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AN ACT
RELATING TO GAMING; AMENDING, REPEALING AND ENACTING CERTAIN
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, as amended) 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

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

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

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

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

11 H. "cheat" or "cheating" means to alter the
12 element of chance, the method of selection or other criteria
13 in a manner that determines:

14 (1) the result of the game;

15 (2) the amount or frequency of payment in a
16 game, including taking advantage of a malfunctioning machine;

17 (3) the value of a wagering instrument; or

18 (4) the value of a wagering credit;

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

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

1 gaming devices;

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

4 (1) voting stock or similar security;

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

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

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

13 L. "executive director" means the chief
14 administrative officer appointed by the board pursuant to
15 Section 60-2E-7 NMSA 1978;

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

20 N. "foreign institutional investor" means:

21 (1) a government-related pension plan of a
22 foreign government; or

23 (2) a person that meets the requirement of a
24 qualified institutional buyer as defined by the governing
25 financial regulatory agency of the foreign country in which

1 the company's primary operations are located and is
2 registered or licensed in that country as a bank, an
3 insurance company, an investment company, an investment
4 advisor, a collective trust fund, an employee benefit plan or
5 pension fund sponsored by a publicly traded corporation
6 registered with the board or a group composed entirely of
7 entities specified in this subsection;

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

15 P. "gaming" means offering a game for play;

16 Q. "gaming activity" means an endeavor associated
17 with the manufacture or distribution of gaming devices or the
18 conduct of gaming;

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

24 S. "gaming employee" means a person connected
25 directly with a gaming activity; "gaming employee" does not

1 include:

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

5 (2) secretarial or janitorial personnel;

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

7 (4) other nongaming personnel;

8 T. "gaming establishment" means the premises on or
9 in which gaming is conducted;

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

16 V. "gaming operator" means a person who conducts
17 gaming;

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

24 X. "immediate family" means natural persons who
25 are related to a specified natural person by affinity or

1 consanguinity in the first through the third degree;

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

7 Z. "institutional investor" means:

8 (1) a foreign institutional investor;

9 (2) a state or federal government pension
10 plan; or

11 (3) a person that meets the requirements of
12 a qualified institutional buyer as defined in Rule 144A of
13 the federal Securities Act of 1933, and is:

14 (a) a bank as defined in Section
15 3(a)(6) of the federal Securities Exchange Act of 1934;

16 (b) an insurance company as defined in
17 Section 2(a)(17) of the federal Investment Company Act of
18 1940;

19 (c) an investment company registered
20 under Section 8 of the federal Investment Company Act of
21 1940;

22 (d) an investment adviser registered
23 under Section 203 of the federal Investment Advisers Act of
24 1940;

25 (e) collective trust funds as defined

1 in Section 3(c)(11) of the federal Investment Company Act of
2 1940;

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

8 (g) a group comprised entirely of
9 persons specified in Subparagraphs (a) through (f) of this
10 paragraph;

11 AA. "intermediary company" means a company that:

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

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

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

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

23 DD. "licensee" means a person to whom a valid
24 license has been issued;

25 EE. "manufacturer" means a person who

1 manufactures, fabricates, assembles, produces, programs or
2 makes modifications to any gaming device for use or play in
3 New Mexico or for sale, lease or distribution outside New
4 Mexico from any location within New Mexico;

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

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

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

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

16 GG. "nonprofit organization" means:

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

23 (2) a bona fide chartered or incorporated
24 post, auxiliary unit or society of, or a trust or foundation
25 for the post or auxiliary unit, in existence in New Mexico

1 prior to January 1, 1997, of a veterans' organization that is
2 described in Section 501(c)(19) or (23) of the federal
3 Internal Revenue Code of 1986 and that is exempt from federal
4 income taxation pursuant to Section 501(a) of that code;

5 HH. "person" means a legal entity;

6 II. "premises" means land, together with all
7 buildings, improvements and personal property located on the
8 land;

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

13 KK. "public post-secondary educational
14 institution" means an institution designated in Article 12,
15 Section 11 of the constitution of New Mexico or an
16 institution designated in Chapter 21, Article 13, 14 or 16
17 NMSA 1978;

18 LL. "progressive system" means one or more gaming
19 machines linked to one or more common progressive jackpots;

20 MM. "publicly traded corporation" means a
21 corporation that:

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

25 (2) is an issuer subject to the securities

1 laws of the United States or New Mexico; or

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

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

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

17 PP. "technician" means a person approved by the
18 board to repair and service gaming devices or associated
19 equipment but who is prohibited from programming gaming
20 devices; and

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

25 Section 2. Section 60-2E-8 NMSA 1978 (being Laws 1997,

1 Chapter 190, Section 10, as amended) is amended to read:

2 "60-2E-8. BOARD REGULATIONS--DISCRETIONARY
3 REGULATIONS--PROCEDURE--REQUIRED PROVISIONS.--

4 A. The board may adopt any regulation:

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

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

9 B. No regulation shall be adopted, amended or
10 repealed without a public hearing on the proposed action
11 before the board or a hearing officer designated by it.

