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SENATE BILL 700

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Shannon Robinson

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

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(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,

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1 joint venture, limited liability company or other form of
2 business organization that is not a natural person; "company"
3 does not mean a nonprofit organization;

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

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

- 9 (1) voting stock or similar security;
- 10 (2) a security convertible into voting stock
11 or similar security, with or without consideration, or a
12 security carrying a warrant or right to subscribe to or
13 purchase voting stock or similar security;
- 14 (3) a warrant or right to subscribe to or
15 purchase voting stock or similar security; or
- 16 (4) a security having a direct or indirect
17 participation in the profits of the issuer;

18 L. "executive director" means the chief
19 administrative officer appointed by the board pursuant to
20 [~~Section 9 of the Gaming Control Act~~] Section 60-2E-7 NMSA
21 1978;

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

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

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

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

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

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

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

25 (2) secretarial or janitorial personnel;

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

2 (4) other nongaming personnel;

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

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

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

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

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

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

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1 be receiving the annuity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (1) cash received from patrons for playing a

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1 game;

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

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

6 FF. "nonprofit organization" means:

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

13 (2) a bona fide chartered or incorporated
14 post, auxiliary unit or society of, or a trust or foundation
15 for the post or auxiliary unit, in existence in New Mexico
16 prior to January 1, 1997, of a veterans' organization that is
17 described in Section 501(c)(19) or (23) of the federal
18 Internal Revenue Code of 1986 and that is exempt from federal
19 income taxation pursuant to Section 501(a) of that code;

20 GG. "person" means a legal entity;

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

24 II. "progressive jackpot" means a prize that
25 increases over time or as gaming machines that are linked to a

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1 progressive system are played and upon conditions established
2 by the board may be paid by an annuity;

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

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

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

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

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

17 LL. "registration" means a board action that
18 authorizes a company to be a holding company with respect to a
19 company that holds or applies for a license or that relates to
20 other persons required to be registered pursuant to the Gaming
21 Control Act;

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

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

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

7 "60-2E-19. REGISTRATION WITH BOARD BY COMPANY
8 APPLICANTS--NONPROFIT ORGANIZATIONS--REQUIRED INFORMATION. --

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

11 [~~A.~~] (1) the organization, financial
12 structure and nature of the business to be operated, including
13 the names and personal histories of all officers, directors
14 and key executives;

15 [~~B.~~] (2) the rights and privileges acquired
16 by the holders of different classes of authorized securities;

17 [~~C.~~] (3) the terms and conditions of all
18 outstanding loans, mortgages, trust deeds, pledges or any
19 other indebtedness or security interest evidenced by a
20 security instrument pertaining to the proposed gaming
21 operation or other licensed activity in this state and the
22 name and address of the person who is servicing the loan,
23 mortgage, trust deed, pledge or other indebtedness or security
24 interest;

25 [~~D.~~] (4) remuneration to persons, other than

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1 directors, officers and key executives, exceeding fifty
2 thousand dollars (\$50,000) per year;

3 ~~[E-]~~ (5) bonus and profit-sharing
4 arrangements within the company;

5 ~~[F-]~~ (6) management and service contracts
6 pertaining to the proposed gaming activity in this state;

7 ~~[G-]~~ (7) balance sheets and profit and loss
8 statements for at least the three preceding fiscal years, or,
9 if the company has not been in business for a period of three
10 years, balance sheets and profit and loss statements from the
11 time of its commencement of business operations and projected
12 for three years from the time of its commencement of business
13 operations. All balance sheets and profit and loss statements
14 shall be certified by independent certified public
15 accountants; and

16 ~~[H-]~~ (8) any further financial data that the
17 board deems necessary or appropriate.

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

21 (1) the information requested in Paragraphs
22 (1), (3), (6), (7) and (8) of Subsection A of this section;

23 (2) if the nonprofit organization has various
24 classes of members, information detailing the rights and
25 privileges attributed to each class of member and providing

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- 1 the number of members in each class;
- 2 (3) the level of remuneration for all paid
- 3 employees of the nonprofit organization; and
- 4 (4) details about any other form of
- 5 remuneration or awards that are conferred on members. "

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

8 "60-2E-20. INDIVIDUAL CERTIFICATION OF OFFICERS,
9 DIRECTORS AND OTHER PERSONS. --

10 A. An officer, director, equity security holder of
11 five percent or more, partner, general partner, limited
12 partner, trustee or beneficiary of the company that holds or
13 has applied for a license shall be certified individually,
14 according to the provisions of the Gaming Control Act, and if
15 in the judgment of the board the public interest is served by
16 requiring any or all of the company's key executives to be
17 certified, the company shall require those persons to apply
18 for certification. A person who is required to be certified
19 pursuant to this ~~[section]~~ subsection shall apply for
20 certification within thirty days after becoming an officer,
21 director, equity security holder of five percent or more,
22 partner, general partner, limited partner of five percent or
23 more, trustee, beneficiary or key executive required to be
24 certified. A person who is required to be certified pursuant
25 to a decision of the board shall apply for certification

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1 within thirty days after the board so requests.

