed pursuant to the  
25 exclusions contained in Subsection H of this section, the

1 closure:

2 (1) if made in an open meeting, shall be  
3 approved by a majority vote of a quorum of the policymaking body;  
4 the authority for the closure and the subject to be discussed  
5 shall be stated with reasonable specificity in the motion calling  
6 for the vote on a closed meeting; the vote shall be taken in an  
7 open meeting; and the vote of each individual member shall be  
8 recorded in the minutes. Only those subjects announced or voted  
9 upon prior to closure by the policymaking body may be discussed  
10 in a closed meeting; and

11 (2) if called for when the policymaking body is  
12 not in an open meeting, shall not be held until public notice,  
13 appropriate under the circumstances, stating the specific  
14 provision of the law authorizing the closed meeting and stating  
15 with reasonable specificity the subject to be discussed is given  
16 to the members and to the general public.

17 J. Following completion of any closed meeting, the  
18 minutes of the open meeting that was closed or the minutes of the  
19 next open meeting if the closed meeting was separately scheduled  
20 shall state that the matters discussed in the closed meeting were  
21 limited only to those specified in the motion for closure or in  
22 the notice of the separate closed meeting. This statement shall  
23 be approved by the public body under Subsection G of this section  
24 as part of the minutes. "

25 Section 66. Section 30-19-1 NMSA 1978 (being Laws 1963,

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1 Chapter 303, Section 19-1, as amended) is amended to read:

2 "30-19-1. DEFINITIONS RELATING TO GAMBLING. --As used in  
3 Chapter 30, Article 19 NMSA 1978:

4 A. "antique gambling device" means a gambling device  
5 twenty-five years of age or older and substantially in original  
6 condition that is not used for gambling or commercial gambling or  
7 located in a gambling place;

8 B. "bet" means a bargain in which the parties agree  
9 that, dependent upon chance, even though accompanied by some  
10 skill, one stands to win or lose anything of value specified in  
11 the agreement. A bet does not include:

12 (1) bona fide business transactions that are  
13 valid under the law of contracts, including ~~[without limitation]~~:

14 (a) contracts for the purchase or sale, at a  
15 future date, of securities or other commodities; and

16 (b) agreements to compensate for loss caused  
17 by the happening of the chance, including ~~[without limitation]~~  
18 contracts for indemnity or guaranty and life or health and  
19 accident insurance;

20 (2) offers of purses, prizes or premiums to the  
21 actual contestants in any bona fide contest for the determination  
22 of skill, speed, strength or endurance or to the bona fide owners  
23 of animals or vehicles entered in such contest;

24 (3) a lottery as defined in this section; or

25 (4) betting otherwise permitted by law;

1           ~~[C. "lottery" means an enterprise other than the New~~  
2 ~~Mexico state lottery established and operated pursuant to the New~~  
3 ~~Mexico Lottery Act wherein, for a consideration, the participants~~  
4 ~~are given an opportunity to win a prize, the award of which is~~  
5 ~~determined by chance, even though accompanied by some skill. As~~  
6 ~~used in this subsection, "consideration" means anything of~~  
7 ~~pecuniary value required to be paid to the promoter in order to~~  
8 ~~participate in such enterprise;~~

9           ~~D.]~~ C. "gambling device" means a contrivance other  
10 than an antique gambling device that is not licensed for use  
11 pursuant to the Gaming Control Act and that, for a consideration,  
12 affords the player an opportunity to obtain anything of value,  
13 the award of which is determined by chance, even though  
14 accompanied by some skill, ~~[and]~~ whether or not the prize is  
15 automatically paid by the device; ~~[and]~~

16           ~~[E.]~~ D. "gambling place" means ~~[any]~~ a building or  
17 tent, ~~[any]~~ a vehicle, whether self-propelled or not, or ~~[any]~~ a  
18 room within any of them that is not within the premises of a  
19 person licensed as a lottery retailer or that is not licensed  
20 pursuant to the Gaming Control Act, one of whose principal uses  
21 is:

- 22                   (1) making and settling of bets;
- 23                   (2) receiving, holding, recording or forwarding  
24 bets or offers to bet;
- 25                   (3) conducting lotteries; or

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(4) playing gambling devices; and

E. "lottery" means an enterprise wherein, for a consideration, the participants are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill. "Lottery" does not include the New Mexico state lottery established and operated pursuant to the New Mexico Lottery Act or gaming that is licensed and operated pursuant to the Gaming Control Act. As used in this subsection, "consideration" means anything of pecuniary value required to be paid to the promoter in order to participate in a gambling or gaming enterprise. "

Section 67. A new section of Chapter 40, Article 3 NMSA 1978 is enacted to read:

"[NEW MATERIAL] GAMBLING DEBTS ARE SEPARATE DEBTS OF SPOUSE INCURRING DEBT. -- A gambling debt incurred by a married person as a result of legal gambling is a separate debt of the spouse incurring the debt. "

Section 68. Section 60-7A-19 NMSA 1978 (being Laws 1981, Chapter 39, Section 96) is amended to read:

"60-7A-19. COMMERCIAL GAMBLING ON LICENSED PREMISES. --

A. It is a violation of the Liquor Control Act for a licensee to knowingly allow commercial gambling on the licensed premises.

B. In addition to any criminal penalties, any person who violates Subsection A of this section may have his license

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1 suspended or revoked or a fine imposed, or both, pursuant to the  
2 Liquor Control Act.

3 C. [~~For purposes of~~] As used in this section:

4 (1) "commercial gambling" means:

5 [~~(1)~~] (a) participating in the earnings of  
6 or operating a gambling place;

7 [~~(2)~~] (b) receiving, recording or forwarding  
8 bets or offers to bet;

9 [~~(3)~~] (c) possessing facilities with the  
10 intent to receive, record or forward bets or offers to bet;

11 [~~(4)~~] (d) for gain, becoming a custodian of  
12 anything of value bet or offered to be bet;

13 [~~(5)~~] (e) conducting a lottery where both  
14 the consideration and the prize are money, or whoever with intent  
15 to conduct a lottery possesses facilities to do so; or

16 [~~(6)~~] (f) setting up for use for the purpose  
17 of gambling, or collecting the proceeds of, any gambling device  
18 or game; and

19 (2) "commercial gambling" does not mean:

20 (a) activities authorized pursuant to the  
21 New Mexico Lottery Act;

22 (b) the conduct of activities pursuant to  
23 Subsection D of Section 30-19-6 NMSA 1978; and

24 (c) gaming authorized pursuant to the Gaming  
25 Control Act on the premises of a gaming operator licensee

1 licensed pursuant to that act. "

2 Section 69. SEVERABILITY.--If any part or application of  
3 the Gaming Control Act is held invalid, the remainder or its  
4 application to other situations or persons shall not be affected.

5 Section 70. DELAYED EFFECTIVE DATE.--The provisions of the  
6 Gaming Control Act shall be effective on the date that a tribal  
7 gaming compact agreed upon and executed by an Indian nation,  
8 tribe or pueblo and the state is approved pursuant to the  
9 provisions of the Indian Gaming Regulatory Act, 25 USCA Section  
10 2701, et seq.

11 Section 71. EMERGENCY.--It is necessary for the public  
12 peace, health and safety that this act take effect immediately.

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