12 Notice of the subject matter of the regulation, the action
13 proposed to be taken, the time and place of the hearing, the
14 manner in which interested persons may present their views
15 and the method by which copies of the proposed regulation,
16 amendment or repeal may be obtained shall be published once
17 at least thirty days prior to the hearing date in a newspaper
18 of general circulation and mailed at least thirty days prior
19 to the hearing date to all persons who have made a written
20 request for advance notice of hearing. All regulations and
21 actions taken on regulations shall be filed in accordance
22 with the State Rules Act.

23 C. The board shall adopt regulations:

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

1 (2) prescribing the information to be
2 furnished by an applicant or licensee concerning the
3 applicant's or licensee's antecedents, immediate family,
4 habits, character, associates, criminal record, business
5 activities and financial affairs, past or present;

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

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

10 (5) prescribing the manner and method of the
11 issuance of licenses, permits, registrations, certificates
12 and other actions of the board not elsewhere prescribed in
13 the Gaming Control Act;

14 (6) defining the area, games and gaming
15 devices allowed and the methods of operation of the games and
16 gaming devices for authorized gaming;

17 (7) prescribing under what conditions the
18 nonpayment of winnings is grounds for suspension or
19 revocation of a license of a gaming operator;

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

22 (9) prescribing accounting procedures,
23 security, collection and verification procedures required of
24 licensees and matters regarding financial responsibility of
25 licensees;

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

3 (11) restricting access to confidential
4 information obtained pursuant to the provisions of the Gaming
5 Control Act and ensuring that the confidentiality of that
6 information is maintained and protected;

7 (12) prescribing financial reporting and
8 internal control requirements for licensees;

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

12 (14) prescribing the frequency of and the
13 matters to be contained in audits of and periodic financial
14 reports relevant to the gaming operator licensee's gaming
15 activities from a gaming operator licensee consistent with
16 standards prescribed by the board;

17 (15) prescribing the procedures to be
18 followed by a gaming operator licensee for the exclusion of
19 persons from gaming establishments;

20 (16) establishing criteria and conditions
21 for the operation of progressive systems;

22 (17) establishing criteria and conditions
23 for approval of procurement by the board of personal property
24 valued in excess of twenty thousand dollars (\$20,000),
25 including background investigation requirements for a person

1 submitting a bid or proposal;

2 (18) establishing an applicant fee schedule
3 for processing applications that is based on costs of the
4 application review incurred by the board whether directly or
5 through payment by the board for costs charged for
6 investigations of applicants by state departments and
7 agencies other than the board, which regulation shall set a
8 maximum fee of one hundred thousand dollars (\$100,000); and

9 (19) establishing criteria and conditions
10 for allowing temporary possession of gaming devices:

11 (a) by post-secondary educational
12 institutions;

13 (b) for trade shows;

14 (c) for film or theater productions; or

15 (d) for other non-gaming purposes."

16 Section 3. Section 60-2E-12 NMSA 1978 (being Laws 1997,
17 Chapter 190, Section 14) is amended to read:

18 "60-2E-12. CONFLICTS OF INTEREST--BOARD--EXECUTIVE
19 DIRECTOR--EMPLOYEES.--

20 A. In addition to all other provisions of New
21 Mexico law regarding conflicts of interest of state officials
22 and employees, a member of the board, the executive director,
23 an employee of the board or a person in the immediate family
24 of or residing in the household of any of the foregoing
25 persons, shall not:

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

5 (2) accept or agree to accept any economic
6 opportunity, gift, loan, gratuity, special discount, favor,
7 hospitality or service having an aggregate value of one
8 hundred dollars (\$100) or more in any calendar year from a
9 licensee or applicant.

10 B. If a member of the board, the executive
11 director or a person in the immediate family of or residing
12 in the household of a member of the board or the executive
13 director violates a provision of this section, the member of
14 the board or executive director shall be removed from office.
15 A board member shall be removed by the governor, and the
16 executive director shall be removed from the executive
17 director's position by the board."

18 Section 4. Section 60-2E-13.1 NMSA 1978 (being Laws
19 2002, Chapter 102, Section 9) is amended to read:

20 "60-2E-13.1. TEMPORARY POSSESSION OF GAMING DEVICE FOR
21 LIMITED PURPOSE.--

22 A. A public post-secondary educational institution
23 may temporarily possess gaming devices for the limited
24 purpose of providing instruction on the technical aspects of
25 gaming devices to persons seeking certification as

1 technicians qualified to repair and maintain gaming devices.
2 A gaming device allowed for such limited use shall be subject
3 to registration, transport, possession and use requirements
4 and restrictions established in board regulations.

