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SENATE BILL 85

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Steven P. Neville

FOR THE GOVERNMENT RESTRUCTURING TASK FORCE

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; TRANSFERRING REGULATORY
AUTHORITY FOR HORSE RACING, PARI-MUTUEL WAGERING, SIMULCASTING,
INTERSTATE COMMON POOL WAGERING, LICENSING AUTHORITY AND OTHER
ADMINISTRATIVE DUTIES TO THE GAMING CONTROL BOARD; TRANSFERRING
FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL
OBLIGATIONS AND STATUTORY REFERENCES; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE NMSA 1978.

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

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

"60-2E-1. SHORT TITLE.--Chapter 60, Article 2E NMSA 1978
may be cited as the "Gaming Control and Horse Racing Act"."

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

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1 "60-2E-2. POLICY.--It is the state's policy on gaming and
2 horse racing that:

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

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

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

14 "60-2E-3. DEFINITIONS.--As used in the Gaming Control and
15 Horse Racing Act:

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

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

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

23 (2) is involved in:

24 (a) gaming activities; [~~or involved in~~]

25 (b) pari-mutuel wagering; or

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1 (c) the ownership of property on which
2 gaming, pari-mutuel wagering or horse racing is conducted;

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

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

13 E. "associated equipment" means equipment or a
14 mechanical, electromechanical or electronic contrivance,
15 component or machine used in connection with gaming activity;

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

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

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

- 22 (1) the result of the game;
- 23 (2) the amount or frequency of payment in a
24 game, including taking advantage of a malfunctioning machine;
- 25 (3) the value of a wagering instrument; or

1 (4) the value of a wagering credit;

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

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

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

12 (1) voting stock or similar security;

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

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

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

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

24 M. "finding of suitability" means a certification
25 of approval issued by the board permitting a person to be

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1 involved directly or indirectly with a licensee, relating only
2 to the specified involvement for which it is made;

3 N. "foreign institutional investor" means:

4 (1) a government-related pension plan of a
5 foreign government; or

6 (2) a person that meets the requirement of a
7 qualified institutional buyer as defined by the governing
8 financial regulatory agency of the foreign country in which the
9 company's primary operations are located and is registered or
10 licensed in that country as a bank, an insurance company, an
11 investment company, an investment advisor, a collective trust
12 fund, an employee benefit plan or pension fund sponsored by a
13 publicly traded corporation registered with the board or a
14 group composed entirely of entities specified in this
15 subsection;

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

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

23 Q. "gaming activity" means an endeavor associated
24 with the manufacture or distribution of gaming devices or the
25 conduct of gaming;

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1 R. "gaming device" means associated equipment or a
2 gaming machine and includes a system for processing information
3 that can alter the normal criteria of random selection that
4 affects the operation of a game or determines the outcome of a
5 game;

6 S. "gaming employee":

7 (1) means a person who is connected directly
8 with:

9 (a) a gaming activity; [~~"gaming~~
10 ~~employee"~~]

11 (b) a horse racetrack if that person
12 performs accounting, administration or management, cash
13 handling, pari-mutuel wagering operations, security or
14 simulcasting operations for the racetrack; or

15 (c) a horse racetrack if that person has
16 access to a restricted area on a licensed premises, including a
17 horse owner, trainer, jockey, agent, apprentice, groom,
18 exercise person, veterinarian, valet, farrier, starter,
19 clocker, racing secretary, pari-mutuel clerk and other
20 personnel designated by the board whose work, in whole or in
21 part, is conducted around racehorses or a pari-mutuel
22 betting window; and

23 (2) does not include:

24 [~~(1)~~] (a) bartenders, cocktail servers
25 or other persons engaged solely in preparing or serving food or

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1 beverages;

2 [~~(2)~~] (b) secretarial or janitorial
3 personnel;

4 [~~(3)~~] (c) stage, sound and light
5 technicians; [~~or~~]

6 (d) a horseman's bookkeeper; or

7 [~~(4)~~] (e) 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 a
14 game, whether the payoff is made automatically from the machine
15 or in any other manner;

16 V. "gaming operator" means a person who conducts
17 gaming at a gaming establishment or pari-mutuel wagering at a
18 horse racetrack on live or simulcast horse races;

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

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1 X. "horse race" means a competition among horses,
2 on a predetermined course, in which the horse that completes
3 the course in the least amount of time generally wins;

4 Y. "horse racetrack" means a place where horse
5 racers are conducted;

6 ~~[X.]~~ Z. "immediate family" means natural persons
7 who are related to a specified natural person by affinity or
8 consanguinity in the first through the third degree;

9 ~~[Y.]~~ AA. "independent administrator" means a person
10 who administers an annuity, who is not associated in any manner
11 with the gaming operator licensee for which the annuity was
12 purchased and who is in no way associated with the person who
13 will be receiving the annuity;

14 ~~[Z.]~~ BB. "institutional investor" means:

- 15 (1) a foreign institutional investor;
- 16 (2) a state or federal government pension
17 plan; or
- 18 (3) a person that meets the requirements of a
19 qualified institutional buyer as defined in Rule 144A of the
20 federal Securities Act of 1933, and is:
- 21 (a) a bank as defined in Section 3(a)(6)
22 of the federal Securities Exchange Act of 1934;
- 23 (b) an insurance company as defined in
24 Section 2(a)(17) of the federal Investment Company Act of 1940;
- 25 (c) an investment company registered

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1 under Section 8 of the federal Investment Company Act of 1940;

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

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

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

12 (g) a group [~~comprised~~] composed
13 entirely of persons specified in Subparagraphs (a) through (f)
14 of this paragraph;

15 [~~AA-~~] CC. "intermediary company" means a company
16 that:

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

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

21 [~~BB-~~] DD. "key executive" means an executive of a
22 licensee or other person having the power to exercise
23 significant influence over decisions concerning any part of the
24 licensed operations of the licensee or whose compensation
25 exceeds an amount established by the board in a rule;

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1 ~~[GG.]~~ EE. "license" means an authorization required
2 by the board for engaging in gaming activities, horse racing or
3 pari-mutuel wagering;

4 ~~[DD.]~~ FF. "licensee" means a person to whom a valid
5 license has been issued;

6 ~~[EE.]~~ GG. "manufacturer" means a person who
7 manufactures, fabricates, assembles, produces, programs or
8 makes modifications to any gaming device for use or play in New
9 Mexico or for sale, lease or distribution outside New Mexico
10 from any location within New Mexico;

11 ~~[FF.]~~ HH. "net take" means the total of the
12 following, less the total of all cash paid out as losses to
13 winning patrons and those amounts paid to purchase annuities to
14 fund losses paid to winning patrons over several years by
15 independent administrators:

16 (1) cash received from patrons for playing a
17 game or pari-mutuel wagering;

18 (2) cash received in payment for credit
19 extended by a licensee to a patron for playing a game or pari-
20 mutuel wagering; and

21 (3) compensation received for conducting a
22 game or pari-mutuel wagering in which the licensee is not a
23 party to a wager;

24 ~~[GG.]~~ II. "nonprofit organization" means:

25 (1) a bona fide chartered or incorporated

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

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

13 JJ. "pari-mutuel wagering" means a system of
14 wagering in which bets on a live or simulcast horse race are
15 pooled and held by the racetrack operator licensee for
16 distribution of the total amount, less the deductions
17 authorized by law, to holders of winning tickets; "pari-mutuel
18 wagering" does not include bookmaking or pool selling;

19 [~~HH.~~] KK. "person" means a legal entity;

20 [~~HH.~~] LL. "premises" means land, together with all
21 buildings, improvements and personal property located on the
22 land;

23 [~~JJ.~~] MM. "progressive jackpot" means a prize that
24 increases over time or as gaming machines that are linked to a
25 progressive system are played and upon conditions established

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1 by the board may be paid by an annuity;

2 ~~[KK.]~~ NN. "public post-secondary educational
3 institution" means an institution designated in Article 12,
4 Section 11 of the constitution of New Mexico or an institution
5 designated in Chapter 21, Article 13, 14 or 16 NMSA 1978;

6 ~~[LL.]~~ OO. "progressive system" means one or more
7 gaming machines linked to one or more common progressive
8 jackpots;

9 ~~[MM.]~~ PP. "publicly traded corporation" means a
10 corporation that:

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

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

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

21 QQ. "race meet" means a period of time within dates
22 specified by the board in which a racetrack operator licensee
23 is authorized to conduct live racing on the racing grounds;

24 RR. "racing grounds" means the area of a racetrack
25 operator licensee's premises used for the purpose of conducting

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1 horse races and all activities ancillary to the conduct of
2 horse races, including the track, stable area, jockeys'
3 quarters and horse training areas;

4 SS. "racing season" means a period of live horse
5 racing conducted on the racing grounds of a racetrack operator
6 licensee and authorized by the board pursuant to the Gaming
7 Control and Horse Racing Act;

8 TT. "racetrack gaming operator" means a gaming
9 operator at a racetrack;

10 UU. "racetrack operator" means a person who
11 conducts horse races at a horse racetrack;

12 ~~[NN.]~~ VV. "registration" means a board action that
13 authorizes a company to be a holding company with respect to a
14 company that holds or applies for a license or that relates to
15 other persons required to be registered pursuant to the Gaming
16 Control and Horse Racing Act;

17 WW. "simulcast" means a transmission of a live
18 audiovisual broadcast of a horse race being run at a horse
19 racetrack other than the horse racetrack or other licensed
20 facility at which the broadcast is being received for viewing
21 pursuant to a simulcasting contract;

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

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1 [PP-] YY. "technician" means a person approved by
2 the board to repair and service gaming devices or associated
3 equipment but who is prohibited from programming gaming
4 devices; and

5 [QQ-] ZZ. "work permit" means a card, certificate
6 or permit issued by the board, whether denominated as a work
7 permit, registration card or otherwise, authorizing the
8 employment of the holder as a gaming employee."

9 **SECTION 4.** Section 60-2E-4 NMSA 1978 (being Laws 1997,
10 Chapter 190, Section 6) is amended to read:

11 "60-2E-4. LIMITED GAMING ACTIVITY AND PARI-MUTUEL
12 WAGERING PERMITTED.--Gaming activity [~~is~~] and pari-mutuel
13 wagering are permitted in New Mexico only if it is conducted in
14 compliance with and pursuant to:

- 15 A. the Gaming Control and Horse Racing Act; or
- 16 B. a state or federal law other than the Gaming
17 Control and Horse Racing Act that expressly permits the
18 activity or exempts it from the application of the state
19 criminal law, or both."

20 **SECTION 5.** Section 60-2E-5 NMSA 1978 (being Laws 1997,
21 Chapter 190, Section 7, as amended) is amended to read:

22 "60-2E-5. GAMING CONTROL BOARD CREATED.--
23 A. The "gaming control board" is created and
24 consists of [~~five~~] seven members. [~~Four~~] Members are appointed
25 by the governor with the advice and consent of the senate [~~and~~

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1 ~~one ex-officio member is the chairman of the state racing~~
2 ~~commission~~]. All members of the board shall be residents of
3 New Mexico and citizens of the United States. One ~~[appointed]~~
4 member of the board shall have a minimum of five years of
5 previous employment in a supervisory and administrative
6 position in a law enforcement agency; one ~~[appointed]~~ member of
7 the board shall be a certified public accountant in New Mexico
8 who has had at least five years of experience in public
9 accountancy; one ~~[appointed]~~ member of the board shall be an
10 attorney who has been admitted to practice before the supreme
11 court of New Mexico; three members of the board shall be
12 practical breeders of racehorses within New Mexico; and one
13 ~~[appointed]~~ member of the board shall be a public member who
14 has knowledge and experience in business management and
15 financing.

16 B. ~~[The appointed]~~ Members of the board shall be
17 appointed for terms of five years, except, of the members who
18 are first appointed, the member with law enforcement experience
19 shall be appointed for a term of five years; the member who is
20 a certified public accountant shall be appointed for a term of
21 four years; the member who is an attorney shall be appointed
22 for a term of three years; and the public member shall be
23 appointed for a term of two years. When first appointed, one
24 practical breeder member shall be appointed for a term of four
25 years, one practical breeder member shall be appointed for a

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1 term of three years; and one practical breeder member shall be
2 appointed for a term of two years. Thereafter, all members
3 shall be appointed for terms of five years. [~~No~~] A person
4 shall not serve as a board member for more than two consecutive
5 terms or ten years total.

6 C. [~~No~~] A full-time board member who receives a
7 salary pursuant to Subsection G of this section [~~may~~] shall not
8 be employed in any other capacity [~~or~~] and shall not in any
9 manner receive compensation for services rendered to any person
10 or entity other than the board while a member of the board.

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

17 E. The governor shall choose a [~~chairman~~] chair
18 annually from the board's appointed full-time, salaried
19 members.

20 F. No more than [~~three~~] four members of the board
21 shall be from the same political party.

22 G. The law enforcement, certified public accountant
23 and attorney members of the board shall be full-time state
24 officials and shall receive a salary set by the governor. The
25 public member and [~~ex-officio member~~] practical breeder members

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1 of the board shall not receive salaries for their work for the
2 board. All [~~appointed~~] members of the board [~~shall~~] are
3 entitled to receive per diem and mileage pursuant to the
4 provisions of the Per Diem and Mileage Act.

5 H. The department of public safety shall conduct
6 background investigations of all members of the board prior to
7 confirmation by the senate. To assist the department in the
8 background investigation, a prospective board member shall
9 furnish a disclosure statement to the department on a form
10 provided by the department containing that information deemed
11 by the department as necessary for completion of a detailed and
12 thorough background investigation. The required information
13 shall include at least:

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

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

22 (3) complete disclosure of [~~any~~] an equity
23 interest held by the prospective board member or a member of
24 [~~his~~] the prospective board member's immediate family in a
25 company that is an applicant or licensee or an affiliate,

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1 affiliated company, intermediary company or holding company in
2 respect to an applicant or licensee; and

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

5 I. ~~[No]~~ A person ~~[may]~~ shall not be appointed or
6 confirmed as a member of the board if that person or member of
7 ~~[his]~~ that person's immediate family holds an equity interest
8 in a company that is an applicant or licensee or an affiliate,
9 affiliated company, intermediary company or holding company in
10 respect to an applicant or licensee.

11 J. A prospective board member shall provide
12 assistance and information requested by the department of
13 public safety or the governor and shall cooperate in any
14 inquiry or investigation of the prospective board member's
15 fitness or qualifications to hold the office to which ~~[he]~~ the
16 prospective board member is appointed. The senate shall not
17 confirm a prospective board member if it has reasonable cause
18 to believe that the prospective board member has:

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

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

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

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

7 K. At the time of taking office, each board member
8 shall file with the secretary of state a sworn statement that
9 [he] the board member is not disqualified under the provisions
10 of Subsection I of this section."

11 SECTION 6. Section 60-2E-6 NMSA 1978 (being Laws 1997,
12 Chapter 190, Section 8) is amended to read:

13 "60-2E-6. BOARD--MEETINGS--QUORUM--RECORDS.--

14 A. A majority of the qualified membership of the
15 board then in office constitutes a quorum. No action may be
16 taken by the board unless at least [~~three~~] four members concur.

17 B. Written notice of the time and place of each
18 board meeting shall be given to each member of the board at
19 least ten days prior to the meeting.

20 C. Meetings of the board shall be open and public
21 in accordance with the Open Meetings Act, except that the board
22 may close a meeting to hear confidential security and
23 investigative information and other information made
24 confidential by the provisions of the Gaming Control and Horse
25 Racing Act.

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1 D. All proceedings of the board shall be recorded
2 by audiotape or other equivalent verbatim audio recording
3 device.

4 E. The [~~chairman~~] chair of the board, the executive
5 director or a majority of the members of the board then in
6 office may call a special meeting of the board upon at least
7 five days' prior written notice to all members of the board and
8 the executive director."

9 SECTION 7. Section 60-2E-7 NMSA 1978 (being Laws 1997,
10 Chapter 190, Section 9, as amended) is amended to read:

11 "60-2E-7. BOARD'S POWERS AND DUTIES.--

12 A. The board shall implement the state's policy on
13 gaming, pari-mutuel wagering and horse racing consistent with
14 the provisions of the Gaming Control and Horse Racing Act and
15 the New Mexico Bingo and Raffle Act. It has the duty to
16 fulfill all responsibilities assigned to it pursuant to those
17 acts, and it has all authority necessary to carry out those
18 responsibilities. It may delegate authority to the executive
19 director, but it retains accountability. The board is an
20 adjunct agency.

