

AN ACT
RELATING TO GAMING; PROVIDING FOR NONPROFIT DISCLOSURE;
AMENDING SECTIONS OF THE GAMING CONTROL ACT.

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

Section 1. Section 60-2E-3 NMSA 1978 (being Laws 1997, Chapter 190, Section 5) is amended to read:

"60-2E-3. DEFINITIONS.--As used in the Gaming Control Act:

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

B. "affiliated company" means a company that:
(1) controls, is controlled by or is under common control with a company licensee; and
(2) is involved in gaming activities or involved in the ownership of property on which gaming is conducted;

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

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

E. "associated equipment" means equipment or a

mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming;

F. "board" means the gaming control board;

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

H. "certified technician" means a person certified by a manufacturer licensee to repair and service gaming devices, but who is prohibited from programming gaming devices;

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

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

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

(1) voting stock or similar security;

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

(3) a warrant or right to subscribe to or purchase voting stock or similar security; or

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

L. "executive director" means the chief administrative officer appointed by the board pursuant to

Section 60-2E-7 NMSA 1978;

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

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

O. "gaming" means offering a game for play;

P. "gaming activity" means any endeavor associated with the manufacture or distribution of gaming devices or the conduct of gaming;

Q. "gaming device" means associated equipment or a gaming machine and includes a system for processing information that can alter the normal criteria of random selection that affects the operation of a game or determines the outcome of a game; "gaming device" does not include a system or device that affects a game solely by stopping its operation so that the outcome remains undetermined;

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

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

(2) secretarial or janitorial personnel;

- (3) stage, sound and light technicians; or
- (4) other nongaming personnel;

S. "gaming establishment" means the premises on or in which gaming is conducted;

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

U. "gaming operator" means a person who conducts gaming;

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

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

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

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

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

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

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

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

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

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

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

Z. "intermediary company" means a company that:

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

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

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

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

CC. "licensee" means a person to whom a valid license has been issued;

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

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

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

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

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

FF. "nonprofit organization" means:

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

(2) a bona fide chartered or incorporated post, auxiliary unit or society of, or a trust or foundation

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

GG. "person" means a legal entity;

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

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

JJ. "progressive system" means one or more gaming machines linked to one or more common progressive jackpots;

KK. "publicly traded corporation" means a corporation that:

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

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

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

LL. "registration" means a board action that

authorizes a company to be a holding company with respect to a company that holds or applies for a license or that relates to other persons required to be registered pursuant to the Gaming Control Act;

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

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

Section 2. Section 60-2E-19 NMSA 1978 (being Laws 1997, Chapter 190, Section 21) is amended to read:

"60-2E-19. REGISTRATION WITH BOARD BY COMPANY APPLICANTS--NONPROFIT ORGANIZATIONS--REQUIRED INFORMATION.--

A. A company applicant shall provide the following information to the board on forms provided by the board:

(1) the organization, financial structure and nature of the business to be operated, including the names and personal histories of all officers, directors and key executives;

(2) the rights and privileges acquired by the holders of different classes of authorized securities;

(3) the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest evidenced by a security instrument pertaining to the proposed gaming operation or other licensed activity in this state and the

name and address of the person who is servicing the loan, mortgage, trust deed, pledge or other indebtedness or security interest;

(4) remuneration to persons, other than directors, officers and key executives, exceeding fifty thousand dollars (\$50,000) per year;

(5) bonus and profit-sharing arrangements within the company;

(6) management and service contracts pertaining to the proposed gaming activity in this state;

(7) balance sheets and profit and loss statements for at least the three preceding fiscal years, or, if the company has not been in business for a period of three years, balance sheets and profit and loss statements from the time of its commencement of business operations and projected for three years from the time of its commencement of business operations. All balance sheets and profit and loss statements shall be certified by independent certified public accountants; and

(8) any further financial data that the board deems necessary or appropriate.