5 B. Trade shows and similar events for the purpose
6 of demonstrating and marketing gaming devices may be
7 conducted in the state at the discretion of the board. A
8 gaming device allowed in the state for such limited use shall
9 be subject to registration, transport, possession and use
10 requirements and restrictions established in board
11 regulations.

12 C. A person may possess an unlicensed gaming
13 device used by the person for the purposes of testing or
14 demonstration if that person is a manufacturer licensee or
15 has obtained a waiver pursuant to the Gaming Control Act.

16 D. A person may possess a gaming device for the
17 purpose of film or theater productions or other non-gaming
18 purposes permitted by regulation of the board. Any gaming
19 device allowed in the state for such limited use shall be
20 subject to registration, transport, possession and use
21 requirements and restrictions established in board
22 regulations."

23 Section 5. Section 60-2E-16 NMSA 1978 (being Laws 1997,
24 Chapter 190, Section 18, as amended) is amended to read:

25 "60-2E-16. ACTION BY BOARD ON APPLICATIONS.--

1 A. A person that the board determines is qualified
2 to receive a license pursuant to the provisions of the Gaming
3 Control Act may be issued a license. The burden of proving
4 qualifications is on the applicant.

5 B. A license shall not be issued unless the board
6 is satisfied that the applicant is:

7 (1) a person of good moral character,
8 honesty and integrity;

9 (2) a person whose prior activities, state
10 and federal criminal records, reputation, habits and
11 associations do not pose a threat to the public interest or
12 to the effective regulation and control of gaming or create
13 or enhance the dangers of unsuitable, unfair or illegal
14 practices, methods and activities in the conduct of gaming or
15 the carrying on of the business and financial arrangements
16 incidental thereto; and

17 (3) in all other respects qualified to be
18 licensed consistent with the laws of this state.

19 C. A license shall not be issued unless the
20 applicant has satisfied the board that:

21 (1) the applicant has adequate business
22 probity, competence and experience in business and gaming;

23 (2) the proposed financing of the applicant
24 is adequate for the nature of the proposed license and from a
25 suitable source; any lender or other source of money or

1 credit that the board finds does not meet the standards set
2 forth in Subsection B of this section shall be deemed
3 unsuitable; and

4 (3) the applicant is sufficiently
5 capitalized under standards set by the board to conduct the
6 business covered by the license.

7 D. An application to receive a license,
8 certification or work permit constitutes a request for a
9 determination of the applicant's general moral character,
10 integrity and ability to participate or engage in or be
11 associated with gaming. Any written or oral statement made
12 in the course of an official proceeding of the board or by a
13 witness testifying under oath that is relevant to the purpose
14 of the proceeding is absolutely privileged and does not
15 impose liability for defamation or constitute a ground for
16 recovery in any civil action.

17 E. The board shall not issue a license or
18 certification to an applicant who has previously been denied
19 a license or certification in this state or another state,
20 who has had a certification, permit or license issued
21 pursuant to the gaming laws of a state or the United States
22 permanently suspended or revoked for cause or who is
23 currently under suspension or subject to any other limiting
24 action in this state or another state involving gaming
25 activities or licensure for gaming activities, unless the

1 violation that is the basis of the denial, permanent
2 suspension or other limiting action regarding a license,
3 certification or permit applied for or issued in this state
4 or another state is determined by the board to be a technical
5 violation, and, if the board finds the violation to be a
6 technical violation, the board may choose to issue a license
7 or certification.

8 F. The board shall investigate the qualifications
9 of each applicant before a license, certification or work
10 permit is issued by the board and shall continue to observe
11 and monitor the conduct of all licensees, work permit
12 holders, persons certified as being suitable and the persons
13 having a material involvement directly or indirectly with a
14 licensee.

15 G. The board has the authority to deny an
16 application or limit, condition, restrict, revoke or suspend
17 a license, certification or permit for any cause.

18 H. After issuance, a license, certification or
19 permit shall continue in effect upon proper payment of the
20 initial and renewal fees, subject to the power of the board
21 to revoke, suspend, condition or limit licenses,
22 certifications and permits.

23 I. The board has full and absolute power and
24 authority to deny an application for any cause it deems
25 reasonable. If an application is denied, the board shall

1 prepare and file its written decision on which its order
2 denying the application is based."

