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SENATE BILL 759

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

JOHN ARTHUR SMITH

AN ACT

RELATING TO GAMING; ENACTING THE GAMING CONTROL ACT; AUTHORIZING LIMITED MACHINE GAMING; PROVIDING FOR LICENSING AND REGULATION OF THE PERMITTED ACTIVITIES; PROVIDING FOR FEES AND A TAX; REQUIRING LOCAL OPTION FOR CERTAIN MACHINE GAMING; PROVIDING FOR DISTRIBUTION OF CERTAIN REVENUE; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1 through 63 of this act may be cited as the "Gaming Control Act".

Section 2. [NEW MATERIAL] POLICY. --It is the state's policy on gaming that:

- A. limited gaming activities should be allowed in the state if those activities are strictly regulated to ensure

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1 honest and competitive gaming that is free from criminal and
2 corruptive elements and influences; and

3 B. the holder of any license issued by the state in
4 connection with the regulation of gaming activities has a
5 revocable privilege only and has no property right or vested
6 interest in the license.

7 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
8 Gaming Control Act:

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

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

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

16 (2) is involved in gaming activities or
17 involved in the ownership of property on which gaming is
18 conducted;

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

23 D. "application" means a request for the issuance of
24 a license or for approval of an act or transaction for which
25 approval is required or allowed pursuant to the provisions of

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1 the Gaming Control Act, but "application" does not include a
2 supplemental form or information that may be required with the
3 application;

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

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

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

10 H. "company" means a corporation, partnership,
11 limited partnership, trust, association, joint stock company,
12 joint venture, limited liability company or other form of
13 business organization that is not a natural person;

14 I. "distributor" means a person who supplies gaming
15 devices to a gaming operator but does not manufacture gaming
16 devices;

17 J. "equity security" means an interest in a company
18 that is evidenced by:

19 (1) voting stock or similar security;

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

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

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

3 K. "executive director" means the chief
4 administrative officer appointed by the board pursuant to
5 Section 7 of the Gambling Control Act;

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

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

16 N. "gaming" means offering a game for play;

17 O. "gaming activity" means any endeavor associated
18 with the manufacture or distribution of gaming devices or the
19 conduct of gaming;

20 P. "gaming device" means associated equipment or a
21 gaming machine and includes a system for processing information
22 that can alter the normal criteria of random selection that
23 affects the operation of a game or determines the outcome of a
24 game; "gaming device" does not include a system or device that
25 affects a game solely by stopping its operation so that the

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1 outcome remains undetermined;

2 Q. "gaming employee" means a person connected
3 directly with a gaming activity; "gaming employee" does not
4 include:

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

8 (2) secretarial or janitorial personnel;

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

10 (4) other nongaming personnel;

11 R. "gaming establishment" means the premises on or
12 in which gaming is conducted;

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

19 T. "gaming operator" means a person who conducts
20 gaming;

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

1 holding company;

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

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

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

11 (2) an insurance company as defined in Section
12 2(a)(17) of the federal Investment Company Act of 1940;

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

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

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

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

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

- 1 X. "intermediary company" means a company that:
2 (1) is a holding company with respect to a
3 company that is an applicant or licensee; and
4 (2) is a subsidiary with respect to any holding
5 company;
- 6 Y. "key executive" means an executive of a licensee
7 having the power to exercise significant influence over
8 decisions concerning any part of the licensed operations of the
9 licensee or whose compensation exceeds an amount established by
10 the board in a regulation;
- 11 Z. "license" means an authorization required by the
12 board for engaging in gaming activities;
- 13 AA. "licensee" means a person to whom a valid
14 license has been issued;
- 15 BB. "liquor establishment" means a person licensed
16 pursuant to Section 60-6A-3 NMSA 1978 to dispense alcoholic
17 beverages;
- 18 CC. "manufacturer" means a person who manufactures,
19 fabricates, assembles, produces, programs or makes modifications
20 to any gaming device for use or play in New Mexico or for sale,
21 lease or distribution outside New Mexico from any location
22 within New Mexico;
- 23 DD. "net take" means the total of the following,
24 less the total of all cash paid out as losses to winning patrons
25 and those amounts paid to purchase annuities to fund losses paid