21 B. The board shall:

- 22 (1) employ the executive director;
23 (2) make the final decision on issuance,
24 denial, suspension and revocation of all licenses pursuant to
25 and consistent with the provisions of the Gaming Control and

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1 Horse Racing Act and the New Mexico Bingo and Raffle Act;

2 (3) develop, adopt and promulgate all
3 [~~regulations~~] rules necessary to implement and administer the
4 provisions of the Gaming Control and Horse Racing Act and the
5 New Mexico Bingo and Raffle Act;

6 (4) conduct itself, or employ a hearing
7 officer to conduct, all hearings required by the provisions of
8 the Gaming Control and Horse Racing Act and other hearings it
9 deems appropriate to fulfill its responsibilities;

10 (5) meet at least once each month; [~~and~~]

11 (6) prepare and submit an annual report in
12 December of each year to the governor and the legislature,
13 covering activities of the board in the most recently completed
14 fiscal year, a summary of gaming activities, pari-mutuel
15 wagering and horse racing in the state and any recommended
16 changes in or additions to the laws relating to gaming and
17 horse racing in the state;

18 (7) require background investigations of
19 gaming or horse racing employees and exclude or compel the
20 exclusion from any gaming establishment or horse racetrack in
21 the state a person whose behavior is found to be detrimental to
22 the best interests of gaming or horse racing, as defined by the
23 board, or a person who willfully violates the gaming or horse
24 racing laws or rules of this state or another state;

25 (8) personally or by agents or

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1 representatives, supervise and verify the making of pari-mutuel
2 wagering pools and the distributions from those pools;

3 (9) adopt rules governing, restricting or
4 regulating bids on leases at racetracks;

5 (10) make rules to hold, conduct and operate
6 all horse races held in the state and to identify and assign
7 racetrack dates;

8 (11) approve all improvements proposed to be
9 completed on the licensed premises of a horse racetrack,
10 including extensions, additions or improvements of buildings,
11 stables or tracks;

12 (12) approve contracts for simulcasting, pari-
13 mutuel wagering and capital improvements funded pursuant to
14 Section 60-2E-47 NMSA 1978 entered into by horse racetracks;
15 and

16 (13) supervise and control the pari-mutuel
17 machines and equipment at all horse races held or operated by
18 the state, its agencies or commissions.

19 C. The board may:

20 (1) impose civil fines not to exceed twenty-
21 five thousand dollars (\$25,000) for the first violation of any
22 prohibitory provision of the Gaming Control and Horse Racing
23 Act or any prohibitory provision of a regulation adopted
24 pursuant to that act and fifty thousand dollars (\$50,000) for
25 subsequent violations;

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- 1 (2) conduct investigations;
- 2 (3) subpoena persons and documents to compel
3 access to or the production of documents and records, including
4 books and memoranda, in the custody or control of a licensee;
- 5 (4) compel the appearance of employees of a
6 licensee or persons for the purpose of ascertaining compliance
7 with provisions of the Gaming Control and Horse Racing Act or a
8 [~~regulation~~] rule adopted pursuant to its provisions;
- 9 (5) administer oaths and take depositions to
10 the same extent and subject to the same limitations as would
11 apply if the deposition were pursuant to discovery rules in a
12 civil action in the district court;
- 13 (6) sue and be sued subject to the limitations
14 of the Tort Claims Act;
- 15 (7) contract for the provision of goods and
16 services necessary to carry out its responsibilities;
- 17 (8) conduct audits, relevant to their pari-
18 mutuel wagering or gaming activities, of applicants, licensees
19 and persons affiliated with licensees;
- 20 (9) inspect, examine, photocopy and audit all
21 documents and records of an applicant or licensee relevant to
22 the applicant's or licensee's gaming activities or pari-mutuel
23 wagering in the presence of the applicant or licensee or the
24 applicant's or licensee's agent;
- 25 (10) require verification of income and all

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1 other matters pertinent to the gaming activities or pari-mutuel
2 wagering of an applicant or licensee affecting the enforcement
3 of any provision of the Gaming Control and Horse Racing Act;

4 (11) inspect all places where gaming
5 activities, pari-mutuel wagering or horse racing are conducted
6 and inspect all property connected with gaming, pari-mutuel
7 wagering or horse racing in those places;

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

12 (13) inspect, examine, photocopy and audit
13 documents and records, relevant to the affiliate's gaming
14 activities or pari-mutuel wagering, of an affiliate of an
15 applicant or licensee that the board knows or reasonably
16 suspects is involved in the financing, operation or management
17 of the applicant or licensee. The inspection, examination,
18 photocopying and audit shall be in the presence of a
19 representative of the affiliate or its agent when practicable;
20 and

21 [~~(14) conduct background investigations~~
22 ~~pursuant to the Horse Racing Act; and~~

23 ~~(15)] (14) except for the powers specified in
24 Paragraphs (1) and (4) of this subsection, carry out all or
25 part of the foregoing powers and activities through the~~

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1 executive director.

2 D. The board shall monitor all activity authorized
3 in an Indian gaming compact between the state and an Indian
4 nation, tribe or pueblo. The board shall appoint the state
5 gaming representative for the purposes of the compact."

6 SECTION 8. Section 60-2E-8 NMSA 1978 (being Laws 1997,
7 Chapter 190, Section 10, as amended) is amended to read:

8 "60-2E-8. BOARD ~~[REGULATIONS]~~ RULES--DISCRETIONARY
9 ~~[REGULATIONS]~~ RULES--PROCEDURE--REQUIRED PROVISIONS.--

10 A. The board may adopt any ~~[regulation]~~ rule that:

11 (1) is consistent with the provisions of the
12 Gaming Control and Horse Racing Act; and

13 (2) it decides is necessary to implement the
14 provisions of the Gaming Control and Horse Racing Act.

15 B. No ~~[regulation]~~ rule shall be adopted, amended
16 or repealed without a public hearing on the proposed action
17 before the board or a hearing officer designated by it. Notice
18 of the subject matter of the ~~[regulation]~~ rule, the action
19 proposed to be taken, the time and place of the hearing, the
20 manner in which interested persons may present their views and
21 the method by which copies of the proposed ~~[regulation]~~ rule,
22 amendment or repeal may be obtained shall be published once at
23 least thirty days prior to the hearing date in a newspaper of
24 general circulation and mailed at least thirty days prior to
25 the hearing date to all persons who have made a written request

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1 for advance notice of hearing. All [~~regulations~~] rules and
2 actions taken on [~~regulations~~] rules shall be filed in
3 accordance with the State Rules Act.

4 C. The board shall adopt [~~regulations~~] rules:

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

7 (2) prescribing the information to be
8 furnished by an applicant or licensee concerning the
9 applicant's or licensee's antecedents, immediate family,
10 habits, character, associates, criminal record, business
11 activities and financial affairs, past or present;

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

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

16 (5) prescribing the manner and method of the
17 issuance of licenses, permits, registrations, certificates and
18 other actions of the board not elsewhere prescribed in the
19 Gaming Control and Horse Racing Act;

20 (6) defining the area, games and gaming
21 devices allowed and the methods of operation of the games and
22 gaming devices for authorized gaming;

23 (7) prescribing under what conditions the
24 nonpayment of winnings is grounds for suspension or revocation
25 of a license of a gaming operator;

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

3 (9) prescribing accounting procedures,
4 security, collection and verification procedures required of
5 licensees and matters regarding financial responsibility of
6 licensees;

7 (10) prescribing what shall be considered to
8 be an unsuitable method of operating gaming activities, horse
9 racing or pari-mutuel wagering;

10 (11) restricting access to confidential
11 information obtained pursuant to the provisions of the Gaming
12 Control and Horse Racing Act and ensuring that the
13 confidentiality of that information is maintained and
14 protected;

15 (12) prescribing financial reporting and
16 internal control requirements for licensees;

17 (13) prescribing the manner in which winnings,
18 compensation from gaming activities and pari-mutuel wagering
19 and net take shall be computed and reported by a [~~gaming~~
20 ~~operator~~] licensee;

21 (14) prescribing the frequency of and the
22 matters to be contained in audits of and periodic financial
23 reports relevant to [~~the gaming operator~~] a licensee's gaming
24 activities [~~from a gaming operator licensee~~] or pari-mutuel
25 wagering consistent with standards prescribed by the board;

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1 (15) prescribing the procedures to be followed
2 by a [~~gaming operator~~] licensee for the exclusion of persons
3 from gaming establishments or horse racetracks;

4 (16) establishing criteria and conditions for
5 the operation of progressive systems;

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

11 (18) establishing an applicant fee schedule
12 for processing applications that is based on costs of the
13 application review incurred by the board whether directly or
14 through payment by the board for costs charged for
15 investigations of applicants by state departments and agencies
16 other than the board, which [~~regulation~~] rule shall set a
17 maximum fee of one hundred thousand dollars (\$100,000); [~~and~~]

18 (19) governing pari-mutuel wagering, horse
19 racing and interstate common pool wagering; and

20 [~~(19)~~] (20) establishing criteria and
21 conditions for allowing temporary possession of gaming devices:

22 (a) by post-secondary educational
23 institutions;

24 (b) for trade shows;

25 (c) for film or theater productions; or

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

2 SECTION 9. Section 60-2E-10 NMSA 1978 (being Laws 1997,
3 Chapter 190, Section 12, as amended) is amended to read:

4 "60-2E-10. EXECUTIVE DIRECTOR--POWERS--DUTIES.--

5 A. The executive director shall implement the
6 policies of the board.

7 B. The executive director shall employ all
8 personnel who work for the board. The employees shall be
9 covered employees pursuant to the provisions of the Personnel
10 Act. Among those personnel, ~~[he]~~ the executive director shall
11 employ and designate an appropriate number of individuals as
12 law enforcement officers subject to proper certification
13 pursuant to the Law Enforcement Training Act. Law enforcement
14 officers shall not carry firearms on racing grounds, except as
15 provided in the rules adopted by the board.

16 C. The executive director shall establish
17 organizational units ~~[he]~~ that the executive director
18 determines are appropriate to administer the provisions of the
19 Gaming Control and Horse Racing Act.

20 D. The executive director:

21 (1) may delegate authority to subordinates as
22 ~~[he]~~ the executive director deems necessary and appropriate,
23 clearly delineating the delegated authority and the limitations
24 on it, if any;

25 (2) shall take administrative action by

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1 issuing orders and instructions consistent with the Gaming
2 Control and Horse Racing Act and [~~regulations~~] rules of the
3 board to [~~assure~~] ensure implementation of and compliance with
4 the provisions of that act and those [~~regulations~~] rules;

5 (3) may issue administrative citations to
6 [~~any~~] a licensee upon a reasonable belief that the licensee has
7 violated or is violating any provision of the Gaming Control
8 and Horse Racing Act or [~~regulations~~] rules of the board;

9 (4) may conduct research and studies that will
10 improve the operations of the board and the provision of
11 services to the citizens of the state;

12 (5) may provide courses of instruction and
13 practical training for employees of the board and other persons
14 involved in the activities regulated by the board with the
15 objectives of improving operations of the board and achieving
16 compliance with the law and [~~regulations~~] rules;

17 (6) shall prepare an annual budget for the
18 board and submit it to the board for approval; and

19 (7) shall make recommendations to the board of
20 proposed [~~regulations~~] rules and any legislative changes needed
21 to provide better administration of the Gaming Control and
22 Horse Racing Act and fair and efficient regulation of gaming
23 activities, pari-mutuel wagering and horse racing in the
24 state."

25 SECTION 10. Section 60-2E-11 NMSA 1978 (being Laws 1997,

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1 Chapter 190, Section 13, as amended) is amended to read:

2 "60-2E-11. INVESTIGATION OF EXECUTIVE DIRECTOR
3 CANDIDATES AND EMPLOYEES.--

4 A. A person who is under consideration in the final
5 selection process for appointment as the executive director
6 shall file a disclosure statement pursuant to the requirements
7 of this section, and the board shall not make an appointment of
8 a person as executive director until a background investigation
9 is completed by the department of public safety and a report is
10 made to the board.

11 B. A person who has reached the final selection
12 process for employment by the executive director shall file a
13 disclosure statement pursuant to the requirements of this
14 section if the executive director or the board has directed the
15 person do so. The person shall not be further considered for
16 employment until a background investigation is completed by the
17 board's law enforcement officers and a report is made to the
18 executive director.

19 C. Forms for the disclosure statements required by
20 this section shall be developed by the board in cooperation
21 with the department of public safety. At least the following
22 information shall be required of a person submitting a
23 statement:

- 24 (1) a full set of fingerprints made by a law
25 enforcement agency on forms supplied by the board;

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

6 (3) a complete description of any equity
7 interest held in a business connected with the gaming or horse
8 racing industry.

9 D. In preparing an investigative report, the
10 board's law enforcement officers may request and receive
11 criminal history information from the federal bureau of
12 investigation or any other law enforcement agency or
13 organization. The board's law enforcement officers shall
14 maintain confidentiality regarding information received from a
15 law enforcement agency that may be imposed by the agency as a
16 condition for providing the information to the department of
17 public safety, except that the board's law enforcement officers
18 may provide criminal history information and reports to
19 licensees or tribal gaming casinos when conducting background
20 checks on behalf of the licensee or tribal gaming casino.

21 E. A person required to file a disclosure statement
22 shall provide any assistance or information requested by the
23 department of public safety or the board and shall cooperate in
24 any inquiry or investigation.

25 F. If information required to be included in a

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1 disclosure statement changes or if information is added after
2 the statement is filed, the person required to file it shall
3 provide that information in writing to the person requesting
4 the investigation. The supplemental information shall be
5 provided within thirty days after the change or addition.

6 G. The board shall not appoint a person as
7 executive director, and the executive director shall not employ
8 a person, if the board or the executive director has reasonable
9 cause to believe that the person has:

10 (1) knowingly misrepresented or omitted a
11 material fact required in a disclosure statement;

12 (2) been convicted of a felony, a gaming- or
13 horse racing-related offense or a crime involving fraud, theft
14 or moral turpitude within ten years immediately preceding the
15 date of submitting a disclosure statement required pursuant to
16 this section;

17 (3) exhibited a history of willful disregard
18 for the gaming or horse racing laws of this or any other state
19 or the United States; or

20 (4) had a permit or license issued pursuant to
21 the gaming or horse racing laws of this or any other state or
22 the United States permanently suspended or revoked for cause.

23 H. Both the board and the executive director may
24 exercise absolute discretion in exercising their respective
25 appointing and employing powers."

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1 SECTION 11. Section 60-2E-12 NMSA 1978 (being Laws 1997,
2 Chapter 190, Section 14, as amended) is amended to read:

3 "60-2E-12. CONFLICTS OF INTEREST--BOARD--EXECUTIVE
4 DIRECTOR--EMPLOYEES.--

5 A. In addition to all other provisions of New
6 Mexico law regarding conflicts of interest of state officials
7 and employees, a member of the board, the executive director,
8 an employee of the board or a person in the immediate family of
9 or residing in the household of any of the foregoing persons,
10 shall not:

11 (1) directly or indirectly, as a proprietor or
12 as a member, stockholder, director or officer of a company,
13 have an interest in a business engaged in gaming activities,
14 pari-mutuel wagering or horse racing in this or another
15 jurisdiction; or

16 (2) accept or agree to accept any economic
17 opportunity, gift, loan, gratuity, special discount, favor,
18 hospitality or service having an aggregate value of one hundred
19 dollars (\$100) or more in any calendar year from a licensee or
20 applicant.

21 B. If a member of the board, the executive director
22 or a person in the immediate family of or residing in the
23 household of a member of the board or the executive director
24 violates a provision of this section, the member of the board
25 or executive director shall be removed from office. A board

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1 member shall be removed by the governor, and the executive
2 director shall be removed from the executive director's
3 position by the board."

4 SECTION 12. Section 60-2E-13 NMSA 1978 (being Laws 1997,
5 Chapter 190, Section 15, as amended) is amended to read:

6 "60-2E-13. GAMING ACTIVITIES REQUIRING LICENSING.--

7 A. A person shall not conduct gaming unless the
8 person is licensed as a gaming operator.

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

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

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1 D. Upon receiving a written request from a person
2 who manufactures associated equipment, the board may waive the
3 requirement for a manufacturer's license on the terms and
4 conditions the board deems necessary as long as the waiver is
5 consistent with the purpose of the Gaming Control and Horse
6 Racing Act.