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

5 "60-2E-19. COMPANY APPLICANTS--NONPROFIT ORGANIZATION
6 APPLICANTS--REQUIRED INFORMATION.--

7 A. A company applicant for a license or a renewal
8 of a license shall provide the following information to the
9 board on forms provided by the board:

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

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

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

24 (4) remuneration to persons, other than
25 directors, officers and key executives, exceeding one hundred

1 thousand dollars (\$100,000) per year;

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

4 (6) a list of management and service
5 contracts pertaining to the proposed gaming activity in this
6 state;

7 (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
14 statements shall be audited by independent certified public
15 accountants; and

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

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

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

25 (2) the terms and conditions of all

1 outstanding loans, mortgages, trust deeds, pledges or any
2 other indebtedness or security interest evidenced by a
3 security instrument pertaining to the proposed gaming
4 operation or other licensed activity in this state and the
5 name and address of the person who is servicing the loan,
6 mortgage, trust deed, pledge or other indebtedness or
7 security interest;

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

10 (4) balance and profit and loss statements
11 for at least the three preceding fiscal years or, if the
12 nonprofit organization has not been in business for a period
13 of three years, balance sheets and profit and loss statements
14 from the date of charter or incorporation and projected for
15 three years from the date of charter or incorporation. All
16 balance sheets and profit and loss statements shall be
17 submitted in a manner prescribed by the board;

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

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

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

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

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

5 "60-2E-20. INDIVIDUAL CERTIFICATION OF FINDING OF
6 SUITABILITY OF OFFICERS, DIRECTORS AND OTHER PERSONS.--

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

1 certified pursuant to this subsection shall provide to the
2 board an application for certification, including a personal
3 history, a financial statement, copies of the person's income
4 tax returns for the three years immediately prior to the year
5 of the application and other information that the board deems
6 necessary or appropriate.

7 B. The key executives of a nonprofit organization
8 that holds or has applied for a license shall individually
9 apply for and obtain a certification of finding of
10 suitability. For purposes of this subsection, key executives
11 are those officers, employees, volunteers and other persons
12 who are designated by the nonprofit organization as key
13 executives. The board may require additional officers,
14 employees, volunteers and other persons to apply for and
15 obtain a certification of finding of suitability if the board
16 determines the public interest is served by the additional
17 certifications. A person who is required to be certified
18 pursuant to this subsection shall apply for certification
19 within thirty days after becoming an officer or key
20 executive. A person who is required to be certified pursuant
21 to a decision of the board shall apply for certification
22 within thirty days after the board so requests. A person
23 required or requested to be certified pursuant to this
24 subsection shall provide to the board an application for
25 certification, including a personal history, a financial

1 statement, copies of the person's income tax returns for the
2 three years immediately prior to the year of the application
3 and other information that the board deems necessary or
4 appropriate."

5 Section 8. Section 60-2E-21 NMSA 1978 (being Laws 1997,
6 Chapter 190, Section 23) is amended to read:

7 "60-2E-21. REQUIREMENTS IF COMPANY IS OR BECOMES A
8 SUBSIDIARY--INVESTIGATIONS--RESTRICTIONS ON UNSUITABLE
9 PERSONS--OTHER REQUIREMENTS.--

10 A. If the company applicant or licensee is or
11 becomes a subsidiary, each nonpublicly traded holding company
12 and intermediary company with respect to the subsidiary
13 company shall:

14 (1) qualify to do business in New Mexico;
15 and

16 (2) register with the board and furnish to
17 the board the following information:

18 (a) a complete list of all beneficial
19 owners of five percent or more of its equity securities,
20 which shall be updated within thirty days after any change;

21 (b) the names of all company officers
22 and directors within thirty days of their appointment or
23 election;

24 (c) its organization, financial
25 structure and nature of the business it operates;

1 (d) the terms, position, rights and
2 privileges of the different classes of its outstanding
3 securities;

4 (e) the terms on which its securities
5 are to be, and during the preceding three years have been,
6 offered;

7 (f) the holder of and the terms and
8 conditions of all outstanding loans, mortgages, trust deeds,
9 pledges or any other indebtedness or security interest
10 pertaining to the applicant or licensee;

11 (g) the extent of the securities
12 holdings or other interest in the holding company or
13 intermediary company of all officers, directors, key
14 executives, underwriters, partners, principals, trustees or
15 any direct or beneficial owners, and the amount of any
16 remuneration paid them as compensation for their services in
17 the form of salary, wages, fees or by contract pertaining to
18 the licensee;

19 (h) remuneration to persons other than
20 directors, officers and key executives exceeding two hundred
21 fifty thousand dollars (\$250,000) per year;

22 (i) bonus and profit-sharing
23 arrangements within the holding company or intermediary
24 company, if deemed necessary by the board;

25 (j) management and service contracts

1 pertaining to the licensee or applicant, if deemed necessary
2 by the board;

3 (k) options existing or to be created
4 in respect to the company's securities or other interests, if
5 deemed necessary by the board;

6 (l) balance sheets and profit and loss
7 statements, audited by independent certified public
8 accountants or their foreign equivalents, for not more than
9 the three preceding fiscal years, or, if the holding company
10 or intermediary company has not been in existence more than
11 three years, balance sheets and profit and loss statements
12 from the time of its establishment, together with projections
13 for three years from the time of its establishment;

14 (m) any further financial statements
15 necessary or appropriate to assist the board in making its
16 determinations; and

17 (n) a current annual profit and loss
18 statement, a current annual balance sheet and a copy of the
19 company's most recent federal income tax return or its
20 foreign equivalent within thirty days after the return is
21 filed.

