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SENATE BILL 873

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Mark Boitano

AN ACT

RELATING TO LOTTERIES; ALLOWING CERTAIN RAFFLES AND DOOR PRIZES
TO BE CONDUCTED WITHOUT BEING CONSIDERED GAMBLING.

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

Section 1. Section 30-19-6 NMSA 1978 (being Laws 1963,
Chapter 303, Section 19-6, as amended) is amended to read:

"30-19-6. PERMISSIVE LOTTERY. --

A. Nothing in Chapter 30, Article 19 [~~Chapter 30~~]
NMSA 1978 shall be construed to apply to any sale or drawing of
any prize at any fair held in this state for the benefit of any
church, public library or religious society situate or being in
this state, or for charitable purposes when all the proceeds of
[~~such~~] the fair shall be expended in this state for the benefit
of [~~such~~] the church, public library, religious society or
charitable purposes. A lottery shall be operated for the

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1 benefit of the organization or charitable purpose only when the
2 entire proceeds of the lottery go to the organization or
3 charitable purpose and no part of such proceeds go to any
4 individual member or employee thereof.

5 B. Nothing in Chapter 30, Article 19 [~~Chapter 30~~]
6 NMSA 1978 shall be held to prohibit any bona fide motion
7 picture theatre from offering prizes of cash or merchandise for
8 advertising purposes, in connection with such business or for
9 the purpose of stimulating business, whether or not any
10 consideration other than a monetary consideration in excess of
11 the regular price of admission is exacted for participation in
12 drawings for prizes.

13 C. Nothing in Chapter 30, Article 19 [~~Chapter 30~~]
14 NMSA 1978 shall be held to apply to any bona fide county fair,
15 including fairs for more than one county, which shall have been
16 held annually at the same location for at least two years and
17 which shall offer prizes of livestock or poultry in connection
18 with [~~such~~] the fair when the proceeds of [~~such~~] the drawings
19 shall be used for the benefit of [~~said~~] the fair.

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

- 25 (1) no more than two lotteries shall be

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1 operated in any year by such an organization;

2 (2) all the gross proceeds less the reasonable
3 cost of prizes of any lottery operated by such an organization
4 shall be expended in the state for the benefit of the
5 organization or public purposes; and

6 (3) no part of the proceeds of any lottery
7 shall go to any individual member or employee of any
8 organization except as payment for the purchase of prizes at no
9 more than the reasonable retail price.

10 E. Nothing in Chapter 30, Article 19 NMSA 1978
11 shall be construed to apply to a lottery for which:

12 (1) the price of each ticket is five dollars
13 (\$5.00) or less; and

14 (2) the combined cash and retail value of
15 nondonated prizes awarded at any one event is one thousand
16 dollars (\$1,000) or less."

17 Section 2. Section 60-2B-13 NMSA 1978 (being Laws 1981,
18 Chapter 259, Section 13) is amended to read:

19 "60-2B-13. EXEMPTIONS. -- Nothing in the Bingo and Raffle
20 Act shall be construed to apply to:

21 A. any drawing or any prize at any fair or fiesta
22 held in New Mexico under the sponsorship or authority of the
23 state or any of its political subdivisions, or for the benefit
24 of any church situated [~~and being~~] in this state or for
25 charitable purposes when all the proceeds of the sale or

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1 drawing shall be expended within New Mexico for the benefit of
2 that church or charitable purpose, provided [~~such~~] the fair or
3 fiesta ~~must~~ have been held on an annual basis for not less than
4 two years ~~immediately~~ preceding and for a period of not more
5 than fourteen consecutive calendar days in each year; [~~or~~]

6 B. any bingo or raffle held by any group or
7 organization as defined in Section [~~3 of the Bingo and Raffle~~
8 ~~Act which~~] 60-2B-3 NMSA 1978 that holds a bingo or raffle only
9 once during three consecutive calendar months and not exceeding
10 four occasions in one calendar year; or

11 C. a raffle in which:

12 (1) the price of each ticket is five dollars
13 (\$5.00) or less; and

14 (2) the combined cash and retail value of
15 nondonated prizes awarded at any one event is one thousand
16 dollars (\$1,000) or less. "

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

19 "60-2E-3. DEFINITIONS. --As used in the Gaming Control
20 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
24 person;

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

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

3 (2) is involved in gaming activities or
4 involved in the ownership of property on which gaming is
5 conducted;

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

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

16 E. "associated equipment" means equipment or a
17 mechanical, electromechanical or electronic contrivance,
18 component or machine used in connection with gaming activity;

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

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

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

25 I. "company" means a corporation, partnership,

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

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

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

10 (1) voting stock or similar security;

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

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

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

19 L. "executive director" means the chief
20 administrative officer appointed by the board pursuant to
21 Section 60-2E-7 NMSA 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;

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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 player
7 or to a lottery in which the price of each ticket is five
8 dollars (\$5.00) or less and the combined cash and retail value
9 of nondonated prizes awarded at any one event is one thousand
10 dollars (\$1,000) or less;

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

12 P. "gaming activity" means an endeavor associated
13 with the manufacture or distribution of gaming devices or the
14 conduct of gaming;

15 Q. "gaming device" means associated equipment or a
16 gaming machine and includes a system for processing information
17 that can alter the normal criteria of random selection that
18 affects the operation of a game or determines the outcome of a
19 game;

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

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

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

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

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

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

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

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

23 X. "independent administrator" means a person who
24 administers an annuity, who is not associated in any manner
25 with the gaming operator licensee for which the annuity was

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1 purchased and is in no way associated with the person who will
2 be receiving the annuity;

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

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

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

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

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

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

25 (1) is a holding company with respect to a

1 company that is an applicant or licensee; and

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

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

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

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

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

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

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

25 (2) cash received in payment for credit

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1 extended by a licensee to a patron for playing a game; and

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

4 FF. "nonprofit organization" means:

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

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

18 GG. "person" means a legal entity;

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

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

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1 JJ. "public post-secondary educational institution"
2 means an institution designated in Article 12, Section 11 of
3 the constitution of New Mexico and an institution designated in
4 Chapter 21, Articles 13, 14, 16 and 17 NMSA 1978;

5 KK. "progressive system" means one or more gaming
6 machines linked to one or more common progressive jackpots;

7 LL. "publicly traded corporation" means a
8 corporation that:

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

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

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

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

24 NN. "subsidiary" means a company, all or a part of
25 whose outstanding equity securities are owned, subject to a

1 power or right of control or held, with power to vote, by a
2 holding company or intermediary company; and

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

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