7 E. Except as provided in Section 60-2E-13.1 NMSA
8 1978, a gaming operator licensee or a person other than a
9 manufacturer licensee or distributor licensee shall not possess
10 an unlicensed or illegal gaming device or possess or control a
11 place where there is an unlicensed or illegal gaming device.
12 Any unlicensed or illegal gaming device, except a gaming
13 machine in the possession of a licensee while awaiting transfer
14 to a gaming operator licensee for licensure of the machine, or
15 as provided in Section 60-2E-13.1 NMSA 1978, is subject to
16 seizure and forfeiture pursuant to Section 30-19-10 NMSA 1978.

17 F. A person shall not service or repair a gaming
18 device or associated equipment unless the person is licensed as
19 a manufacturer, is employed by a manufacturer licensee or is a
20 technician approved by the board and employed by a distributor
21 licensee or a gaming operator licensee.

22 G. A person shall not engage in an activity for
23 which the board requires a license or permit without obtaining
24 the license or permit.

25 H. Except as provided in Subsections B and D of

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1 this section, a person shall not purchase, lease or acquire
2 possession of a gaming device or associated equipment except
3 from a distributor licensee or manufacturer licensee.

4 I. A distributor licensee may receive a percentage
5 of the amount wagered, the net take or other measure related to
6 the operation of a gaming machine as a payment pursuant to a
7 lease or other arrangement for furnishing a gaming machine, but
8 the board shall adopt a [~~regulation~~] rule setting the maximum
9 allowable percentage."

10 SECTION 13. Section 60-2E-13.1 NMSA 1978 (being Laws
11 2002, Chapter 102, Section 9, as amended) is amended to read:

12 "60-2E-13.1. TEMPORARY POSSESSION OF GAMING DEVICE FOR
13 LIMITED PURPOSE.--

14 A. A public post-secondary educational institution
15 may temporarily possess gaming devices for the limited purpose
16 of providing instruction on the technical aspects of gaming
17 devices to persons seeking certification as technicians
18 qualified to repair and maintain gaming devices. A gaming
19 device allowed for such limited use shall be subject to
20 registration, transport, possession and use requirements and
21 restrictions established in board [~~regulations~~] rules.

22 B. Trade shows and similar events for the purpose
23 of demonstrating and marketing gaming devices may be conducted
24 in the state at the discretion of the board. A gaming device
25 allowed in the state for such limited use shall be subject to

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1 registration, transport, possession and use requirements and
2 restrictions established in board [~~regulations~~] rules.

3 C. A person may possess an unlicensed gaming device
4 used by the person for the purposes of testing or demonstration
5 if that person is a manufacturer licensee or has obtained a
6 waiver pursuant to the Gaming Control and Horse Racing Act.

7 D. A person may possess a gaming device for the
8 purpose of film or theater productions or other non-gaming
9 purposes permitted by [~~regulation~~] rule of the board. Any
10 gaming device allowed in the state for such limited use shall
11 be subject to registration, transport, possession and use
12 requirements and restrictions established in board
13 [~~regulations~~] rules."

14 SECTION 14. Section 60-2E-14 NMSA 1978 (being Laws 1997,
15 Chapter 190, Section 16, as amended) is amended to read:

16 "60-2E-14. LICENSURE--APPLICATION.--

17 A. The board shall establish and issue the
18 following categories of licenses:

- 19 (1) manufacturer;
- 20 (2) distributor;
- 21 (3) gaming operator; [~~and~~]
- 22 (4) gaming machine;
- 23 (5) racetrack operator; and
- 24 (6) racetrack gaming operator.

25 B. The board shall issue certifications of findings

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1 of suitability for key executives and other persons for whom
2 certification is required. The board may issue one
3 certification of finding of suitability for a key executive or
4 other person found suitable for employment in both gaming and
5 horse racing operations.

6 C. The board shall issue work permits for gaming
7 employees. The board may issue one permit to allow a gaming
8 employee to work in both gaming and horse racing operations.

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

17 E. An applicant for a license, a certification of
18 finding of suitability or a work permit shall apply on forms
19 provided by the board and shall furnish to the board two sets
20 of fingerprint cards and all other information requested by the
21 board. Submission of an application constitutes consent to a
22 national criminal background check of the applicant, a credit
23 check of the applicant and all persons having a substantial
24 interest in the applicant and any other background
25 investigations required pursuant to the Gaming Control and

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1 Horse Racing Act or deemed necessary by the board. The board
2 may obtain from the taxation and revenue department copies of
3 tax returns filed by or on behalf of the applicant or its
4 affiliates and information concerning liens imposed on the
5 applicant or its affiliates by the taxation and revenue
6 department.

7 F. Unless otherwise stated in the Gaming Control
8 and Horse Racing Act, all licenses issued by the board pursuant
9 to the provisions of this section shall be reviewed for renewal
10 annually unless revoked, suspended, canceled or terminated.

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

12 H. The application for a license shall include:

13 (1) the name of the applicant;

14 (2) the location of the proposed operation;

15 (3) if for a gaming operator license or a
16 racetrack gaming operator license, the gaming devices to be
17 operated, manufactured, distributed or serviced;

18 (4) if for a racetrack operator license, the
19 dates and days of the week of the race meet that the applicant
20 is requesting the board to approve;

21 [~~4~~] (5) the names of all persons having a
22 direct or indirect interest in the business of the applicant
23 and the nature of such interest; and

24 [~~5~~] (6) such other information and details
25 as the board may require.

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1 I. The board shall furnish to the applicant
2 supplemental forms that the applicant shall complete and file
3 with the application. The supplemental forms shall require two
4 sets of fingerprint cards and complete information and details
5 with respect to the applicant's antecedents, habits, immediate
6 family, character, state and federal criminal records, business
7 activities, financial affairs and business associates, covering
8 at least a ten-year period immediately preceding the date of
9 filing of the application.

10 J. In conducting a background investigation and
11 preparing an investigative report on the applicant, the board's
12 law enforcement officers may request and receive criminal
13 history information from the federal bureau of investigation or
14 any other law enforcement agency or organization. The board's
15 law enforcement officers shall maintain confidentiality
16 regarding information received from a law enforcement agency
17 that may be imposed by the agency as a condition for providing
18 the information to the board."

19 SECTION 15. A new section of the Gaming Control and
20 Horse Racing Act is enacted to read:

21 "[NEW MATERIAL] CLASSIFICATION OF RACETRACK GAMING
22 OPERATOR LICENSES.--

23 A. A gaming operator licensee authorized to conduct
24 pari-mutuel wagering on live horse races on the racing grounds
25 of a racetrack operator licensee and on simulcast horse races

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1 received on the racetrack operator licensee's premises shall be
2 issued either a class A or class B racetrack gaming operator
3 license pursuant to the following:

4 (1) a class A license shall be issued to a
5 racetrack gaming operator licensee for a horse racetrack at
6 which the total gross amount wagered through the pari-mutuel
7 system in the preceding calendar year from live horse races and
8 simulcast races was ten million dollars (\$10,000,000) or more;
9 and

10 (2) a class B license shall be issued to a
11 racetrack gaming operator licensee for a horse racetrack at
12 which the total gross amount wagered through the pari-mutuel
13 system in the preceding calendar year from live horse races and
14 simulcast races was less than ten million dollars
15 (\$10,000,000).

16 B. A new racetrack gaming operator licensee shall
17 be given a classification by the board based on the best
18 estimate of the projected total gross amount to be wagered at
19 the new horse racetrack through the pari-mutuel system from
20 live horse races and simulcast races.

21 C. Each class of license is subject to the
22 provisions of the Gaming Control and Horse Racing Act, except
23 as explicitly stated in that act.

24 D. The board shall adopt rules as necessary to
25 provide for racetrack gaming operator license classification."

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1 SECTION 16. A new section of the Gaming Control and
2 Horse Racing Act is enacted to read:

3 "[NEW MATERIAL] RACETRACK OPERATOR LICENSES--
4 APPLICATIONS--SPECIFIC REQUIREMENTS.--

5 A. A racetrack operator license shall be valid for
6 a period not to exceed one year. The board may renew a
7 racetrack operator license upon expiration of the term of the
8 license.

9 B. Renewal applications for racetrack operator
10 licenses shall be filed no later than June 1 of each year. The
11 race dates for the upcoming year shall be set by the board
12 after the board receives all renewal applications.

13 C. An application shall specify the dates and days
14 of the week of the race meet that the applicant is requesting
15 the board to approve.

16 D. An application shall be filed not less than
17 sixty days prior to the first day the proposed horse race or
18 race meet is to be held.

19 E. The board may schedule a date for a hearing on
20 the application for a new racetrack operator license to
21 determine the eligibility of the applicant pursuant to the
22 Gaming Control and Horse Racing Act or as needed for
23 determining the eligibility for the renewal of a racetrack
24 operator license. The applicant shall be notified of the
25 hearing at least five days prior to the date of the hearing.

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1 The applicant has the right to present testimony in support of
2 the application. Notice shall be mailed to the address of the
3 applicant appearing upon the application for the racetrack
4 operator license. Notice of the hearing date, time and
5 location shall be postmarked by United States mail five days
6 prior to the date of the hearing. Deposit of the hearing
7 notice in the United States mail constitutes notice.

8 F. If, after a hearing on the application, the
9 board finds the applicant ineligible pursuant to the provisions
10 of the Gaming Control and Horse Racing Act or rules adopted by
11 the board, the racetrack operator license shall be denied.

12 G. If there is more than one application for a
13 racetrack operator license pending at the same time, the board
14 shall determine the racing days that will be allotted to each
15 successful applicant. Upon renewal, the board shall determine
16 the racing days that will be allotted to each applicant upon
17 terms and conditions established by the board.

18 H. A person shall not have a direct, indirect or
19 beneficial interest of any nature, whether or not financial,
20 administrative, policymaking or supervisory, in more than two
21 horse racetracks in New Mexico. For purposes of this
22 subsection, a person shall not be considered to have a direct,
23 indirect or beneficial interest in a horse racetrack if the
24 person owns or holds less than ten percent of the total
25 authorized, issued and outstanding shares of a corporation that

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1 is licensed to conduct a race meet in New Mexico, unless the
2 person has some other direct, indirect or beneficial interest
3 of any nature, whether or not financial, administrative,
4 policymaking or supervisory, in more than two licensed horse
5 racetracks.

6 I. To determine interest held in a racetrack, to
7 the extent that the interest is based on stock ownership:

8 (1) stock owned, directly or indirectly, by or
9 for a corporation, partnership, estate or trust shall be
10 considered as being owned proportionately by its shareholders,
11 partners or beneficiaries;

12 (2) an individual shall be considered as
13 owning the stock, directly or indirectly, if it is held by an
14 immediate family member. For purposes of this paragraph,
15 "immediate family member" includes only the individual's
16 siblings, spouse or children; and

17 (3) stock constructively owned by a person by
18 reason of the application of Paragraph (1) of this subsection
19 shall be considered to be actually owned by the person; and
20 stock shall be constructively owned by an individual by reason
21 of the application of Paragraph (2) of this subsection if the
22 purpose of the constructive ownership is to make a person other
23 than the individual applicant appear as the owner of the stock.

24 J. A corporation holding a racetrack operator
25 license shall not issue to a person shares of its stock

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1 amounting to ten percent or more of the total authorized,
2 issued and outstanding shares, and a corporation holding a
3 racetrack license shall not issue shares of its stock that
4 would, when combined with that stock transferee's existing
5 shares owned, total more than ten percent of the total
6 authorized, issued and outstanding shares of the corporation,
7 unless:

8 (1) the corporation gives written notice to
9 the board at least sixty days before the contemplated stock
10 transfer that the person to whom the stock is being transferred
11 will become an owner of ten percent or more of the total
12 authorized, issued and outstanding shares of the corporation;
13 and

14 (2) the corporation receives written approval
15 from the board of the proposed transfer.

16 K. A determination made by the board of a matter
17 pursuant to this section shall be final and not subject to
18 appeal."

19 **SECTION 17.** Section 60-2E-15 NMSA 1978 (being Laws 1997,
20 Chapter 190, Section 17) is amended to read:

21 "60-2E-15. LICENSE, CERTIFICATION AND WORK PERMIT
22 FEES.--

23 A. License and other fees shall be established by
24 board [~~regulation~~] rule but shall not exceed the following
25 amounts:

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

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

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

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

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

18 (6) work permit, one hundred dollars (\$100)
19 annually; and

20 (7) racetrack operator license, five thousand
21 dollars (\$5,000) for the initial license and one thousand
22 dollars (\$1,000) for annual renewal.

23 B. The board shall establish the fee for
24 certifications or other actions by [~~regulation~~] rule, but no
25 fee established by the board shall exceed one thousand dollars

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1 (\$1,000), except for fees established pursuant to Paragraph
2 (18) of Subsection C of Section [~~10 of the Gaming Control Act~~]
3 60-2E-8 NMSA 1978.

4 C. All license, certification or work permit fees
5 shall be paid to the board at the time and in the manner
6 established by [~~regulations~~] rules of the board."

7 **SECTION 18.** Section 60-2E-16 NMSA 1978 (being Laws 1997,
8 Chapter 190, Section 18, as amended) is amended to read:

9 "60-2E-16. ACTION BY BOARD ON APPLICATIONS.--

10 A. A person that the board determines is qualified
11 to receive a license pursuant to the provisions of the Gaming
12 Control and Horse Racing Act may be issued a license. The
13 burden of proving qualifications is on the applicant.

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

16 (1) a person of good moral character, honesty
17 and integrity;

18 (2) a person whose prior activities, state and
19 federal criminal records, reputation, habits and associations
20 do not pose a threat to the public interest or to the effective
21 regulation and control of gaming, pari-mutuel wagering or horse
22 racing or create or enhance the dangers of unsuitable, unfair
23 or illegal practices, methods and activities in the conduct of
24 gaming, pari-mutuel wagering or horse racing or the carrying on
25 of the business and financial arrangements incidental thereto;

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1 and

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

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

6 (1) the applicant has adequate business
7 probity, competence and experience in business and gaming,
8 pari-mutuel wagering or horse racing;

9 (2) the proposed financing of the applicant is
10 adequate for the nature of the proposed license and from a
11 suitable source; any lender or other source of money or credit
12 that the board finds does not meet the standards set forth in
13 Subsection B of this section shall be deemed unsuitable; and

14 (3) the applicant is sufficiently capitalized
15 under standards set by the board to conduct the business
16 covered by the license.

17 D. An application to receive a license,
18 certification or work permit constitutes a request for a
19 determination of the applicant's general moral character,
20 integrity and ability to participate or engage in or be
21 associated with gaming, pari-mutuel wagering or horse racing.
22 Any written or oral statement made in the course of an official
23 proceeding of the board or by a witness testifying under oath
24 that is relevant to the purpose of the proceeding is absolutely
25 privileged and does not impose liability for defamation or

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1 constitute a ground for recovery in any civil action.

2 E. The board shall not issue a license or
3 certification to an applicant who has previously been denied a
4 license or certification in this state or another state, who
5 has had a certification, permit or license issued pursuant to
6 the gaming, pari-mutuel wagering or horse racing laws of a
7 state or the United States permanently suspended or revoked for
8 cause or who is currently under suspension or subject to any
9 other limiting action in this state or another state involving
10 gaming activities, pari-mutuel wagering or horse racing or
11 licensure for gaming activities, pari-mutuel wagering or horse
12 racing, unless the violation that is the basis of the denial,
13 permanent suspension or other limiting action regarding a
14 license, certification or permit applied for or issued in this
15 state or another state is determined by the board to be a
16 technical violation, and, if the board finds the violation to
17 be a technical violation, the board may choose to issue a
18 license or certification.

19 F. The board shall investigate the qualifications
20 of each applicant before a license, certification or work
21 permit is issued by the board and shall continue to observe and
22 monitor the conduct of all licensees, work permit holders,
23 persons certified as being suitable and the persons having a
24 material involvement directly or indirectly with a licensee.

25 G. The board has the authority to deny an

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1 application or limit, condition, restrict, revoke or suspend a
2 license, certification or permit for any cause.

3 H. After issuance, a license, certification or
4 permit shall continue in effect upon proper payment of the
5 initial and renewal fees, subject to the power of the board to
6 revoke, suspend, condition or limit licenses, certifications
7 and permits.

8 I. The board has full and absolute power and
9 authority to deny an application for any cause it deems
10 reasonable. If an application is denied, the board shall
11 prepare and file its written decision on which its order
12 denying the application is based."