22 B. The board may require all holders of five
23 percent or more of the equity security of a holding company
24 or intermediary company to apply for a certification of
25 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,
4 principals, trustees or direct or beneficial owners of any
5 interest in any holding company or intermediary company as it
6 deems necessary, either at the time of initial registration
7 or at any time 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
10 part of any class of securities of, or any interest in, any
11 holding company or intermediary company is unsuitable to be
12 connected with a licensee, it shall so notify both the
13 unsuitable person and the holding company or intermediary
14 company. The unsuitable person shall immediately offer the
15 securities or other interest to the issuing company for
16 purchase. The company shall purchase the securities or
17 interest offered upon the terms and within the time period
18 ordered by the board.

19 E. Beginning on the date when the board serves
20 notice that a person has been found to be unsuitable pursuant
21 to Subsection D of this section, it is unlawful for the
22 unsuitable person to:

23 (1) receive any dividend or interest upon
24 any securities held in the holding company or intermediary
25 company, or any dividend, payment or distribution of any kind

1 from the holding company or intermediary company;

2 (2) exercise, directly or indirectly or
3 through a proxy, trustee or nominee, any voting right
4 conferred by the securities or interest; or

5 (3) receive remuneration in any form from
6 the licensee, or from any holding company or intermediary
7 company with respect to that licensee, for services rendered
8 or otherwise.

9 F. A holding company or intermediary company
10 subject to the provisions of Subsection A of this section
11 shall not make any public offering of any of its equity
12 securities unless such public offering has been approved by
13 the board.

14 G. This section does not apply to a holding
15 company or intermediary company that is a publicly traded
16 corporation, the stock of which is traded on recognized stock
17 exchanges, which shall instead comply with the provisions of
18 Section 60-2E-22 NMSA 1978."

19 Section 9. Section 60-2E-22 NMSA 1978 (being Laws 1997,
20 Chapter 190, Section 24) is amended to read:

21 "60-2E-22. CHANGE IN COMPANY OWNERSHIP.--

22 A. If a company applicant or company licensee
23 proposes to transfer ownership of twenty percent or more of
24 the applicant or licensee, it shall notify the board in
25 writing and provide the following information about the

1 successor company:

2 (1) if the company is a publicly traded
3 corporation, as of the date the company became a publicly
4 traded corporation, and on any later date when the
5 information changes, the names of all stockholders of record
6 who hold five percent or more of the outstanding shares of
7 any class of equity securities issued by the publicly traded
8 corporation;

9 (2) the names of all officers within thirty
10 days of their respective appointments;

11 (3) the names of all directors within thirty
12 days of their respective elections or appointments;

13 (4) the organization, financial structure
14 and nature of the businesses the company operates;

15 (5) if the company is a publicly traded
16 corporation, the terms, position, rights and privileges of
17 the different classes of securities outstanding as of the
18 date the company became a publicly traded corporation;

19 (6) if the company is a publicly traded
20 corporation, the terms on which the company's securities were
21 issued during the three years preceding the date on which the
22 company became a publicly traded corporation and the terms on
23 which the publicly traded corporation's securities are to be
24 offered to the public as of the date the company became a
25 publicly traded corporation;

1 (7) the terms and conditions of all
2 outstanding indebtedness and evidence of security pertaining
3 directly or indirectly to the company;

4 (8) remuneration exceeding one hundred
5 thousand dollars (\$100,000) per year paid to persons other
6 than directors, officers and key executives who are actively
7 and directly engaged in the administration or supervision of
8 the gaming activities of the company;

9 (9) bonus and profit-sharing arrangements
10 within the company directly or indirectly relating to its
11 gaming activities;

12 (10) management and service contracts of the
13 company pertaining to its gaming activities;

14 (11) options existing or to be created
15 pursuant to its equity securities;

16 (12) balance sheets and profit and loss
17 statements, certified by independent certified public
18 accountants or their foreign equivalents, for not less than
19 the three fiscal years preceding the date of the proposed
20 transfer of ownership;

21 (13) any further financial statements deemed
22 necessary or appropriate by the board; and

23 (14) a description of the company's
24 affiliated companies and intermediary companies and gaming
25 licenses, permits and approvals held by those entities.