1 to winning patrons over several years by independent
2 administrators:

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

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

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

9 EE. "nonprofit organization" means an organization
10 that:

11 (1) is described in Section 501(c)(8), (10),
12 (19) or (23) of the federal Internal Revenue Code of 1986 and
13 that is exempt from federal income taxation pursuant to Section
14 501(a) of that code;

15 (2) has been issued a license pursuant to
16 Section 60-6A-5 NMSA 1978 but does not have gaming as its
17 primary activity; and

18 (3) has been in continuous existence since
19 before January 1, 1994;

20 FF. "person" means a legal entity;

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

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

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

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

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

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

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

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

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

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

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

5 Section 4. [NEW MATERIAL] LIMITED GAMING ACTIVITY
6 PERMITTED. --Gaming activity is permitted in New Mexico only if
7 it is conducted in compliance with and pursuant to:

- 8 A. the Gaming Control Act; or
9 B. a state or federal law other than the Gaming
10 Control Act that expressly permits the activity or exempts it
11 from the application of the state criminal law, or both.

12 Section 5. [NEW MATERIAL] GAMING CONTROL BOARD
13 CREATED. --

- 14 A. The "gaming control board" is created and
15 consists of five members appointed by the governor with the
16 advice and consent of the senate. All members of the board
17 shall be residents of New Mexico and citizens of the United
18 States. At least one member of the board shall have a minimum
19 of five years of previous employment in a supervisory and
20 administrative position in a law enforcement agency; at least
21 one member of the board shall be a certified public accountant
22 in New Mexico who has had at least five years of experience in
23 public accountancy; at least one member of the board shall be
24 an attorney who has been admitted to practice before the
25 supreme court of New Mexico; and at least one member of the

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1 board shall have at least five years of previous employment in
2 a top-level supervisory and administrative position in a
3 governmental gaming regulatory agency.

4 B. The members of the board shall be appointed for
5 terms of five years, except, of the members who are first
6 appointed, one member with law enforcement experience and one
7 member who is a certified public accountant shall be appointed
8 for terms of five years; one member who is an attorney and one
9 member who has gaming regulatory experience shall be appointed
10 for terms of four years; and the fifth member shall be
11 appointed for a term of three years. Thereafter, all members
12 shall be appointed for terms of five years. No person shall
13 serve as a board member for more than two consecutive terms or
14 ten years total.

15 C. No person appointed to the board may be
16 employed in any other capacity or shall in any manner receive
17 compensation for services rendered to any person or entity
18 other than the board while a member of the board.

19 D. A vacancy on the board shall be filled within
20 thirty days by the governor with the advice and consent of the
21 senate for the unexpired portion of the term in which the
22 vacancy occurs. A person appointed to fill a vacancy shall
23 meet all qualification requirements of the office established
24 in this section.

25 E. The governor shall choose a chairman annually

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1 from the board's membership.

2 F. No more than three members of the board shall
3 be from the same political party.

4 G. The members of the board shall be full-time
5 state officials and shall receive a salary set by the
6 governor.

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

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

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

24 (3) complete disclosure of any equity
25 interest held by the prospective board member or a member of

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1 his immediate family in a business connected with gaming; and

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

4 I. No person may be appointed or confirmed as a
5 member of the board if that person or member of his immediate
6 family holds an equity interest in a business connected with
7 gaming.

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

16 (1) knowingly misrepresented or omitted a
17 material fact required in a disclosure statement;

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

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

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

4 K. The senate may in its discretion not confirm a
5 prospective board member.

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

10 Section 6. [NEW MATERIAL] BOARD- - MEETINGS- - QUORUM -
11 RECORDS. - -

12 A. A majority of the qualified membership of the
13 board then in office constitutes a quorum. No action may be
14 taken by the board unless at least three members concur.

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

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

23 D. All proceedings of the board shall be recorded
24 by audiotape or other equivalent verbatim audio recording
25 device.

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1 E. The chairman of the board, the executive
2 director, the security director or a majority of the members
3 of the board then in office may call a special meeting of the
4 board upon at least five days' prior written notice to all
5 members of the board, the executive director and the security
6 director.