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

15 "60-2E-19. COMPANY APPLICANTS--NONPROFIT ORGANIZATION
16 APPLICANTS--REQUIRED INFORMATION.--

17 A. A company applicant for a license or a renewal
18 of a license shall provide the following information to the
19 board on forms provided by the board:

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

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

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

9 (4) remuneration to persons, other than
10 directors, officers and key executives, exceeding one hundred
11 thousand dollars (\$100,000) per year;

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

14 (6) a list of management and service contracts
15 pertaining to the proposed gaming activity, pari-mutuel
16 wagering or horse racing in this state;

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

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

3 B. A nonprofit organization applying for a license
4 or a renewal of a license as a nonprofit gaming operator
5 pursuant to the Gaming Control and Horse Racing Act shall
6 provide in its application:

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

10 (2) the terms and conditions of all
11 outstanding loans, mortgages, trust deeds, pledges or any other
12 indebtedness or security interest evidenced by a security
13 instrument pertaining to the proposed gaming, pari-mutuel
14 wagering or horse racing operation or other licensed activity
15 in this state and the name and address of the person who is
16 servicing the loan, mortgage, trust deed, pledge or other
17 indebtedness or security interest;

18 (3) management and service contracts
19 pertaining to the proposed gaming activity or pari-mutuel
20 wagering or horse racing operation in this state;

21 (4) balance and profit and loss statements for
22 at least the three preceding fiscal years or, if the nonprofit
23 organization has not been in business for a period of three
24 years, balance sheets and profit and loss statements from the
25 date of charter or incorporation and projected for three years

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1 from the date of charter or incorporation. All balance sheets
2 and profit and loss statements shall be submitted in a manner
3 prescribed by the board;

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

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

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

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

14 **SECTION 20.** Section 60-2E-20 NMSA 1978 (being Laws 1997,
15 Chapter 190, Section 22, as amended) is amended to read:

16 "60-2E-20. INDIVIDUAL CERTIFICATION OF FINDING OF
17 SUITABILITY OF OFFICERS, DIRECTORS AND OTHER PERSONS.--

18 A. An officer, director, equity security holder of
19 five percent or more, partner, general partner, limited
20 partner, trustee or beneficiary of the company that holds or
21 has applied for a license shall individually apply for and
22 obtain a certification of finding of suitability, according to
23 the provisions of the Gaming Control and Horse Racing Act, and
24 if, in the judgment of the board the public interest is served
25 by requiring any or all of the company's key executives to

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1 apply for and obtain a certification of finding of suitability,
2 the company shall require those persons to apply for
3 certification. A person who is required to be certified
4 pursuant to this subsection shall apply for certification
5 within thirty days after becoming an officer, director, equity
6 security holder of five percent or more, partner, general
7 partner, limited partner of five percent or more, trustee,
8 beneficiary or key executive. A person who is required to be
9 certified pursuant to a decision of the board shall apply for
10 certification within thirty days after the board so requests.
11 A person required or requested to be certified pursuant to this
12 subsection shall provide to the board an application for
13 certification, including a personal history, a financial
14 statement, copies of the person's income tax returns for the
15 three years immediately prior to the year of the application
16 and other information that the board deems necessary or
17 appropriate.

18 B. The key executives of a nonprofit organization
19 that holds or has applied for a license shall individually
20 apply for and obtain a certification of finding of suitability.
21 For purposes of this subsection, key executives are those
22 officers, employees, volunteers and other persons who are
23 designated by the nonprofit organization as key executives.
24 The board may require additional officers, employees,
25 volunteers and other persons to apply for and obtain a

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1 certification of finding of suitability if the board determines
2 the public interest is served by the additional certifications.
3 A person who is required to be certified pursuant to this
4 subsection shall apply for certification within thirty days
5 after becoming an officer or key executive. A person who is
6 required to be certified pursuant to a decision of the board
7 shall apply for certification within thirty days after the
8 board so requests. A person required or requested to be
9 certified pursuant to this subsection shall provide to the
10 board an application for certification, including a personal
11 history, a financial statement, copies of the person's income
12 tax returns for the three years immediately prior to the year
13 of the application and other information that the board deems
14 necessary or appropriate."

15 SECTION 21. Section 60-2E-22 NMSA 1978 (being Laws 1997,
16 Chapter 190, Section 24, as amended) is amended to read:

17 "60-2E-22. CHANGE IN COMPANY OWNERSHIP.--

18 A. If a company applicant or company licensee
19 proposes to transfer ownership of twenty percent or more of the
20 applicant or licensee, it shall notify the board in writing and
21 provide the following information about the successor company:

22 (1) if the company is a publicly traded
23 corporation, as of the date the company became a publicly
24 traded corporation, and on any later date when the information
25 changes, the names of all stockholders of record who hold five

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1 percent or more of the outstanding shares of any class of
2 equity securities issued by the publicly traded corporation;

3 (2) the names of all officers within thirty
4 days of their respective appointments;

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

7 (4) the organization, financial structure and
8 nature of the businesses the company operates;

9 (5) if the company is a publicly traded
10 corporation, the terms, position, rights and privileges of the
11 different classes of securities outstanding as of the date the
12 company became a publicly traded corporation;

13 (6) if the company is a publicly traded
14 corporation, the terms on which the company's securities were
15 issued during the three years preceding the date on which the
16 company became a publicly traded corporation and the terms on
17 which the publicly traded corporation's securities are to be
18 offered to the public as of the date the company became a
19 publicly traded corporation;

20 (7) the terms and conditions of all
21 outstanding indebtedness and evidence of security pertaining
22 directly or indirectly to the company;

23 (8) remuneration exceeding one hundred
24 thousand dollars (\$100,000) per year paid to persons other than
25 directors, officers and key executives who are actively and

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1 directly engaged in the administration or supervision of the
2 gaming activities or pari-mutuel wagering or horse racing
3 operations of the company;

4 (9) bonus and profit-sharing arrangements
5 within the company directly or indirectly relating to its
6 gaming activities or pari-mutuel wagering or horse racing
7 operations;

8 (10) management and service contracts of the
9 company pertaining to its gaming activities or pari-mutuel
10 wagering or horse racing operations;

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

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

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

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

23 B. The board shall determine whether the proposed
24 transaction is a transfer or assignment of the license as
25 prohibited by Subsection G of Section 60-2E-14 NMSA 1978. If

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1 the board determines that the proposed transaction is
2 prohibited, it shall notify the licensee in writing and shall
3 require the proposed transferee to file an application for a
4 license. If the board determines that the proposed transaction
5 is not a prohibited transfer or assignment of the license, it
6 shall make a determination as to whether to issue a
7 certification approving the transaction. The board shall
8 consider the following information about the successor company
9 in determining whether to certify the transaction:

10 (1) the business history of the company,
11 including its record of financial stability, integrity and
12 success of its gaming operations or pari-mutuel wagering or
13 horse racing operations in other jurisdictions;

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

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

22 (4) the present and proposed compensation
23 arrangements between the company and its directors, officers,
24 key executives, securities holders, lenders or other sources of
25 financing;

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

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

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

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

20 SECTION 22. Section 60-2E-27 NMSA 1978 (being Laws 1997,
21 Chapter 190, Section 29, as amended) is amended to read:

22 "60-2E-27. RACETRACK GAMING OPERATOR LICENSEES--SPECIAL
23 CONDITIONS FOR RACETRACKS--NUMBER OF GAMING MACHINES--DAYS AND
24 HOURS OF OPERATIONS.--

25 A. [A] The board may issue a racetrack gaming

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1 operator's license to a horse racetrack [~~licensed by the state~~
2 ~~racing commission pursuant to the Horse Racing Act~~] to conduct
3 live horse races or simulcast races [~~may be issued a gaming~~
4 ~~operator's license~~] and to operate gaming machines on its
5 premises where live racing is conducted; provided that the
6 racetrack is in compliance with the requirements of the Gaming
7 Control and Horse Racing Act and the board.

8 B. A [~~racetrack's~~] racetrack gaming operator's
9 license shall automatically become void if:

10 (1) the racetrack no longer holds an active
11 license to conduct pari-mutuel wagering; or

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

16 C. Unless a larger number is allowed pursuant to
17 Subsection D of this section, a racetrack gaming operator
18 licensee [~~that is a racetrack~~] may have up to six hundred
19 licensed gaming machines.

20 D. By execution of an allocation agreement, signed
21 by both the allocating racetrack and the racetrack to which the
22 allocation is made, a racetrack gaming operator licensee [~~that~~
23 ~~is a racetrack~~] may allocate any number of its authorized
24 gaming machines to another racetrack gaming operator licensee
25 [~~that is a racetrack~~]. To be valid, the allocation agreement

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1 must bear the written approval of the board [~~and the state~~
2 ~~racing commission~~], and this approval shall make specific
3 reference to the [~~meeting~~] meetings at which the action of
4 approval was taken and the number of votes cast both for and
5 against the approval. By allocating a number of its authorized
6 machines to another racetrack, the allocating racetrack
7 automatically surrenders all rights to operate the number of
8 machines allocated. No racetrack shall operate or be
9 authorized to operate more than seven hundred fifty gaming
10 machines.

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

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1 within the limitations imposed by this subsection, the hours it
2 will offer gaming machines for operation each day and shall
3 notify the board in writing of those hours.

4 F. Maintaining fewer than four live race days or
5 nine live races on each race day during a licensed race meet
6 does not constitute a failure to maintain the minimum number of
7 live race days or races as required by Paragraph (2) of
8 Subsection B of this section if the [~~licensee submits to the~~
9 ~~board written approval by the state racing commission for the~~
10 ~~licensee to vary the minimum number of live race days or races,~~
11 ~~and the]~~ variance is due to:

12 (1) the inability of a racetrack gaming
13 operator licensee to fill races as published in the licensee's
14 condition book;

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

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

19 (4) a power outage, electrical failure or
20 failure or unavailability of any equipment or supplies
21 necessary to conduct a race or meet;

22 (5) hazardous conditions or other threats to
23 the public health or safety; or

24 (6) any other act, event or occurrence that
25 the board finds is not within the control of the licensee even

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1 with the exercise of reasonable diligence or care.

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

5 SECTION 23. A new section of the Gaming Control and
6 Horse Racing Act is enacted to read:

7 "[NEW MATERIAL] PARI-MUTUEL WAGERING--RACETRACK GAMING
8 OPERATOR LICENSEES--LIMITED TO ENCLOSURE WHERE HORSE RACES ARE
9 CONDUCTED--GAMBLING STATUTES DO NOT APPLY.--

10 A. A racetrack gaming operator licensed by the
11 board may conduct pari-mutuel wagering on live horse races or
12 on simulcast horse races.

13 B. Pari-mutuel wagering may be conducted only
14 within the enclosure where horse races are conducted on the
15 racing grounds of a racetrack gaming operator licensee.

16 C. A racetrack gaming operator licensee may sell
17 pari-mutuel tickets or certificates only for:

18 (1) live races being conducted on the racing
19 grounds on the premises of the racetrack gaming operator
20 licensee; or

21 (2) simulcast races received on the premises
22 of the racetrack gaming operator licensee.

23 D. Pari-mutuel tickets or certificates may be sold
24 only in the racing enclosure on the racing grounds of a
25 racetrack gaming operator licensee or in areas set aside for

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1 viewing simulcast races on the premises of the racetrack gaming
2 operator licensee.

3 E. The sale to patrons present on the licensed
4 premises of a racetrack operator licensee of pari-mutuel
5 tickets or certificates is not gambling as defined in Section
6 30-19-2 or 30-19-3 NMSA 1978.

7 F. Placing a wager while on the premises of the
8 racetrack gaming operator licensee is not placing a bet
9 pursuant to Section 30-19-1 NMSA 1978.

10 G. The licensed premises of a horse racetrack is
11 not a "gambling place" as that term is defined in Section
12 30-19-1 NMSA 1978."

13 SECTION 24. A new section of the Gaming Control and
14 Horse Racing Act is enacted to read:

15 "[NEW MATERIAL] HORSE RACE SIMULCASTING ALLOWED--
16 RACETRACK GAMING OPERATOR LICENSEES.--

17 A. The board may allow simulcasting of horse races
18 being conducted on the racing grounds of a racetrack gaming
19 operator licensee to other locations within or outside of the
20 state holding a pari-mutuel license or gaming license allowing
21 pari-mutuel wagering.

22 B. Simulcasting of horse races licensed and
23 conducted outside of the state may be permitted on the racing
24 grounds of racetrack gaming operator licensees.

25 C. A racetrack gaming operator licensee shall not

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1 be allowed to simulcast horse races unless that racetrack
2 gaming operator licensee offers at least seventeen days per
3 year of pari-mutuel wagering on live horse races run on the
4 premises of the racetrack gaming operator licensee.

5 D. Pari-mutuel wagering on the racing grounds of a
6 racetrack gaming operator licensee on simulcast races is
7 permitted only on days on which live races are conducted on the
8 racing grounds of the licensee or on days when the licensee is
9 receiving simulcast races from another gaming operator licensee
10 facility racetrack in New Mexico.

11 E. Pari-mutuel wagering shall be conducted on
12 simulcast races on the premises of a racetrack gaming operator
13 licensee located within an eighty-mile radius of another
14 racetrack gaming operator licensee facility at which live races
15 are in progress only if there is a mutual agreement of the two
16 racetrack gaming operator licensees.

17 F. The board shall adopt rules concerning the
18 simulcasting of horse races pursuant to this section."

19 SECTION 25. A new section of the Gaming Control and
20 Horse Racing Act is enacted to read:

21 "[NEW MATERIAL] INTERSTATE COMMON POOL WAGERING
22 AUTHORIZED--RACETRACK GAMING OPERATOR LICENSEES.--

23 A. Subject to the federal Interstate Horse Racing
24 Act of 1978, the board may permit a racetrack gaming operator
25 licensee to participate in interstate common pools. All

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1 provisions of the Gaming Control and Horse Racing Act that
2 govern pari-mutuel wagering apply to pari-mutuel wagering in
3 interstate common pools, except as otherwise provided in this
4 section.

5 B. Subject to prior approval of the board, the
6 following provisions apply when a racetrack gaming operator
7 licensee participates in interstate common pools on a horse
8 race that originates outside of New Mexico:

9 (1) the licensee may combine its pari-mutuel
10 pools with comparable pari-mutuel pools at the host track and
11 other locations. The types of wagering, takeout, distribution
12 of winnings and rules of racing in effect for pari-mutuel pools
13 at the host track shall govern wagers placed at the guest track
14 in this state and merged into the interstate common pool.
15 Breakage for interstate common pools shall be calculated in
16 accordance with the rules governing the host track and shall be
17 distributed in a manner agreed upon by the racetrack gaming
18 operator licensee guest track and the host track;

19 (2) with the concurrence of the host track, an
20 interstate common pool that excludes the host track may be
21 formed among the racetrack gaming operator licensee guest track
22 and other locations outside the state where the host track is
23 located. When such an interstate common pool is formed, the
24 board may approve types of wagering takeout, distribution of
25 winnings, rules of racing and calculation of breakage that are

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1 different than those that would otherwise be in effect in New
2 Mexico, provided that they are applied consistently to all
3 persons in the interstate common pool;

4 (3) the racetrack gaming operator licensee may
5 deduct from retainage resulting from an interstate common pool
6 any reasonable fee paid to the person conducting the horse race
7 for the privilege of conducting pari-mutuel wagering on the
8 race and participating in the common pool; and

9 (4) provisions of law or contract governing
10 the distribution of pari-mutuel taxes, breeder or other awards
11 and purses from the takeout of wagers placed in this state
12 shall remain in effect for wagers placed in interstate common
13 pools; provided that:

14 (a) if the board approves an adjustment
15 in the takeout rate, the distribution of the takeout within New
16 Mexico shall be adjusted proportionately to reflect the
17 adjustment in the takeout rate; and

18 (b) with the concurrence of the
19 racetrack gaming operator licensee and the organization
20 representing a majority of the breeders, horsemen or other
21 persons entitled to shares of the distribution and subject to
22 approval of the board, the respective shares to the breeders or
23 other awards or purses may be modified.