1 B. The board shall determine whether the proposed
2 transaction is a transfer or assignment of the license as
3 prohibited by Subsection G of Section 60-2E-14 NMSA 1978. If
4 the board determines that the proposed transaction is
5 prohibited, it shall notify the licensee in writing and shall
6 require the proposed transferee to file an application for a
7 license. If the board determines that the proposed
8 transaction is not a prohibited transfer or assignment of the
9 license, it shall make a determination as to whether to issue
10 a certification approving the transaction. The board shall
11 consider the following information about the successor
12 company in determining whether to certify the transaction:

13 (1) the business history of the company,
14 including its record of financial stability, integrity and
15 success of its gaming operations in other jurisdictions;

16 (2) the current business activities and
17 interests of the company, as well as those of its officers,
18 promoters, lenders and other sources of financing, or any
19 other persons associated with it;

20 (3) the current financial structure of the
21 company as well as changes that could reasonably be expected
22 to occur to its financial structure as a consequence of its
23 proposed action;

24 (4) the present and proposed compensation
25 arrangements between the company and its directors, officers,

1 key executives, securities holders, lenders or other sources
2 of financing;

3 (5) the equity investment, commitment or
4 contribution of present or prospective directors, key
5 executives, investors, lenders or other sources of financing;
6 and

7 (6) the dealings and arrangements,
8 prospective or otherwise, between the company and its
9 investment bankers, promoters, finders or lenders and other
10 sources of financing.

11 C. The board may issue a certification upon
12 receipt of a proper application and consideration of the
13 criteria set forth in Subsection B of this section if it
14 finds that the certification would not be contrary to the
15 public interest or the policy set forth in the Gaming Control
16 Act.

17 D. The board shall require the officers,
18 directors key executives and holders of an equity security
19 interest of five percent or more of the successor company and
20 any other person specified in the Gaming Control Act to apply
21 for and obtain a certification of finding of suitability."

22 Section 10. Section 60-2E-25 NMSA 1978 (being Laws
23 1997, Chapter 190, Section 27) is amended to read:

24 "60-2E-25. REPORT OF PROPOSED ISSUANCE OR TRANSFER OF
25 OWNERSHIP--REPORT OF CHANGE IN CORPORATE OFFICERS AND

1 DIRECTORS--APPROVAL OF BOARD.--

2 A. Before a company licensee, other than a
3 publicly traded corporation, may issue or transfer five
4 percent or more of its ownership to a person, it shall file a
5 report of its proposed action with the board, which report
6 shall request the approval of the board. The board shall
7 have ninety days within which to approve or deny the request.
8 If the board fails to act in ninety days, the request is
9 deemed approved. If the board denies the request, the
10 company shall not issue or transfer five percent or more of
11 its securities to the person about whom the request was made.

12 B. A company licensee shall file a report of each
13 change of the corporate officers and directors with the board
14 within thirty days of the change. The board shall have
15 ninety days from the date the report is filed within which to
16 approve or disapprove such change. During the ninety-day
17 period and thereafter, if the board does not disapprove the
18 change, an officer or director is entitled to exercise all
19 powers of the office to which the officer or director was
20 elected or appointed.

21 C. A company licensee shall report to the board
22 in writing a change in company personnel who have been
23 designated as key executives. The report shall be made no
24 later than thirty days after the change.

25 D. The board may require that a company licensee

1 furnish the board with a copy of its federal income tax
2 return within thirty days after the return is filed."

3 Section 11. Section 60-2E-26 NMSA 1978 (being Laws
4 1997, Chapter 190, Section 28) is amended to read:

5 "60-2E-26. GAMING OPERATOR LICENSEES--GENERAL
6 PROVISIONS--BUSINESS PLAN--PLAYER AGE LIMIT--RESTRICTIONS.--

7 A. An applicant for a gaming operator's license
8 shall submit with the application a plan for assisting in the
9 prevention, education and treatment of compulsive gambling.
10 The plan shall include regular educational training sessions
11 for employees. Plan approval by the board is a condition of
12 issuance of the license.

13 B. An applicant for a gaming operator's license
14 shall submit with the application a proposed business plan.
15 The 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
20 gaming machines;

21 (4) a current financial status and gaming
22 protection plan;

23 (5) a security plan;

24 (6) a staffing plan for gaming machine
25 operations;

1 (7) internal control systems in compliance
2 with Section 60-2E-35 NMSA 1978; and

3 (8) details of any proposed progressive
4 systems.

5 C. A gaming operator licensee shall be granted a
6 license to operate a number of machines, not to exceed the
7 statutory maximum, at a gaming establishment identified in
8 the license application and shall be granted a license for
9 each gaming machine.

10 D. A gaming operator licensee shall apply for and
11 pay the machine license fee for any increase in the number of
12 authorized gaming machines in operation at the licensed
13 premises and shall notify the board of any decrease in the
14 number of authorized gaming machines in operation at the
15 licensed premises.

16 E. Gaming machines may be available for play only
17 in an area restricted to persons twenty-one years of age or
18 older.

19 F. A gaming operator licensee shall erect a
20 permanent physical barrier to allow for multiple uses of the
21 premises by persons of all ages. For purposes of this
22 subsection, "permanent physical barrier" means a
23 floor-to-ceiling wall separating the general areas from the
24 restricted areas. The entrance to the area where gaming
25 machines are located shall display a sign that the premises

1 are restricted to persons twenty-one years of age or older.
2 Persons under the age of twenty-one shall not enter the area
3 where gaming machines are located.