2 B. The president or commander of a nonprofit
3 organization and those officers and employees who are applying
4 for certification as key executives shall provide to the board
5 a financial statement certified by a certified public
6 accountant and copies of their income tax returns for the
7 three years immediately prior to the year of application. The
8 board may require additional persons to become certified if
9 within the judgment of the board, the public interest is
10 served by additional individual certifications. "

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

13 "60-2E-23. FINDING OF SUITABILITY REQUIRED FOR
14 DIRECTORS, OFFICERS AND KEY EXECUTIVES--REMOVAL FROM POSITION
15 IF FOUND UNSUITABLE--SUSPENSION OF SUITABILITY BY BOARD.--

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

23 B. If any officer, director or key executive of a
24 holding company, intermediary company or publicly traded
25 corporation required to be found suitable pursuant to

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1 Subsection A of this section fails to apply for a finding of
2 suitability within thirty days after being requested to do so
3 by the board, or is not found suitable by the board, or if his
4 finding of suitability is revoked after appropriate findings
5 by the board, the holding company, intermediary company or
6 publicly traded corporation shall immediately remove that
7 officer, director or key executive from any office or position
8 in which the person is engaged in the administration or
9 supervision of, or any other involvement with, the activities
10 of the certified subsidiary until the person is thereafter
11 found to be suitable. If the board suspends the finding of
12 suitability of any officer, director or key executive, the
13 holding company, intermediary company or publicly traded
14 corporation shall immediately and for the duration of the
15 suspension suspend that officer, director or key executive
16 from performance of any duties in which he is actively and
17 directly engaged in the administration or supervision of, or
18 any other involvement with, the activities of the subsidiary
19 licensee.

20 C. For purposes of this section, the officers or
21 key executives of a nonprofit organization's gaming operator
22 licensee are the president or commander and those officers,
23 employees and volunteers who are designated by the nonprofit
24 organization as key executives. The board may require that
25 additional people involved in the nonprofit operator

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1 licensee's gaming activities apply for a finding of
2 suitability as it deems necessary. "

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FIRST SESSION, 1999

March 12, 1999

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

SENATE BILL 700

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. On page 11, strike lines 21 and 22 and insert in lieu thereof:

"(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

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FIRST SESSION, 1999

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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;".

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2. Renumber succeeding paragraphs accordingly.

3. On page 12, lines 23 and 24, strike "required to be certified".

4. On page 13, strike lines 2 through 10 and insert in lieu thereof the following:

"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

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FIRST SESSION, 1999

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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. "".

5. On page 14, line 19, after the period insert a closing quotation mark.

6. On page 14, strike lines 20 through 25 in their entirety and on page 15, strike lines 1 and 2 in their entirety.

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Respectfully submitted,

Shannon Robinson, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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The roll call vote was 6 For 1 Against

Yes: 6

No: Smith

Excused: Howes, Stockard

Absent: None

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1 FORTY-FOURTH LEGISLATURE
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6 March 19, 1999
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8 Mr. Speaker:
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10 Your JUDICIARY COMMITTEE, to whom has been referred
11

12 SENATE BILL 700, as amended
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14 has had it under consideration and reports same with
15 recommendation that it DO PASS and thence referred to
16 APPROPRIATIONS AND FINANCE COMMITTEE.

17 Respectfully submitted,
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22 R. David Pederson, Chairman
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FORTY-FOURTH LEGISLATURE
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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 8 For 1 Against

Yes: 8

No: T. Taylor

Excused: Luna, Stewart, Sanchez

Absent: None

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999

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4 March 19, 1999

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7 Mr. Speaker:

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9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
10 whom has been referred

11 SENATE BILL 700, as amended

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13 has had it under consideration and reports same with
14 recommendation that it DO PASS.

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16 Respectfully submitted,

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21 Max Coll, Chairman
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4 Adopted _____ Not Adopted _____
5 (Chief Clerk) (Chief Clerk)

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7 Date _____

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9 The roll call vote was 16 For 0 Against

10 Yes: 16

11 Excused: Buffett

12 Absent: None

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