24 C. Subject to prior approval of the board, the
25 following provisions apply when a racetrack gaming operator

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1 licensee participates in interstate common pools on a horse
2 race that originates at the licensee's track:

3 (1) a licensee may permit one or more of its
4 horse races to be utilized for pari-mutuel wagering at, and may
5 transmit audio-visual signals of horse races the licensee
6 conducts to, one or more locations outside New Mexico. The
7 racetrack gaming operator licensee may also permit pari-mutuel
8 wagering pools in other locations to be combined with the
9 licensee's comparable pari-mutuel wagering pools or with
10 wagering pools established in other jurisdictions. The board
11 may modify its rules and adopt separate rules for interstate
12 common pools and their calculation of breakage;

13 (2) daily pari-mutuel taxes shall not be
14 imposed upon amounts wagered in an interstate common pool other
15 than upon amounts wagered within this state;

16 (3) except as otherwise provided in this
17 section, any provisions of law or contract governing the
18 distribution of shares of the takeout as New Mexico pari-mutuel
19 taxes, breeder or other awards and purses shall remain in
20 effect for amounts wagered within this state in interstate
21 common pools; provided that with the concurrence of the
22 racetrack gaming operator licensee and the organization
23 representing a majority of the breeders, horsemen or other
24 persons entitled to shares of the distribution, and subject to
25 approval of the board, the respective shares to breeder or

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1 other awards or purses may be modified; and

2 (4) with respect to the retainage on
3 interstate common pooling received from a guest state by a
4 racetrack gaming operator licensee, that licensee shall
5 allocate to the New Mexico horse breeders' association five
6 percent of the daily retainage. Of the retainage remaining
7 after the allocation to the New Mexico horse breeders'
8 association, fifty percent shall be allocated to race purses
9 and fifty percent shall be retained by the racetrack gaming
10 operator licensee.

11 D. When the laws and rules of the host and guest
12 states permit, an interstate common pool may be established on
13 a regional or other basis between two or more guest states and
14 not include a merger into the host track's pari-mutuel pool, in
15 which case one of the guest tracks shall serve as if it were
16 the host track for the purposes of calculating the pari-mutuel
17 pool. An interstate common pool may include members located
18 outside the United States. Except as otherwise set forth in
19 the board's rules, participation by a person in a common pool
20 with wagering facilities in one or more other guest states
21 shall not cause the participating person to be deemed to be
22 doing business in any state other than the state in which that
23 person is physically located.

24 E. The board may adopt rules necessary or
25 appropriate to exercise its powers and duties pursuant to this

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1 section.

2 F. As used in this section:

3 (1) "guest state" means the jurisdiction
4 within which a guest track is located;

5 (2) "guest track" means the horse racetrack,
6 off-track wagering facility or other facility in a location
7 other than the state in which the horse race is run that is a
8 member of and subject to an interstate common pool;

9 (3) "host state" means the jurisdiction within
10 which a host track is located;

11 (4) "host track" means the horse racetrack
12 from which the horse race is run that is transmitted to members
13 of and is subject to an interstate common pool; and

14 (5) "interstate common pool" means a pari-
15 mutuel pool that combines comparable pari-mutuel pools of one
16 or more locations accepting wagers on a horse race run at the
17 host track for purposes of establishing payoff prices at the
18 pool members' locations. Pool members from more than one state
19 may simultaneously combine pari-mutuel pools into an interstate
20 common pool."

21 SECTION 26. Section 60-2E-29 NMSA 1978 (being Laws 1997,
22 Chapter 190, Section 31, as amended) is amended to read:

23 "60-2E-29. LICENSING OF MANUFACTURERS OF GAMING
24 DEVICES--EXCEPTION--DISPOSITION OF GAMING DEVICES.--

25 A. It is unlawful for a person to operate, carry

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1 on, conduct or maintain any form of manufacturing of a gaming
2 device or associated equipment for use or play in New Mexico or
3 any form of manufacturing of a gaming device or associated
4 equipment in New Mexico for use or play outside of New Mexico
5 without first obtaining and maintaining a manufacturer's
6 license.

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

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

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

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

17 (4) any association or agreement between the
18 manufacturer and a distributor licensee or gaming operator
19 licensee in New Mexico shall be terminated.

20 C. An agreement between a manufacturer licensee and
21 a distributor licensee or a gaming operator licensee in New
22 Mexico shall be deemed to include a provision for its
23 termination without liability for the termination on the part
24 of either party upon a finding by the board that either party
25 is unsuitable. Failure to include that condition in the

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1 agreement is not a defense in an action brought pursuant to
2 this section to terminate the agreement.

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

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

11 E. The board may inspect every gaming device that
12 is manufactured:

- 13 (1) for use in New Mexico; or
14 (2) in New Mexico for use outside of New
15 Mexico.

16 F. The board may inspect every gaming device that
17 is offered for play within New Mexico by a gaming operator
18 licensee.

19 G. The board may inspect all associated equipment
20 that is manufactured and sold for use in New Mexico or
21 manufactured in New Mexico for use outside of New Mexico.

22 H. In addition to all other fees and charges
23 imposed pursuant to the Gaming Control and Horse Racing Act,
24 the board may determine, charge and collect from each
25 manufacturer an inspection fee, which shall not exceed the

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1 actual cost of inspection and investigation.

2 I. The board may prohibit the use of a gaming
3 device by a gaming operator licensee if it finds that the
4 gaming device does not meet the requirements of this section."

5 SECTION 27. Section 60-2E-30 NMSA 1978 (being Laws 1997,
6 Chapter 190, Section 32, as amended) is amended to read:

7 "60-2E-30. LICENSING OF DISTRIBUTORS OF GAMING
8 DEVICES.--

9 A. It is unlawful for [~~any~~] a person to operate,
10 carry on, conduct or maintain any form of distribution of [~~any~~]
11 a gaming device for use or play in New Mexico or any form of
12 distribution of [~~any~~] a gaming device in New Mexico for use or
13 play outside of New Mexico without first obtaining and
14 maintaining a distributor's or manufacturer's license.

15 B. If the board revokes a distributor's license:

16 (1) no new gaming device distributed by the
17 person may be approved;

18 (2) any previously approved gaming device
19 distributed by the distributor is subject to revocation of
20 approval if the reasons for the revocation of the license also
21 apply to that gaming device;

22 (3) no new gaming device or associated
23 equipment distributed by the distributor may be distributed,
24 sold, transferred or offered for use or play in New Mexico; and

25 (4) [~~any~~] an association or agreement between

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1 the distributor and a gaming operator licensee shall be
2 terminated. An agreement between a distributor licensee and a
3 gaming operator licensee shall be deemed to include a provision
4 for its termination without liability on the part of either
5 party upon a finding by the board that the other party is
6 unsuitable. Failure to include that condition in the agreement
7 is not a defense in any action brought pursuant to this section
8 to terminate the agreement.

9 C. The board may inspect every gaming device that
10 is distributed for use in New Mexico.

11 D. In addition to all other fees and charges
12 imposed by the Gaming Control and Horse Racing Act, the board
13 may determine, charge and collect from each distributor an
14 inspection fee, which shall not exceed the actual cost of
15 inspection and investigation."

16 SECTION 28. Section 60-2E-31 NMSA 1978 (being Laws 1997,
17 Chapter 190, Section 33) is amended to read:

18 "60-2E-31. SUITABILITY OF CERTAIN PERSONS FURNISHING
19 SERVICES OR PROPERTY OR DOING BUSINESS WITH GAMING OPERATORS OR
20 RACETRACK GAMING OPERATORS--TERMINATION OF ASSOCIATION.--

21 A. The board may determine the suitability of any
22 person who furnishes services or property to a gaming operator
23 licensee or a racetrack gaming operator under any arrangement
24 pursuant to which the person receives compensation based on
25 earnings, profits or receipts from gaming or pari-mutuel

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1 wagering. The board may require the person to comply with the
2 requirements of the Gaming Control and Horse Racing Act and
3 with the [~~regulations~~] rules of the board. If the board
4 determines that the person is unsuitable, it may require the
5 arrangement to be terminated.

6 B. The board may require a person to apply for a
7 finding of suitability to be associated with a gaming operator
8 licensee, racetrack gaming operator licensee or racetrack
9 operator licensee if the person:

10 (1) does business on the premises of a gaming
11 establishment or horse racetrack; or

12 (2) provides any goods or services to a gaming
13 operator licensee or racetrack gaming operator licensee for
14 compensation that the board finds to be grossly
15 disproportionate to the value of the goods or services.

16 C. If the board determines that a person is
17 unsuitable to be associated with a gaming operator licensee,
18 racetrack gaming operator licensee or racetrack operator
19 licensee, the association shall be terminated. Any agreement
20 that entitles a business other than gaming, pari-mutuel
21 wagering or horse racing to be conducted on the premises of a
22 gaming establishment or horse racetrack, or entitles a person
23 other than a licensee to conduct business with the [~~gaming~~
24 ~~operator~~] licensee, is subject to termination upon a finding of
25 unsuitability of the person seeking association with a [~~gaming~~

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1 operator] licensee. Every agreement shall be deemed to include
2 a provision for its termination without liability on the part
3 of the gaming operator licensee, racetrack gaming operator
4 licensee or racetrack operator licensee upon a finding by the
5 board of the unsuitability of the person seeking or having an
6 association with the [~~gaming operator~~] licensee. Failure to
7 include that condition in the agreement is not a defense in any
8 action brought pursuant to this section to terminate the
9 agreement. If the application is not presented to the board
10 within thirty days following demand or the unsuitable
11 association is not terminated, the board may pursue any remedy
12 or combination of remedies provided in the Gaming Control and
13 Horse Racing Act."

14 SECTION 29. Section 60-2E-32 NMSA 1978 (being Laws 1997,
15 Chapter 190, Section 34, as amended) is amended to read:

16 "60-2E-32. REASONS FOR INVESTIGATIONS BY BOARD--
17 COMPLAINT BY BOARD--BOARD TO APPOINT HEARING EXAMINER--REVIEW
18 BY BOARD--ORDER OF BOARD.--

19 A. The board shall make appropriate investigations
20 to:

21 (1) determine whether there has been [~~any~~] a
22 violation of the Gaming Control and Horse Racing Act or of [~~any~~
23 ~~regulations~~] rules adopted pursuant to that act;

24 (2) determine any facts, conditions, practices
25 or matters that it deems necessary or proper to aid in the

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1 enforcement of the Gaming Control and Horse Racing Act or
2 [~~regulations~~] rules adopted pursuant to that act;

3 (3) aid in adopting [~~regulations~~] rules;

4 (4) secure information as a basis for
5 recommending legislation relating to the Gaming Control and
6 Horse Racing Act; or

7 (5) determine whether a licensee is able to
8 meet its financial obligations, including all financial
9 obligations imposed by the Gaming Control and Horse Racing Act,
10 as they become due.

11 B. If after an investigation the board is satisfied
12 that a license, registration, finding of suitability or prior
13 approval by the board of [~~any~~] a transaction for which approval
14 was required by the provisions of the Gaming Control and Horse
15 Racing Act should be limited, conditioned, suspended or
16 revoked, or that a fine should be levied, the board shall
17 initiate a hearing by filing a complaint and transmitting a
18 copy of it to the licensee, together with a summary of evidence
19 in its possession bearing on the matter and the transcript of
20 testimony at any investigative hearing conducted by or on
21 behalf of the board. The complaint shall be a written
22 statement of charges that sets forth in ordinary and concise
23 language the acts or omissions with which the respondent is
24 charged. It shall specify the statutes or [~~regulations~~] rules
25 that the respondent is alleged to have violated but shall not

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1 consist merely of charges raised in the language of the
2 statutes or [~~regulations~~] rules. The summary of the evidence
3 shall be confidential and made available only to the respondent
4 until such time as it is offered into evidence at [~~any~~] a
5 public hearing on the matter.

6 C. The respondent shall file an answer within
7 thirty days after service of the complaint.

8 D. Upon filing the complaint, the board shall
9 appoint a hearing examiner to conduct further proceedings.

10 E. The hearing examiner shall conduct proceedings
11 in accordance with the Gaming Control and Horse Racing Act and
12 the [~~regulations~~] rules adopted by the board. At the
13 conclusion of the proceedings, the hearing examiner may
14 recommend that the board take [~~any~~] appropriate action,
15 including revocation, suspension, limitation or conditioning of
16 a license or imposition of a fine not to exceed fifty thousand
17 dollars (\$50,000) for each violation or [~~any~~] a combination or
18 all of the foregoing actions.

19 F. The hearing examiner shall prepare a written
20 decision containing [~~his~~] the hearing examiner's recommendation
21 to the board and shall serve it on all parties.

22 G. The board shall by a majority vote accept,
23 reject or modify the recommendation.

24 H. If the board limits, conditions, suspends or
25 revokes [~~any~~] a license or imposes a fine or limits,

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1 conditions, suspends or revokes [~~any~~] a registration, finding
2 of suitability or prior approval, it shall issue a written
3 order specifying its action.

4 I. The board's order is effective on the date
5 issued and continues in effect unless reversed upon judicial
6 review, except that the board may stay its order pending a
7 rehearing or judicial review upon such terms and conditions as
8 it deems proper."

9 SECTION 30. Section 60-2E-33 NMSA 1978 (being Laws 1997,
10 Chapter 190, Section 35) is amended to read:

11 "60-2E-33. EMERGENCY ORDERS OF BOARD.--The board may
12 issue an emergency order for suspension, limitation or
13 conditioning of a license, registration, finding of suitability
14 or work permit or may issue an emergency order requiring a
15 gaming operator licensee to exclude an individual licensee from
16 the premises of the gaming operator licensee's gaming
17 establishment or the racetrack gaming operator licensee's horse
18 racetrack or not to pay an individual licensee any remuneration
19 for services or any profits, income or accruals on [~~his~~] the
20 individual licensee's investment in the [~~licensed gaming~~]
21 establishment in the following manner:

22 A. an emergency order may be issued only when the
23 board believes that:

24 (1) a licensee has willfully failed to report,
25 pay or truthfully account for and pay over any fee imposed by

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1 the provisions of the Gaming Control and Horse Racing Act or
2 willfully attempted in any manner to evade or defeat any fee or
3 payment thereof;

4 (2) a licensee or gaming employee has cheated
5 at a game; [~~or~~]

6 (3) a licensee or gaming employee has used
7 pari-mutuel wagering in a manner not authorized by the board,
8 influenced or attempted to influence a horse race or attempted
9 to affect the speed or stamina of a racehorse; or

10 [~~(3)~~] (4) the emergency order is necessary for
11 the immediate preservation of the public peace, health, safety,
12 morals, good order or general welfare;

13 B. the emergency order shall set forth the grounds
14 upon which it is issued, including a statement of facts
15 constituting the alleged emergency necessitating such action;

16 C. the emergency order is effective immediately
17 upon issuance and service upon the licensee or resident agent
18 of the licensee or gaming employee or, in cases involving
19 registration or findings of suitability, upon issuance and
20 service upon the person or entity involved or resident agent of
21 the entity involved; the emergency order may suspend, limit,
22 condition or take other action in relation to the license of
23 one or more persons in an operation without affecting other
24 individual licensees or the gaming operator licensee. The
25 emergency order remains effective until further order of the

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1 board or final disposition of the case; and

2 D. within five days after issuance of an emergency
3 order, the board shall cause a complaint to be filed and served
4 upon the person or entity involved; thereafter, the person or
5 entity against whom the emergency order has been issued and
6 served is entitled to a hearing before the board and to
7 judicial review of the decision and order of the board in
8 accordance with the provisions of the board's [~~regulations~~]
9 rules."

10 SECTION 31. Section 60-2E-34 NMSA 1978 (being Laws 1997,
11 Chapter 190, Section 36) is amended to read:

12 "60-2E-34. EXCLUSION OR EJECTION OF CERTAIN PERSONS FROM
13 GAMING ESTABLISHMENTS AND HORSE RACETRACKS--PERSONS INCLUDED.--

14 A. The board shall by [~~regulation~~] rule provide for
15 the establishment of a list of persons who are to be excluded
16 or ejected from a gaming establishment or a horse racetrack.
17 The list may include any person whose presence in the gaming
18 establishment or a horse racetrack is determined by the board
19 to pose a threat to the public interest or licensed gaming
20 activities.

21 B. In making the determination in Subsection A of
22 this section, the board may consider a:

23 (1) prior conviction for a crime that is a
24 felony under state or federal law, a crime involving moral
25 turpitude or a violation of the gaming laws of any

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1 jurisdiction;

2 (2) violation or conspiracy to violate the
3 provisions of the Gaming Control and Horse Racing Act relating
4 to:

5 (a) the failure to disclose an interest
6 in a gaming activity, pari-mutuel wagering or horse racing for
7 which the person must obtain a license; or

8 (b) willful evasion of fees or taxes;

9 (3) notorious or unsavory reputation that
10 would adversely affect public confidence and trust that the
11 gaming or horse racing industry is free from criminal or
12 corruptive influences; or

13 (4) written order of any other governmental
14 agency in this state or any other state that authorizes the
15 exclusion or ejection of the person from an establishment at
16 which gaming, pari-mutuel wagering or horse racing is
17 conducted.

18 C. A gaming operator licensee has the right,
19 without a list established by the board, to exclude or eject a
20 person from its gaming establishment or horse racetrack who
21 poses a threat to the public interest or for any business
22 reason.