4 G. A gaming operator licensee shall not have
5 automated teller machines in the area restricted pursuant to
6 Subsection F of this section.

7 H. A gaming operator licensee shall not provide,
8 allow, contract or arrange to provide alcohol or food for no
9 charge or at reduced prices as an incentive or enticement for
10 patrons to game.

11 I. Only a racetrack licensed by the state racing
12 commission or a nonprofit organization may apply for or be
13 issued a gaming operator's license. No other persons are
14 qualified to apply for or be issued a gaming operator's
15 license pursuant to the Gaming Control Act."

16 Section 12. Section 60-2E-27 NMSA 1978 (being Laws
17 1997, Chapter 190, Section 29, as amended) is amended to
18 read:

19 "60-2E-27. GAMING OPERATOR LICENSEES--SPECIAL
20 CONDITIONS FOR RACETRACKS--NUMBER OF GAMING MACHINES--DAYS
21 AND HOURS OF OPERATIONS.--

22 A. A racetrack licensed by the state racing
23 commission pursuant to the Horse Racing Act to conduct live
24 horse races or simulcast races may be issued a gaming
25 operator's license to operate gaming machines on its premises

1 where live racing is conducted.

2 B. A racetrack's gaming operator's license shall
3 automatically become void if:

4 (1) the racetrack no longer holds an active
5 license to conduct parimutuel wagering; or

6 (2) the racetrack fails to maintain a
7 minimum of four live race days a week with at least nine live
8 races on each race day during its licensed race meet, except
9 as provided in Subsection F of this section.

10 C. Unless a larger number is allowed pursuant to
11 Subsection D of this section, a gaming operator licensee that
12 is a racetrack may have up to six hundred licensed gaming
13 machines.

14 D. By execution of an allocation agreement,
15 signed by both the allocating racetrack and the racetrack to
16 which the allocation is made, a gaming operator licensee that
17 is a racetrack may allocate any number of its authorized
18 gaming machines to another gaming operator licensee that is a
19 racetrack. To be valid, the allocation agreement must bear
20 the written approval of the board and the state racing
21 commission, and this approval shall make specific reference
22 to the meeting at which the action of approval was taken and
23 the number of votes cast both for and against the approval.
24 By allocating a number of its authorized machines to another
25 racetrack, the allocating racetrack automatically surrenders

1 all rights to operate the number of machines allocated. No
2 racetrack shall operate or be authorized to operate more than
3 seven hundred fifty gaming machines.

4 E. Gaming machines on a racetrack gaming operator
5 licensee's premises may be played only on days when the
6 racetrack is either conducting live horse races or
7 simulcasting horse race meets. On days when gaming machines
8 are permitted to be operated, a racetrack gaming operator
9 licensee may offer gaming machines for operation for up to
10 eighteen hours per day; provided that the total number of
11 hours in which gaming machines are operated does not exceed
12 one hundred twelve hours in a one-week period beginning on
13 Tuesday at 8:00 a.m. and ending at 8:00 a.m. on the following
14 Tuesday. A racetrack gaming operator licensee may offer
15 gaming machines for play at any time during a day; provided
16 that the total hours of operation in each day from just after
17 midnight of the previous day until midnight of the current
18 day does not exceed eighteen hours. A racetrack gaming
19 operator licensee shall determine, within the limitations
20 imposed by this subsection, the hours it will offer gaming
21 machines for operation each day and shall notify the board in
22 writing of those hours.

23 F. Maintaining fewer than four live race days or
24 nine live races on each race day during a licensed race meet
25 does not constitute a failure to maintain the minimum number

1 of live race days or races as required by Paragraph (2) of
2 Subsection B of this section if the licensee submits to the
3 board written approval by the state racing commission for the
4 licensee to vary the minimum number of live race days or
5 races, and the variance is due to:

6 (1) the inability of a racetrack gaming
7 operator licensee to fill races as published in the
8 licensee's condition book;

9 (2) severe weather or other act, event or
10 occurrence resulting from natural forces;

11 (3) a strike or work stoppage by jockeys or
12 other persons necessary to conduct a race or meet;

13 (4) a power outage, electrical failure or
14 failure or unavailability of any equipment or supplies
15 necessary to conduct a race or meet;

16 (5) hazardous conditions or other threats
17 to the public health or safety; or

18 (6) any other act, event or occurrence that
19 the board finds is not within the control of the licensee
20 even with the exercise of reasonable diligence or care.

21 G. Alcoholic beverages shall not be sold, served,
22 delivered or consumed in the area restricted pursuant to
23 Subsection F of Section 60-2E-26 NMSA 1978."