B. A nonprofit organization applying for a license as a nonprofit gaming operator pursuant to the Gaming Control Act shall provide in its application:

(1) the organization, financial structure and nature of the nonprofit organization, including the names of all officers, directors and key executives;

(2) the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest evidenced by a

security instrument pertaining to the proposed gaming operation or other licensed activity in this state and the name and address of the person who is servicing the loan, mortgage, trust deed, pledge or other indebtedness or security interest;

(3) management and service contracts pertaining to the proposed gaming activity in this state;

(4) balance and profit and loss statements for at least the three preceding fiscal years or, if the nonprofit organization has not been in business for a period of three years, balance sheets and profit and loss statements from the date of charter or incorporation and projected for three years from the date of charter or incorporation. All balance sheets and profit and loss statements shall be certified by independent certified public accountants;

(5) any further financial data that the board deems necessary or appropriate;

(6) if the nonprofit organization has various classes of members, information detailing the rights and privileges attributed to each class of member and providing the number of members in each class;

(7) the level of remuneration for all paid employees of the nonprofit organization; and

(8) details about any other form of remuneration or awards that are conferred on members."

Section 3. Section 60-2E-20 NMSA 1978 (being Laws 1997, Chapter 190, Section 22) is amended to read:

"60-2E-20. INDIVIDUAL CERTIFICATION OF OFFICERS, DIRECTORS AND OTHER PERSONS.--

A. An officer, director, equity security holder of five percent or more, partner, general partner, limited partner, trustee or beneficiary of the company that holds or has applied for a license shall be certified individually, according to the provisions of the Gaming Control Act, and if in the judgment of the board the public interest is served by requiring any or all of the company's key executives to be certified, the company shall require those persons to apply for certification. A person who is required to be certified pursuant to this subsection shall apply for certification within thirty days after becoming an officer, director, equity security holder of five percent or more, partner, general partner, limited partner of five percent or more, trustee, beneficiary or key executive. A person who is required to be certified pursuant to a decision of the board shall apply for certification within thirty days after the board so requests.

B. The president or commander and key executives of a nonprofit organization that holds or has applied for a license shall be certified individually. For purposes of this subsection, key executives are those officers, employees, volunteers and other persons who are designated by the nonprofit organization as key executives. The board may require additional officers, employees, volunteers and other persons to become certified if the board determines the public interest is served by the additional certifications. A person who is required to be certified pursuant to this subsection shall apply for certification within thirty days after becoming an officer or key executive. A person who is required to be certified

pursuant to a decision of the board shall apply for certification within thirty days after the board so requests. An officer, employee, volunteer or other person required or requested to be certified shall provide to the board an application for certification, including personal history, financial statement, copies of the person's income tax returns for the three years immediately prior to the year of the application and any other information that the board deems necessary or appropriate."

Section 4. Section 60-2E-23 NMSA 1978 (being Laws 1997, Chapter 190, Section 25) is amended to read:

"60-2E-23. FINDING OF SUITABILITY REQUIRED FOR DIRECTORS, OFFICERS AND KEY EXECUTIVES--REMOVAL FROM POSITION IF FOUND UNSUITABLE--SUSPENSION OF SUITABILITY BY BOARD.--

A. Each officer, director and key executive of a holding company, intermediary company or publicly traded corporation that the board determines is or is to become actively and directly engaged in the administration or supervision of, or any other significant involvement with, the activities of the subsidiary licensee or applicant shall apply for a finding of suitability.

B. If any officer, director or key executive of a holding company, intermediary company or publicly traded corporation required to be found suitable pursuant to Subsection A of this section fails to apply for a finding of suitability within thirty days after being requested to do so by the board, or is not found suitable by the board, or if his finding of suitability is revoked after appropriate findings by the board, the holding company, intermediary

company or publicly traded corporation shall immediately remove that officer, director or key executive from any office or position in which the person is engaged in the administration or supervision of, or any other involvement with, the activities of the certified subsidiary until the person is thereafter found to be suitable. If the board suspends the finding of suitability of any officer, director or key executive, the holding company, intermediary company or publicly traded corporation shall immediately and for the duration of the suspension suspend that officer, director or key executive from performance of any duties in which he is actively and directly engaged in the administration or supervision of, or any other involvement with, the activities of the subsidiary licensee." _____

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