23 D. Race, color, creed, national origin or ancestry,
24 age, disability or sex shall not be grounds for placing the
25 name of a person on the list or for exclusion or ejection under

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1 Subsection A or C of this section."

2 SECTION 32. Section 60-2E-34.1 NMSA 1978 (being Laws
3 2009, Chapter 199, Section 14) is amended to read:

4 "60-2E-34.1. SELF-EXCLUSION FROM GAMING ESTABLISHMENTS
5 AND HORSE RACETRACKS--PROCEDURE--FINES--CONFIDENTIALITY.--

6 A. The board shall develop rules that permit a
7 person who is a compulsive gambler to be voluntarily excluded
8 from a gaming establishment or horse racetrack.

9 B. Self-exclusion shall occur through written
10 application made by the compulsive gambler to the board and
11 shall be governed by the following provisions:

12 (1) self-exclusion shall be enforceable upon
13 issuance of a self-exclusion order by the board to each
14 applicable gaming establishment and horse racetrack identified
15 in the order;

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

18 (3) the application shall be submitted to the
19 board;

20 (4) except for notification of the gaming
21 establishments or horse racetracks for which the self-exclusion
22 order is effective and for notification for mailing list
23 exclusion pursuant to this section, the application and the
24 self-exclusion order shall be held confidential by employees of
25 the board and a gaming operator licensee or racetrack gaming

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1 operator licensee and its employees and key executives;

2 (5) a self-exclusion order may apply to one or
3 more gaming establishments or horse racetracks licensed
4 pursuant to the Gaming Control and Horse Racing Act;

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

15 (a) all winnings of the person obtained
16 while present at the gaming establishment or horse racetrack;
17 and

18 (b) all credits, tokens or vouchers
19 received by the person while present at the gaming
20 establishment or horse racetrack;

21 (7) a gaming establishment or horse racetrack
22 is immune from liability arising out of its efforts to exclude
23 a person identified in a self-exclusion order; and

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

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1 C. Notice shall be submitted by the board at least
2 monthly to all gaming establishments and horse racetracks
3 listing all persons who are currently self-excluded and
4 ordering the removal of their names from direct mail or
5 electronic advertisement or promotional lists.

6 D. The state gaming representative may negotiate an
7 agreement with each tribal casino in the state to allow the
8 state to include tribal casinos in the self-exclusion orders."

9 **SECTION 33.** Section 60-2E-37 NMSA 1978 (being Laws 1997,
10 Chapter 190, Section 39) is amended to read:

11 "60-2E-37. AGE REQUIREMENT FOR PATRONS AND GAMING
12 EMPLOYEES.--A person under the age of twenty-one years shall
13 not:

14 A. play, be allowed to play, place wagers on or
15 collect winnings from, whether personally or through an agent,
16 any game or pari-mutuel wagering authorized or offered to play
17 pursuant to the Gaming Control and Horse Racing Act; or

18 B. be employed as a gaming employee."

19 **SECTION 34.** Section 60-2E-41 NMSA 1978 (being Laws 1997,
20 Chapter 190, Section 43) is amended to read:

21 "60-2E-41. COMMUNICATION OR DOCUMENT OF APPLICANT OR
22 LICENSEE ABSOLUTELY CONFIDENTIAL--CONFIDENTIALITY NOT
23 WAIVED--DISCLOSURE OF CONFIDENTIAL INFORMATION PROHIBITED.--

24 A. Any communication or document of an applicant or
25 licensee is confidential and does not impose liability for

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1 defamation or constitute a ground for recovery in any civil
2 action if it is required by:

3 (1) law or the [~~regulations~~] rules of the
4 board; or

5 (2) a subpoena issued by the board to be made
6 or transmitted to the board.

7 B. The confidentiality created pursuant to
8 Subsection A of this section is not waived or lost because the
9 document or communication is disclosed to the board.

10 C. Notwithstanding the powers granted to the board
11 by the Gaming Control and Horse Racing Act, the board:

12 (1) may release or disclose any confidential
13 information, documents or communications provided by an
14 applicant or licensee only with the prior written consent of
15 the applicant or licensee or pursuant to a lawful court order
16 after timely notice of the proceedings has been given to the
17 applicant or licensee;

18 (2) shall maintain all confidential
19 information, documents and communications in a secure place
20 accessible only to members of the board; and

21 (3) shall adopt procedures and [~~regulations~~]
22 rules to protect the confidentiality of information, documents
23 and communications provided by an applicant or licensee."

24 **SECTION 35.** Section 60-2E-47 NMSA 1978 (being Laws 1997,
25 Chapter 190, Section 49, as amended) is amended to read:

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1 "60-2E-47. GAMING TAX--IMPOSITION--ADMINISTRATION.--

2 A. An excise tax is imposed on the privilege of
3 engaging in gaming activities in the state. This tax shall be
4 known as the "gaming tax".

5 B. The gaming tax is an amount equal to ten percent
6 of the gross receipts of manufacturer licensees from the sale,
7 lease or other transfer of gaming devices in or into the state,
8 except receipts of a manufacturer from the sale, lease or other
9 transfer to a licensed distributor for subsequent sale or lease
10 may be excluded from gross receipts; ten percent of the gross
11 receipts of distributor licensees from the sale, lease or other
12 transfer of gaming devices in or into the state; ten percent of
13 the net take of a gaming operator licensee that is a nonprofit
14 organization; and twenty-six percent of the net take of every
15 other gaming operator licensee. For the purposes of this
16 section, "gross receipts" means the total amount of money or
17 the value of other consideration received from selling, leasing
18 or otherwise transferring gaming devices.

19 C. The gaming tax imposed on a licensee is in lieu
20 of all state and local gross receipts taxes on that portion of
21 the licensee's gross receipts attributable to gaming
22 activities.

23 D. The gaming tax is to be paid on or before the
24 fifteenth day of the month following the month in which the
25 taxable event occurs. The gaming tax shall be administered and

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1 collected by the taxation and revenue department in cooperation
2 with the board. The provisions of the Tax Administration Act
3 apply to the collection and administration of the tax.

4 E. In addition to the gaming tax, a racetrack
5 gaming operator licensee [~~that is a racetrack~~] shall pay twenty
6 percent of its net take to purses to be distributed in
7 accordance with rules adopted by the [~~state racing commission~~]
8 board. An amount not to exceed twenty percent of the interest
9 earned on the balance of any fund consisting of money for
10 purses distributed by racetrack gaming operator licensees
11 pursuant to this subsection may be expended for the costs of
12 administering the distributions. A racetrack gaming operator
13 licensee shall spend no less than one-fourth percent of the net
14 take of its gaming machines to fund or support programs for the
15 treatment and assistance of compulsive gamblers.

16 F. A nonprofit gaming operator licensee shall
17 distribute at least sixty percent of the balance of its net
18 take, after payment of the gaming tax and any income taxes,
19 for charitable or educational purposes."

20 SECTION 36. A new section of the Gaming Control and
21 Horse Racing Act is enacted to read:

22 "[NEW MATERIAL] HORSE RACING--DAILY PARI-MUTUEL EXCISE
23 TAX--IMPOSITION--AMOUNT--DISTRIBUTION.--

24 A. A tax that may be cited as the "daily pari-
25 mutuel excise tax" is imposed for the privilege of conducting

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1 pari-mutuel wagering on the racing grounds of a racetrack
2 gaming operator licensee.

3 B. The daily pari-mutuel excise tax imposed on
4 class A racetrack gaming operator licensees pursuant to this
5 section shall be:

6 (1) for each racing day that a class A
7 racetrack gaming operator licensee offers pari-mutuel wagering
8 on live on-track horse races, six hundred fifty dollars (\$650);
9 provided, however, that a class A racetrack gaming operator
10 licensee shall deduct from the six hundred fifty dollars (\$650)
11 and remit to the municipality in which the licensee is located
12 one hundred fifty dollars (\$150) if the licensee is located in
13 a municipality having a population according to the most recent
14 federal decennial census of:

15 (a) less than six thousand located in a
16 county with a population of more than ten thousand but less
17 than fifteen thousand; or

18 (b) more than eight thousand but less
19 than ten thousand located in a county with a population of more
20 than one hundred thousand but less than one hundred fifty
21 thousand; and

22 (2) for each day a class A racetrack gaming
23 operator licensee offers no pari-mutuel wagering on live
24 on-track horse races and offers solely pari-mutuel wagering on
25 simulcast races pursuant to the Gaming Control and Horse Racing

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1 Act, one-eighth percent of the licensee's gross daily handle,
2 not to exceed three hundred dollars (\$300) per racing day.

3 C. The daily pari-mutuel excise tax imposed on a
4 class B racetrack gaming operator licensee pursuant to this
5 section shall be:

6 (1) for each racing day a class B racetrack
7 gaming operator licensee offers pari-mutuel wagering on live
8 on-track horse races, one-eighth percent of the licensee's
9 gross daily handle, not to exceed three hundred dollars (\$300)
10 per racing day; and

11 (2) for each day a class B racetrack gaming
12 operator licensee offers no pari-mutuel wagering on live
13 on-track horse races and offers solely pari-mutuel wagering on
14 simulcast races pursuant to the Gaming Control and Horse Racing
15 Act, one-eighth percent of the licensee's gross daily handle,
16 not to exceed three hundred dollars (\$300) per racing day.

17 D. The daily pari-mutuel excise tax for a licensed
18 state fair association designated by law that in good faith
19 conducts a public fair and exhibition of stock and farming
20 products shall be six hundred fifty dollars (\$650) per day for
21 each racing day authorized; provided, however, that where a
22 state fair association offers no pari-mutuel wagering on live
23 races on the racing grounds of its premises and offers pari-
24 mutuel wagering solely on simulcast races, the daily pari-
25 mutuel excise tax shall be one-eighth percent of the racetrack

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1 gaming operator licensee's gross amount wagered each day, up to
2 a maximum of three hundred dollars (\$300)."

3 SECTION 37. A new section of the Gaming Control and
4 Horse Racing Act is enacted to read:

5 "[NEW MATERIAL] DAILY RACING TAX--IMPOSITION--RACETRACK
6 GAMING OPERATOR LICENSEES--AMOUNT--PROHIBITION OF CERTAIN OTHER
7 TAXES.--

8 A. In addition to the daily pari-mutuel excise tax
9 imposed pursuant to Section 36 of this 2011 act, but in lieu of
10 the gross receipts tax imposed pursuant to the Gross Receipts
11 and Compensating Tax Act on receipts of a racetrack gaming
12 operator licensee from the gross amount wagered each day, a tax
13 that may be referred to as the "daily racing tax" is imposed in
14 an amount of two and three-sixteenths percent of the gross
15 amount wagered each day on horse races on the premises of a
16 racetrack gaming operator licensee. The tax shall be paid from
17 the commissions on pari-mutuel wagering of the racetrack gaming
18 operator licensee. The tax shall be paid on the gross amount
19 wagered each day from live racing on the racing grounds of the
20 racetrack gaming operator licensee or on simulcast races on the
21 premises of the racetrack gaming operator licensee.

22 B. A deduction or offset from the daily racing tax
23 due and owed by a racetrack gaming operator licensee may be
24 taken on forms provided by the taxation and revenue department
25 by the racetrack gaming operator licensee of not more than one-

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1 half of the annual daily racing tax due and owed for the first
2 two hundred fifty thousand dollars (\$250,000) of the gross
3 amount wagered each day for a taxable year, as follows:

4 (1) a class A racetrack gaming operator
5 licensee may deduct the amount that the licensee expends for
6 capital improvements or in financing capital improvements at
7 existing racetrack facilities; and

8 (2) a class B racetrack gaming operator
9 licensee may deduct:

10 (a) the amount that the licensee expends
11 for capital improvements, not to exceed fifty percent of the
12 offset amount allowed pursuant to this subsection; and

13 (b) the amount that the licensee expends
14 for advertising, marketing and promoting horse racing in the
15 state, not to exceed fifty percent of the offset allowed
16 pursuant to this subsection.

17 C. The balance of revenue derived from the daily
18 racing tax of a racetrack gaming operator licensee that remains
19 after the deduction allowed pursuant to Subsection B of this
20 section shall be remitted to the racing suspense account for
21 transfer to the taxation and revenue department for
22 distribution to eligible municipalities pursuant to Section
23 38 of this 2011 act.

24 D. Regarding the horse racetrack located on the
25 fairgrounds of the state fair, an amount equal to one-half of

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1 the daily racing tax imposed pursuant to Subsection A of this
2 section is appropriated from the general fund in fiscal year
3 2011 and in subsequent fiscal years to the state fair
4 commission for expenditure as needed on capital improvements at
5 the state fairgrounds and expenditure for debt service on
6 negotiable bonds issued for the capital improvements. The
7 unexpended or unencumbered balance remaining at the end of a
8 fiscal year shall not revert to the general fund.

9 E. Revenues from the daily racing tax not otherwise
10 appropriated by provisions of this section shall be deposited
11 to the credit of the general fund.

12 F. Accurate records shall be kept by a racetrack
13 gaming operator licensee to show all commissions, total amounts
14 wagered, retainage, distributions and breakage and other
15 information requested by the board. Records shall be open to
16 inspection and shall be audited by the board or its authorized
17 representatives. A racetrack gaming operator licensee is
18 required to maintain records for pari-mutuel wagering and all
19 other financial transactions of the horse racetrack according
20 to generally accepted accounting principles, pursuant to
21 requirements established by the board.

22 G. Notwithstanding any other provision of law, a
23 political subdivision of the state shall not impose an
24 occupational or excise tax on a racetrack operating pursuant to
25 the provisions of the Gaming Control and Horse Racing Act. A

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1 political subdivision may impose local option gross receipts
2 taxes on businesses within the political subdivision's
3 jurisdiction to the extent authorized and permitted by law.

4 H. As used in this section, "capital improvement"
5 means a capital investment in infrastructure that is subject to
6 depreciation pursuant to the federal Internal Revenue Code of
7 1986 and is approved by the board."

8 SECTION 38. A new section of the Gaming Control and
9 Horse Racing Act is enacted to read:

10 "[NEW MATERIAL] HORSE RACING--DETERMINATION OF MUNICIPAL
11 COMPENSATION.--

12 A. No later than August 31 of each year, the
13 taxation and revenue department shall determine the total
14 amount of local option gross receipts taxes paid in the
15 previous fiscal year by a racetrack gaming operator licensee to
16 the municipality in which the racetrack gaming operator
17 licensee is located that is subject to distribution pursuant to
18 Section 7-1-6.12 NMSA 1978 to the municipality in which the
19 premises of the racetrack gaming operator licensee is located.

20 B. If the total distribution pursuant to Section
21 7-1-6.12 NMSA 1978 to a municipality from the racetrack gaming
22 operator licensee is:

23 (1) less than fifty thousand dollars
24 (\$50,000), then the taxation and revenue department shall
25 distribute the difference between fifty thousand dollars

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1 (\$50,000) and the amount of local option gross receipts taxes
2 distributed to the municipality from payments of local option
3 gross receipts taxes made by the racetrack gaming operator
4 licensee in the last fiscal year from the revenue remitted in
5 daily racing taxes pursuant to Section 37 of this 2011 act; or
6 (2) equal to or exceeds fifty thousand dollars
7 (\$50,000), then no amount of daily racing taxes from that
8 licensee shall be distributed to the municipality.

9 C. The taxation and revenue department shall update
10 the board periodically of its progress in calculating the
11 distributions and notify the board when the distributions are
12 complete.

13 D. The taxation and revenue department shall inform
14 the board of the amount of daily racing tax distributed
15 pursuant to this section to municipalities from each racetrack
16 gaming operator licensee no later than August 31 of each year.

17 E. Balances of daily racing tax remaining after
18 distribution to municipalities shall be deposited to the credit
19 of the general fund."

20 **SECTION 39.** A new section of the Gaming Control and Horse
21 Racing Act is enacted to read:

22 "[NEW MATERIAL] DAILY RACE LICENSE FEE--IMPOSITION--
23 AMOUNT--RACETRACK OPERATOR LICENSEE.--In addition to all other
24 daily racing taxes, a daily race license fee of five hundred
25 dollars (\$500) is imposed on a racetrack operator licensee for

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1 each day of live racing conducted on the racing grounds of the
2 licensee."

3 SECTION 40. A new section of the Gaming Control and Horse
4 Racing Act is enacted to read:

5 "[NEW MATERIAL] PAYMENT OF DAILY RACING FEES AND TAXES.--

6 A. Daily race license fees, daily pari-mutuel
7 excise taxes and daily racing taxes imposed by the Gaming
8 Control and Horse Racing Act shall be paid to the board for
9 deposit in the racing suspense account at the close of the
10 business day on Thursday of every week.