24 Section 13. Section 60-2E-29 NMSA 1978 (being Laws
25 1997, Chapter 190, Section 31) is amended to read:

1 "60-2E-29. LICENSING OF MANUFACTURERS OF GAMING
2 DEVICES--EXCEPTION--DISPOSITION OF GAMING DEVICES.--

3 A. It is unlawful for a person to operate, carry
4 on, conduct or maintain any form of manufacturing of a gaming
5 device or associated equipment for use or play in New Mexico
6 or any form of manufacturing of a gaming device or associated
7 equipment in New Mexico for use or play outside of New Mexico
8 without first obtaining and maintaining a manufacturer's
9 license.

10 B. If the board revokes a manufacturer's license:

11 (1) no new gaming device manufactured by
12 the manufacturer may be approved for use in this state;

13 (2) any previously approved gaming device
14 manufactured by the manufacturer is subject to revocation of
15 approval if the reasons for the revocation of the license
16 also apply to that gaming device;

17 (3) no new gaming device or associated
18 equipment made by the manufacturer may be distributed, sold,
19 transferred or offered for use or play in New Mexico; and

20 (4) any association or agreement between
21 the manufacturer and a distributor licensee or gaming
22 operator licensee in New Mexico shall be terminated.

23 C. An agreement between a manufacturer licensee
24 and a distributor licensee or a gaming operator licensee in
25 New Mexico shall be deemed to include a provision for its

1 termination without liability for the termination on the part
2 of either party upon a finding by the board that either party
3 is unsuitable. Failure to include that condition in the
4 agreement is not a defense in an action brought pursuant to
5 this section to terminate the agreement.

6 D. A gaming device shall not be used and offered
7 for play by a gaming operator licensee unless it is identical
8 in all material aspects to a model that has been specifically
9 tested and approved by:

- 10 (1) the board;
- 11 (2) a laboratory selected by the board; or
- 12 (3) gaming officials in Nevada or New
13 Jersey for current use.

14 E. The board may inspect every gaming device that
15 is manufactured:

- 16 (1) for use in New Mexico; or
- 17 (2) in New Mexico for use outside of New
18 Mexico.

19 F. The board may inspect every gaming device that
20 is offered for play within New Mexico by a gaming operator
21 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

1 imposed pursuant to the Gaming Control Act, the board may
2 determine, charge and collect from each manufacturer an
3 inspection fee, which shall not exceed the actual cost of
4 inspection and investigation.

5 I. The board may prohibit the use of a gaming
6 device by a gaming operator licensee if it finds that the
7 gaming device does not meet the requirements of this
8 section."

9 Section 14. A new section of the Gaming Control Act,
10 Section 60-2E-34.1 NMSA 1978, is enacted to read:

11 "60-2E-34.1. SELF-EXCLUSION FROM GAMING
12 ESTABLISHMENTS--PROCEDURE--FINES--CONFIDENTIALITY.--

13 A. The board shall develop rules that permit a
14 person who is a compulsive gambler to be voluntarily excluded
15 from a gaming establishment.

16 B. Self-exclusion shall occur through written
17 application made by the compulsive gambler to the board and
18 shall be governed by the following provisions:

19 (1) self-exclusion shall be enforceable
20 upon issuance of a self-exclusion order by the board to each
21 applicable gaming establishment identified in the order;

22 (2) only the person who is the compulsive
23 gambler may apply on that person's behalf;

24 (3) the application shall be submitted to
25 the board;

1 (4) except for notification of the gaming
2 establishments for which the self-exclusion order is
3 effective and for notification for mailing list exclusion
4 pursuant to this section, the application and the
5 self-exclusion order shall be held confidential by employees
6 of the board and a gaming operator licensee and its employees
7 and key executives;

8 (5) a self-exclusion order may apply to one
9 or more gaming establishments licensed pursuant to the Gaming
10 Control Act;

11 (6) a self-excluded person, if present at a
12 gaming establishment from which the person is excluded, shall
13 forfeit the following to that gaming establishment, provided
14 that all money or other property forfeited shall be used by
15 the gaming establishment only to supplement the one-fourth
16 percent of the net take of its gaming machines to fund or
17 support programs for the treatment and assistance of
18 compulsive gamblers pursuant to Subsection E of
19 Section 60-2E-47 NMSA 1978:

20 (a) all winnings of the person
21 obtained while present at the gaming establishment; and

22 (b) all credits, tokens or vouchers
23 received by the person while present at the gaming
24 establishment;

25 (7) a gaming establishment is immune from

1 liability arising out of its efforts to exclude a person
2 identified in a self-exclusion order; and

3 (8) a specific term shall be set for each
4 self-exclusion order.

5 C. Notice shall be submitted by the board at
6 least monthly to all gaming establishments listing all
7 persons who are currently self-excluded and ordering the
8 removal of their names from direct mail or electronic
9 advertisement or promotional lists.

10 D. The state gaming representative may negotiate
11 an agreement with each tribal casino in the state to allow
12 the state to include tribal casinos in the self-exclusion
13 orders."

14 Section 15. REPEAL.--Section 60-2E-45 NMSA 1978 (being
15 Laws 1997, Chapter 190, Section 47) is repealed. _____

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