11 B. Failure to make weekly remittances by the
12 licensee shall result in an assessment by the board against the
13 licensee of a fine of one percent of the amount due weekly.

14 C. Fines shall be distributed from the racing
15 suspense account to the current school fund pursuant to Article
16 12, Section 4 of the constitution of New Mexico."

17 SECTION 41. Section 60-2E-39 NMSA 1978 (being Laws 1997,
18 Chapter 190, Section 41) is amended to read:

19 "60-2E-39. LIMITATIONS ON TAXES AND LICENSE FEES.--A
20 political subdivision of the state shall not impose a license
21 fee or tax on any licensee licensed pursuant to the Gaming
22 Control and Horse Racing Act except for the imposition of
23 property taxes, local option gross receipts taxes with respect
24 to receipts not subject to the gaming tax [~~and the distribution~~
25 ~~provided for and determined pursuant to Subsection C of Section~~

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1 ~~60-1-15 and Section 60-1-15.2 NMSA 1978~~, the daily pari-mutuel
2 excise tax and the daily racing tax."

3 SECTION 42. A new section of the Gaming Control and Horse
4 Racing Act is enacted to read:

5 "[NEW MATERIAL] RACING SUSPENSE ACCOUNT CREATED.--

6 A. The "racing suspense account" is created in the
7 tax administration suspense fund, into which the board shall
8 deposit all daily racing taxes, the daily pari-mutuel excise
9 taxes and all fees.

10 B. The taxation and revenue department shall
11 administer the racing suspense account.

12 C. A mandatory balance of three thousand dollars
13 (\$3,000) shall be maintained in the racing suspense account
14 after transfers are made to the tax administration suspense
15 fund pursuant to this section.

16 D. Money in the account above the mandatory balance
17 shall be transferred by the end of business each Friday to the
18 tax administration suspense fund for distribution pursuant to
19 the Tax Administration Act and deposit in the general fund.

20 E. All money in the racing suspense account shall
21 be identified as to the source of the money.

22 F. The board shall obtain information about the
23 deposits, distributions and daily balances in the racing
24 suspense account on a monthly basis and upon request of the
25 board to the taxation and revenue department."

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1 SECTION 43. A new section of the Gaming Control and Horse
2 Racing Act is enacted to read:

3 "[NEW MATERIAL] HORSEMEN'S COMMISSIONS--MAXIMUM--
4 COMMISSION DISTRIBUTION--COMMISSION FEE.--

5 A. A class A racetrack gaming operator licensee
6 shall be paid a commission of nineteen percent of the gross
7 amount wagered on win, place and show through the pari-mutuel
8 system, of which eighteen and three-fourths percent shall be
9 retained by the licensee. A fee in the amount of one-fourth
10 percent on the commission retained by the class A racetrack
11 gaming operator licensee shall be remitted to the racing
12 suspense account for deposit in the general fund.

13 B. A class B racetrack gaming operator licensee
14 shall be paid a commission in an amount determined by the class
15 B racetrack gaming operator licensee of not less than eighteen
16 and three-fourths percent and not greater than twenty-five
17 percent of the gross amount wagered on win, place and show
18 through the pari-mutuel system. The commission shall be
19 retained by a class B racetrack gaming operator licensee. Each
20 class B racetrack gaming operator licensee shall advise the
21 board not less than thirty days prior to the first day of each
22 horse racing season of the percentage of commission that the
23 licensee will retain.

24 C. From the commissions, each racetrack gaming
25 operator licensee shall allocate five-eighths percent to the

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1 New Mexico horse breeders' association weekly for distribution
2 pursuant to the provisions of Section 59 of this 2011 act.

3 D. In regard to exotic wagers:

4 (1) a class A racetrack gaming operator
5 licensee shall retain a commission of not less than twenty-one
6 percent and not more than twenty-five percent of the gross
7 amount wagered in exotic wagers;

8 (2) a class B racetrack gaming operator
9 licensee shall elect, with the approval of the board, to retain
10 a commission of not less than twenty-one percent and not
11 greater than thirty percent of the gross amount wagered in
12 exotic wagers;

13 (3) each racetrack gaming operator licensee
14 shall advise the board not less than thirty days prior to the
15 first day of a racing season of the amount of commission to be
16 retained by the licensee from the gross amount wagered in
17 exotic wagers; and

18 (4) a racetrack gaming operator licensee shall
19 allocate one and three-eighths percent to the New Mexico horse
20 breeders' association weekly of redistribution pursuant to the
21 provisions of Section 59 of this 2011 act.

22 E. The odd cents of all redistributions to the
23 wagerer over the next lowest multiple of ten from the gross
24 amount wagered through the pari-mutuel system shall be retained
25 by the racetrack gaming operator licensee, with fifty percent

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1 of the total of the odd cents wagered being allocated to
2 enhance the race purses of established stake races that include
3 only horses registered as New Mexico bred with the New Mexico
4 horse breeders' association, to be distributed by the New
5 Mexico horse breeders' association pursuant to Section 59 of
6 this 2011 act and subject to the approval of the board.

7 F. Money resulting from the failure of patrons who
8 purchased winning pari-mutuel tickets during a horse race
9 season to redeem their winning tickets before the end of the
10 sixty-day period immediately following the closing day of the
11 horse racing season and money resulting from the failure of
12 patrons who purchased pari-mutuel tickets that were entitled to
13 refund but were not refunded during the same sixty-day period
14 shall be apportioned as follows:

15 (1) the racetrack gaming operator licensee
16 shall retain thirty-three and thirty-three hundredths percent;

17 (2) the New Mexico horse breeders' association
18 shall receive a distribution of thirty-three and thirty-four
19 hundredths percent to enhance each horse racetrack's
20 established overnight purses for races that include only horses
21 registered as New Mexico bred with the New Mexico horse
22 breeders' association, subject to board approval, pursuant to
23 Section 59 of this 2011 act; and

24 (3) thirty-three and thirty-three hundredths
25 percent shall be allocated to horsemen's race purses.

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1 G. To promote and improve the quality of horse
2 racing and simulcasting and the participation of interested
3 persons in horse racing in New Mexico, one-half percent of the
4 gross amount wagered on simulcast horse races at each licensed
5 racetrack in New Mexico that receives simulcast horse races
6 shall be allocated by each racetrack gaming operator licensee
7 for distribution to the New Mexico horsemen's association;
8 provided that at least one-fourth percent of the gross amount
9 wagered on simulcast races that is allocated to the New Mexico
10 horsemen's association is used solely for medical benefits for
11 the members of the New Mexico horsemen's association; and
12 provided further that the remaining one-fourth percent of the
13 gross amount wagered on simulcast races that is allocated to
14 the New Mexico horsemen's association shall be used to enhance
15 purses at each licensed racetrack.

16 H. The board shall by rule provide for the timing
17 and manner of the distributions required by this section and
18 shall audit, or arrange for an independent audit of, the
19 disbursements required by this section.

20 I. Fifty percent of the net retainage of each
21 licensee shall be allocated to race purses. For purposes of
22 this section, "net retainage" of the licensee means the
23 commission retained by the licensee on all forms of wagers
24 minus:

25 (1) the daily taxes imposed on racetrack

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1 gaming operator licensees pursuant to the Gaming Control and
2 Horse Racing Act;

3 (2) money allocated to the New Mexico horse
4 breeders' association by this section and Section 59 of this
5 2011 act;

6 (3) money allocated to the New Mexico
7 horsemen's association by this section;

8 (4) a deduction for expenses incurred to
9 engage in intrastate simulcasting pursuant to Section 25 of this
10 2011 act; provided that:

11 (a) the deduction for each racetrack
12 gaming operator licensee shall be a portion of five percent of
13 the gross amount wagered at all the sites receiving the same
14 simulcast horse races;

15 (b) the deduction portion for each
16 racetrack gaming operator licensee shall be an amount allocated
17 to that licensee by agreement voluntarily reached among all of
18 the horse racetracks sending or receiving the same simulcast
19 horse races; and

20 (c) the deduction portion for each
21 racetrack gaming operator licensee shall be an amount allocated
22 to that licensee by the board if all of the racetrack gaming
23 operator licensees sending or receiving the same simulcast
24 horse races fail to reach a voluntary agreement pursuant to
25 Section 60-2E-27.3 NMSA 1978; and

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1 (5) a deduction for fees and commissions
2 incurred to receive interstate simulcasts pursuant to the
3 Gaming Control and Horse Racing Act.

4 J. As used in this section, "exotic wager" means a
5 wager made on other than win, place or show through the pari-
6 mutuel system."

7 SECTION 44. A new section of the Gaming Control and Horse
8 Racing Act is enacted to read:

9 "[NEW MATERIAL] ILLEGAL USE OF PARI-MUTUEL WAGERING.--

10 A. A person shall not use pari-mutuel wagering
11 except as permitted by the board pursuant to the Gaming Control
12 and Horse Racing Act or pursuant to other state law providing
13 licensing of persons to use pari-mutuel wagering.

14 B. A person who, directly or indirectly, uses pari-
15 mutuel wagering in a manner that is not authorized by the board
16 or other state law is guilty of a fourth degree felony and upon
17 conviction shall be sentenced pursuant to Section 31-18-15 NMSA
18 1978."

19 SECTION 45. A new section of the Gaming Control and Horse
20 Racing Act is enacted to read:

21 "[NEW MATERIAL] PREDETERMINING HORSE RACES--INFLUENCING OR
22 ATTEMPTING TO INFLUENCE--FOURTH DEGREE FELONY.--

23 A. A person shall not influence or attempt to
24 influence the outcome of a horse race by offering money, a
25 thing of value, a future benefit, a favor, preferred treatment

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1 or a form of pressure or threat.

2 B. A person shall not enter into an agreement with
3 an owner, jockey, groom or any other person associated with or
4 having an interest in a racehorse to predetermine the outcome
5 of a horse race.

6 C. A person who influences or attempts to influence
7 the outcome of a horse race or a person who enters into an
8 agreement to predetermine the outcome of a horse race is guilty
9 of a fourth degree felony and upon conviction shall be
10 sentenced pursuant to Section 31-18-15 NMSA 1978."

11 SECTION 46. A new section of the Gaming Control and Horse
12 Racing Act is enacted to read:

13 "[NEW MATERIAL] AFFECTING SPEED OR STAMINA OF A RACEHORSE--
14 PENALTIES.--

15 A. A person administering, attempting to administer
16 or conspiring with others to administer to a racehorse a drug,
17 chemical, stimulant or depressant or other foreign substance
18 not naturally occurring in a racehorse, whether internally,
19 externally or by injection, for the purpose of stimulating or
20 depressing the racehorse or affecting the speed or stamina of
21 the racehorse during a horse race or workout is guilty of a
22 fourth degree felony and upon conviction shall be sentenced
23 pursuant to Section 31-18-15 NMSA 1978.

24 B. A person who uses, attempts to use or conspires
25 with others to use during a horse race or workout an

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1 electrically or mechanically prohibited device, implement or
2 instrument, other than an ordinary whip, is guilty of a fourth
3 degree felony and upon conviction shall be sentenced pursuant
4 to Section 31-18-15 NMSA 1978.

5 C. A person who sponges the nostrils or trachea of
6 a racehorse or who uses anything to injure a racehorse for the
7 purpose of stimulating or depressing the racehorse or affecting
8 the speed or stamina of the racehorse during a horse race or
9 workout is guilty of a fourth degree felony and upon conviction
10 shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

11 D. It is prima facie evidence of intent to commit
12 any of the crimes set forth:

13 (1) in Subsection A of this section for a
14 person to be found within the racing grounds of a racetrack
15 licensee, including the stands, stables, sheds or other areas
16 where racehorses are kept, who possesses with the intent to
17 use, sell, give away or otherwise transfer to another person a
18 drug, chemical, stimulant or depressant or other foreign
19 substance not naturally occurring in a racehorse to stimulate
20 or depress a racehorse or to affect the speed or stamina of a
21 racehorse;

22 (2) in Subsection B of this section for a
23 person to be found within the racing grounds of a racetrack
24 operator licensee, including the stands, stables, sheds or
25 other areas where racehorses are kept, who possesses with the

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1 intent to use, sell, give away or otherwise transfer to another
2 person an electrically or mechanically prohibited device,
3 implement or instrument, other than an ordinary whip; and

4 (3) in Subsection C of this section for a
5 person to be found within the racing grounds of a racetrack
6 operator licensee, including the stands, stables, sheds or
7 other areas where racehorses are kept, who possesses with the
8 intent to use, sell, give away or otherwise transfer to another
9 person paraphernalia or substances used to sponge the nostrils
10 or trachea of a racehorse or that may be used to injure a
11 racehorse for the purpose of stimulating or depressing the
12 racehorse or affecting its speed or stamina during a horse race
13 or workout."

14 SECTION 47. A new section of the Gaming Control and Horse
15 Racing Act is enacted to read:

16 "[NEW MATERIAL] HORSE RACING--UNLAWFUL ACTS.--Prohibitions
17 against horse racing, bookmaking, pool selling or other methods
18 of wagering on horse races are not repealed. Pari-mutuel
19 wagering on horse races that are conducted on the premises of a
20 racetrack gaming operator licensee is the only authorized
21 method of wagering on horse races permitted in the state."

22 SECTION 48. A new section of the Gaming Control and Horse
23 Racing Act is enacted to read:

24 "[NEW MATERIAL] PENALTY.--If a person, directly or
25 indirectly, uses a pari-mutuel system of wagering except when

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1 licensed as a racetrack gaming operator licensee by the board
2 and pursuant to the provisions of the Gaming Control and Horse
3 Racing Act, the person is guilty of a misdemeanor and upon
4 conviction shall be fined an amount not to exceed five thousand
5 dollars (\$5,000) or sentenced to imprisonment for not more than
6 ninety days or sentenced with both a fine and imprisonment. An
7 officer of a corporation or company violating a provision of
8 the Gaming Control and Horse Racing Act pertaining to horse
9 racing shall be deemed personally responsible and subject to
10 the penalties imposed pursuant to this section."

11 SECTION 49. A new section of the Gaming Control and Horse
12 Racing Act is enacted to read:

13 "[NEW MATERIAL] HORSE RACING--STEWARDS--POWERS--DUTIES.--
14 There shall be three stewards, licensed and employed by the
15 board, to supervise each horse race meet. One of the stewards
16 shall be designated the presiding official steward of the race
17 meet. Stewards, other than the presiding official steward,
18 shall be employed subject to the approval of the racetrack
19 operator licensee. All stewards shall be licensed or certified
20 by a nationally recognized horse racing organization. Stewards
21 shall exercise those powers and duties prescribed by board
22 rules. A decision or action of a steward may be reviewed or
23 reconsidered by the board."

24 SECTION 50. A new section of the Gaming Control and Horse
25 Racing Act is enacted to read:

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1 "[NEW MATERIAL] OFFICIAL CHEMIST--QUALIFICATIONS--
2 DUTIES.--The board shall designate at least one official
3 chemist. An official chemist shall hold a doctorate degree in
4 chemistry or a related field and shall be knowledgeable and
5 experienced in the techniques used for testing the blood, urine
6 and saliva of horses for drugs, chemicals, stimulants,
7 depressants or other foreign substances not naturally occurring
8 in a horse. The official chemist may be an employee of a
9 private laboratory located in New Mexico or an employee of an
10 agency of New Mexico. The official chemist shall exercise the
11 duties prescribed by rules of the board."

12 SECTION 51. A new section of the Gaming Control and Horse
13 Racing Act is enacted to read:

14 "[NEW MATERIAL] HORSE RACING--TESTING SPECIMENS.--

15 A. The board shall adopt rules applying to the
16 handling and testing of urine and other specimens identified by
17 the board to be taken from racehorses.

18 B. Each specimen taken from a racehorse shall be
19 divided into two or more samples, and:

20 (1) one sample shall be tested by the board or
21 its designated laboratory in order to detect the presence of
22 unauthorized drugs, chemicals, stimulants, depressants or other
23 foreign substances not naturally occurring in a horse; and

24 (2) the second sample shall be forwarded by
25 the board to the scientific laboratory division of the

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1 department of health.

2 C. After an inconclusive or positive test result on
3 the sample tested by the board or its designated laboratory and
4 upon a written request from the president, executive director
5 or manager of the New Mexico horsemen's association on forms
6 designated by the board, the scientific laboratory division
7 shall transmit the corresponding second sample to the New
8 Mexico horsemen's association.

9 D. The scientific laboratory division shall keep
10 all samples in a controlled environment for a period of at
11 least three months.

12 E. The board shall contract with an independent
13 laboratory to maintain a quality assurance program."

14 SECTION 52. Section 60-2E-48 NMSA 1978 (being Laws 1997,
15 Chapter 190, Section 50) is amended to read:

16 "60-2E-48. CIVIL ACTIONS TO RESTRAIN VIOLATIONS OF GAMING
17 CONTROL AND HORSE RACING ACT.--

18 A. The attorney general, at the request of the
19 board, may institute a civil action in any court of this state
20 against any person to enjoin a violation of a prohibitory
21 provision of the Gaming Control and Horse Racing Act.

22 B. An action brought against a person pursuant to
23 this section shall not preclude a criminal action or
24 administrative proceeding against that person."

25 SECTION 53. Section 60-2E-49 NMSA 1978 (being Laws 1997,

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1 Chapter 190, Section 51) is amended to read:

2 "60-2E-49. TESTIMONIAL IMMUNITY.--

3 A. The board may order a person to answer a
4 question or produce evidence and confer immunity pursuant to
5 this section. If, in the course of an investigation or hearing
6 conducted pursuant to the Gaming Control and Horse Racing Act,
7 a person refuses to answer a question or produce evidence on
8 the ground that [~~he~~] the person will be exposed to criminal
9 prosecution by doing so, then the board may by approval of
10 [~~three~~] four members, after the written approval of the
11 attorney general, issue an order to answer or to produce
12 evidence with immunity.

13 B. If a person complies with an order issued
14 pursuant to Subsection A of this section, [~~he~~] the person shall
15 be immune from having a responsive answer given or responsive
16 evidence produced, or evidence derived from either, used to
17 expose [~~him~~] the person to criminal prosecution, except that
18 the person may be prosecuted for [~~any~~] perjury committed in the
19 answer or production of evidence and may also be prosecuted for
20 contempt for failing to act in accordance with the order of the
21 board. An answer given or evidence produced pursuant to the
22 grant of immunity authorized by this section may be used
23 against the person granted immunity in a prosecution of the
24 person for perjury or a proceeding against [~~him~~] the person for
25 contempt."

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1 SECTION 54. Section 60-2E-51 NMSA 1978 (being Laws 1997,
2 Chapter 190, Section 53) is amended to read:

3 "60-2E-51. CRIME--USE OF COUNTERFEIT OR UNAPPROVED
4 TOKENS, CURRENCY OR DEVICES--POSSESSION OF CERTAIN DEVICES,
5 EQUIPMENT, PRODUCTS OR MATERIALS.--

6 A. A person who, in playing [~~any~~] a game designed
7 to be played with, to receive or to be operated by tokens
8 approved by the board or by lawful currency of the United
9 States, knowingly uses tokens other than those approved by the
10 board, uses currency that is not lawful currency of the United
11 States or uses currency not of the same denomination as the
12 currency intended to be used in that game is guilty of a third
13 degree felony and shall be sentenced pursuant to the provisions
14 of Section 31-18-15 NMSA 1978.

15 B. A person who knowingly has on [~~his~~] the person's
16 person or in [~~his~~] the person's possession within a gaming
17 establishment any device intended to be used by [~~him~~] the
18 person to violate the provisions of the Gaming Control and
19 Horse Racing Act is guilty of a third degree felony and shall
20 be sentenced pursuant to the provisions of Section 31-18-15
21 NMSA 1978.

22 C. A person, other than a duly authorized employee
23 of a gaming operator acting in furtherance of [~~his~~] the
24 employee's employment within a gaming establishment, who
25 knowingly has on [~~his~~] the person's person or in [~~his~~] the

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1 person's possession within a gaming establishment [~~any~~] a key
2 or device known by [~~him~~] the person to have been designed for
3 the purpose of and suitable for opening, entering or affecting
4 the operation of [~~any~~] a game, dropbox or [~~any~~] an electronic
5 or mechanical device connected to the game or dropbox or for
6 removing money or other contents from them is guilty of a third
7 degree felony and shall be sentenced pursuant to the provisions
8 of Section 31-18-15 NMSA 1978.

9 D. A person who knowingly and with intent to use
10 them for cheating has on [~~his~~] the person's person or in [~~his~~]
11 the person's possession [~~any~~] paraphernalia for manufacturing
12 slugs is guilty of a third degree felony and shall be sentenced
13 pursuant to the provisions of Section 31-18-15 NMSA 1978. As
14 used in this subsection, "paraphernalia for manufacturing
15 slugs" means the equipment, products and materials that are
16 intended for use or designed for use in manufacturing,
17 producing, fabricating, preparing, testing, analyzing,
18 packaging, storing or concealing a counterfeit facsimile of
19 tokens approved by the board or a lawful coin of the United
20 States, the use of which is unlawful pursuant to the Gaming
21 Control and Horse Racing Act. The term includes:

- 22 (1) lead or lead alloy;
23 (2) molds, forms or similar equipment capable
24 of producing a likeness of a gaming token or coin;
25 (3) melting pots or other receptacles;

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1 (4) torches; and
2 (5) tongs, trimming tools or other similar
3 equipment.

4 E. Possession of more than two items of the
5 equipment, products or material described in Subsection D of
6 this section permits a rebuttable inference that the possessor
7 intended to use them for cheating."

8 SECTION 55. Section 60-2E-54 NMSA 1978 (being Laws 1997,
9 Chapter 190, Section 56) is amended to read:

10 "60-2E-54. CRIME--REPORTING AND RECORD VIOLATIONS--
11 PENALTY.--A person who, in an application, book or record
12 required to be maintained [~~by~~] pursuant to the Gaming Control
13 and Horse Racing Act, [~~or by~~] a [~~regulation~~] rule adopted under
14 that act or in a report required to be submitted [~~by~~] pursuant
15 to that act or a [~~regulation~~] rule adopted under that act,
16 knowingly makes a statement or entry that is false or
17 misleading or fails to maintain or make an entry the person
18 knows is required to be maintained or made is guilty of a
19 fourth degree felony and shall be sentenced pursuant to the
20 provisions of Section 31-18-15 NMSA 1978."

21 SECTION 56. Section 60-2E-55 NMSA 1978 (being Laws 1997,
22 Chapter 190, Section 57) is amended to read:

23 "60-2E-55. CRIME--UNLAWFUL MANUFACTURE, SALE,
24 DISTRIBUTION, MARKING, ALTERING OR MODIFICATION OF DEVICES
25 ASSOCIATED WITH GAMING--UNLAWFUL INSTRUCTION--PENALTY.--

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1 A. A person who manufactures, sells or distributes
2 a device that is intended by [~~him~~] the person to be used to
3 violate [~~any~~] a provision of the Gaming Control and Horse
4 Racing Act is guilty of a fourth degree felony and shall be
5 sentenced pursuant to the provisions of Section 31-18-15 NMSA
6 1978.

7 B. A person who marks, alters or otherwise modifies
8 [~~any~~] a gaming device in a manner that affects the result of a
9 wager by determining win or loss or alters the normal criteria
10 of random selection that affects the operation of a game or
11 that determines the outcome of a game is guilty of a fourth
12 degree felony and shall be sentenced pursuant to the provisions
13 of Section 31-18-15 NMSA 1978."

14 **SECTION 57.** Section 60-2E-57 NMSA 1978 (being Laws 1997,
15 Chapter 190, Section 59) is amended to read:

16 "60-2E-57. CRIME--GENERAL PENALTIES FOR VIOLATION OF
17 ACT.--A person who willfully violates, attempts to violate or
18 conspires to violate any of the provisions of the Gaming
19 Control and Horse Racing Act specifying prohibited acts, the
20 classification of which is not specifically stated in that act,
21 is guilty of a fourth degree felony and shall be sentenced
22 pursuant to the provisions of Section 31-18-15 NMSA 1978."

23 **SECTION 58.** Section 60-2E-58 NMSA 1978 (being Laws 1997,
24 Chapter 190, Section 60) is amended to read:

25 "60-2E-58. DETENTION AND QUESTIONING OF A PERSON

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1 SUSPECTED OF VIOLATING ACT--LIMITATIONS ON LIABILITY--POSTING
2 OF NOTICE.--

3 A. A gaming operator licensee, racetrack gaming
4 operator licensee or racetrack operator licensee or its
5 officers, employees or agents may question a person in its
6 gaming establishment or horse racetrack suspected of violating
7 [~~any of~~] the provisions of the Gaming Control and Horse Racing
8 Act. No gaming operator licensee, racetrack gaming operator
9 licensee or racetrack operator licensee or any of its officers,
10 employees or agents is criminally or civilly liable:

- 11 (1) on account of any such questioning; or
 - 12 (2) for reporting to the board or law
- 13 enforcement authorities the person suspected of the violation.

14 B. A gaming operator licensee, racetrack gaming
15 operator licensee or racetrack operator licensee or any of its
16 officers, employees or agents who has reasonable cause for
17 believing that there has been a violation of the Gaming Control
18 and Horse Racing Act in the gaming establishment or horse
19 racetrack by a person may detain that person in the gaming
20 establishment or horse racetrack in a reasonable manner and for
21 a reasonable length of time. Such a detention does not render
22 the [~~gaming operator~~] licensee or [~~his~~] the licensee's
23 officers, employees or agents criminally or civilly liable
24 unless it is established by clear and convincing evidence
25 detention was unreasonable under the circumstances.

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1 C. No gaming operator licensee, racetrack gaming
2 operator licensee or racetrack operator licensee or its
3 officers, employees or agents are entitled to the immunity from
4 liability provided for in Subsection B of this section unless
5 there is displayed in a conspicuous place in the gaming
6 establishment or horse racetrack a notice in boldface type
7 clearly legible and in substantially this form:

8 "Any gaming operator licensee, racetrack gaming
9 operator licensee or racetrack operator licensee or
10 any of [~~his~~] the licensee's officers, employees or
11 agents who have reasonable cause for believing that
12 [~~any~~] a person has violated [~~any~~] a provision of the
13 Gaming Control and Horse Racing Act prohibiting
14 cheating in gaming and horse racing may detain that
15 person in the establishment."."

16 SECTION 59. A new section of the Gaming Control and Horse
17 Racing Act is enacted to read:

18 "[NEW MATERIAL] BREEDERS' AWARDS.--

19 A. The New Mexico horse breeders' association shall
20 create a fund to pay horse breeders of New Mexico-bred horses
21 merit and incentive awards.

22 B. A racetrack gaming operator licensee shall pay
23 into a fund created by the New Mexico horse breeders'
24 association an amount equal to ten percent of the first money
25 of a purse won, except for stakes-race purses, at a horse race

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1 in New Mexico by a horse registered with the New Mexico horse
2 breeders' association as a New Mexico-bred horse. From
3 stakes-race purses, a racetrack gaming operator licensee shall
4 pay into the fund created by the New Mexico horse breeders'
5 association an amount equal to ten percent of the added money.

6 C. The money deposited with the New Mexico horse
7 breeders' association by a racetrack gaming operator licensee
8 pursuant to Subsection B of this section shall be paid weekly
9 to the owner of the dam of the horse at the time that the
10 animal was foaled upon certification of the board and the New
11 Mexico horse breeders' association.

12 D. In addition to the money distributed pursuant to
13 Subsection B of this section, the New Mexico horse breeders'
14 association shall distribute the money allocated to the New
15 Mexico horse breeders' association pursuant to Section 43 of
16 this 2011 act in the following manner and pursuant to rules
17 adopted by the board:

18 (1) forty-five percent of the money to the
19 owners at the time the winners were foaled of the dams of the
20 first-place winners;

21 (2) seven percent of the money to the owners
22 at the time the winners were foaled of the studs that sired the
23 first-place winners;

24 (3) no more than eight percent of the money to
25 be retained by the New Mexico horse breeders' association for

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1 the purpose of administering the distribution program set forth
2 in this section; and

3 (4) the remaining money to be divided among
4 the first-, second- and third-place finishers during each race
5 meet; provided that the first-, second- and third-place
6 finishers are registered as New Mexico-bred horses with the New
7 Mexico horse breeders' association."

8 SECTION 60. A new section of the Gaming Control and Horse
9 Racing Act is enacted to read:

10 "[NEW MATERIAL] INABILITY TO RECEIVE OR ADMINISTER
11 DISTRIBUTIONS--NEW MEXICO HORSE BREEDERS' ASSOCIATION--NEW
12 MEXICO HORSEMEN'S ASSOCIATION--BOARD AUTHORITY--NEW MEXICO-BRED
13 HORSE REGISTRY.--

14 A. In the event that money allocated to the New
15 Mexico horse breeders' association pursuant to Section 43 of
16 this 2011 act cannot be received or administered by the New
17 Mexico horse breeders' association, the board or another
18 organization designated by the board and under the absolute
19 control of the board shall receive and administer the money
20 that is allocated to be distributed to the horse breeders'
21 association pursuant to Section 59 of this 2011 act. If the
22 board or its designee organization is required to receive,
23 administer and distribute money on behalf of the New Mexico
24 horse breeders' association, the maximum percentage of
25 retainage from Paragraph (3) of Subsection D of Section 59 of

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1 this 2011 act shall be distributed by the board to the New
2 Mexico horse breeders' association as a fee to certify the dam
3 and stud of New Mexico-bred horses from the registry maintained
4 by the New Mexico horse breeders' association.

5 B. In the event that money allocated to the New
6 Mexico horsemen's association pursuant to the Gaming Control
7 and Horse Racing Act cannot be received or administered by the
8 New Mexico horsemen's association, the board or another
9 organization designated by the board and under the absolute
10 control of the board shall receive and administer the money
11 that is allocated by Section 43 of this 2011 act to the New
12 Mexico horsemen's association and distribute the money as
13 required by Section 43 of this 2011 act."

14 SECTION 61. A new section of the Tax Administration Act
15 is enacted to read:

16 "[NEW MATERIAL] DISTRIBUTIONS--DAILY HORSE RACING TAXES--
17 MUNICIPAL SHARES.--The following distributions shall be made
18 pursuant to the provisions of Section 7-1-6.1 NMSA 1978 from
19 the following amounts transferred to the department from the
20 racing suspense account:

21 A. one hundred fifty dollars (\$150) of the daily
22 pari-mutuel excise tax imposed by Section 36 of this 2011 act
23 remitted by a class A racetrack gaming operator licensee shall
24 be distributed to the treasury of the municipality in which the
25 class A racetrack gaming operator licensee's horse racetrack is

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1 located if the class A racetrack gaming operator licensee's
2 racetrack is located in an incorporated municipality with a
3 population according to the most recent federal decennial
4 census that is either:

5 (1) less than six thousand persons if located
6 in a county with a population of more than ten thousand but
7 less than fifteen thousand persons; or

8 (2) more than eight thousand persons but less
9 than ten thousand persons if located in a county with a
10 population of more than one hundred thousand persons but less
11 than one hundred fifty thousand persons; and

12 B. the balance of the daily racing tax imposed by
13 Section 37 of this 2011 act after deductions pursuant to
14 Subsection B of that section are taken shall be distributed to
15 the treasury of a municipality in which a horse racetrack is
16 located that is eligible for distributions pursuant to Section
17 37 of this 2011 act."

18 SECTION 62. A new section of the Tax Administration Act
19 is enacted to read:

20 "[NEW MATERIAL] RACING SUSPENSE ACCOUNT--GAMING CONTROL
21 BOARD ACCESS TO INFORMATION.--The department shall provide the
22 gaming control board with monthly reports on the deposits,
23 balances, refunds and transfers from the racing suspense
24 account and shall provide additional information about the
25 account upon request by the gaming control board. Information

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1 about the account may be disclosed fully to the gaming control
2 board, including deposits attributed to specific horse
3 racetracks."

4 SECTION 63. TEMPORARY PROVISION--TRANSFERS--STATUTORY
5 REFERENCES.--

6 A. On the effective date of this act, all
7 functions, appropriations, money, records, files, furniture,
8 equipment, supplies and other property of the state racing
9 commission are transferred to the gaming control board.

10 B. On the effective date of this act, all
11 contractual obligations of the state racing commission shall be
12 binding on the gaming control board.

13 C. On the effective date of this act, all
14 references in law to the state racing commission shall be
15 deemed to be references to the gaming control board.

16 SECTION 64. REPEAL.--Sections 60-1A-1 through 60-1A-30
17 NMSA 1978 (being Laws 2007, Chapter 39, Sections 1 through 29
18 and 33) are repealed.

19 SECTION 65. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2011.