7 Section 7. [NEW MATERIAL] BOARD'S POWERS AND DUTIES. --

8 A. The board shall implement the state's policy on
9 gaming consistent with the provisions of the Gaming Control
10 Act. It has the duty to fulfill all responsibilities assigned
11 to it pursuant to that act, and it has all authority necessary
12 to carry out those responsibilities. It may delegate
13 authority to the executive director and the security director,
14 respectively, but it retains accountability. The board is an
15 adjunct agency.

16 B. The board shall:

17 (1) employ the executive director and the
18 security director;

19 (2) create a separate organizational unit to
20 be managed by the security director and which shall carry out
21 under his direction all security activities specified by the
22 board;

23 (3) 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 Act;

1 (4) develop, adopt and promulgate all
2 regulations necessary to implement and administer the
3 provisions of the Gaming Control Act;

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

8 (6) meet at least once each month; and

9 (7) prepare and submit an annual report in
10 December of each year to the governor and the legislature,
11 covering activities of the board in the most recently
12 completed fiscal year, a summary of gaming activities in the
13 state and any recommended changes in or additions to the laws
14 relating to gaming in the state.

15 C. The board may:

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

22 (2) conduct investigations;

23 (3) subpoena persons and documents to compel
24 access to or the production of documents and records,
25 including books and memoranda, in the custody or control of

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1 any licensee;

2 (4) compel the appearance of employees of a
3 licensee or persons for the purpose of ascertaining compliance
4 with provisions of the Gaming Control Act or a regulation
5 adopted pursuant to its provisions;

6 (5) administer oaths and take depositions to
7 the same extent and subject to the same limitations as would
8 apply if the deposition were pursuant to discovery rules in a
9 civil action in the district court;

10 (6) sue and be sued subject to the
11 limitations of the Tort Claims Act;

12 (7) contract for the provision of goods and
13 services necessary to carry out its responsibilities;

14 (8) conduct audits of applicants, licensees
15 and persons affiliated with licensees;

16 (9) inspect, examine, photocopy and audit
17 all documents and records of an applicant or licensee relevant
18 to his gaming activities in the presence of the applicant or
19 licensee or his agent;

20 (10) require verification of income and all
21 other matters pertinent to the gaming activities of an
22 applicant or licensee affecting the enforcement of any
23 provision of the Gaming Control Act;

24 (11) inspect all places where gaming
25 activities are conducted and inspect all property connected

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1 with gaming in those places;

2 (12) summarily seize, remove and impound
3 from places inspected any gaming devices, property connected
4 with gaming, documents or records for the purpose of
5 examination or inspection;

6 (13) inspect, examine, photocopy and audit
7 all documents and records of any affiliate of an applicant or
8 licensee who the board knows or reasonably suspects is
9 involved in the financing, operation or management of the
10 applicant or licensee. The inspection, examination,
11 photocopying and audit shall be in the presence of a
12 representative of the affiliate or its agent when practicable;
13 and

14 (14) except for the powers specified in
15 Paragraphs (1) and (4) of this subsection, carry out all or
16 part of the foregoing powers and activities through the
17 executive director or the security director.

18 Section 8. [NEW MATERIAL] BOARD REGULATIONS--
19 DISCRETIONARY REGULATIONS-- PROCEDURE-- REQUIRED PROVISIONS. --

20 A. The board may adopt any regulation:

21 (1) consistent with the provisions of the
22 Gaming Control Act; and

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

25 B. No regulation shall be adopted, amended or

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1 repealed without a public hearing on the proposed action
2 before the board or a hearing officer designated by it. The
3 public hearing shall be held in Santa Fe. Notice of the
4 subject matter of the regulation, the action proposed to be
5 taken, the time and place of the hearing, the manner in which
6 interested persons may present their views and the method by
7 which copies of the proposed regulation, amendment or repeal
8 may be obtained shall be published once at least thirty days
9 prior to the hearing date in a newspaper of general
10 circulation and mailed at least thirty days prior to the
11 hearing date to all persons who have made a written request
12 for advance notice of hearing. All regulations and actions
13 taken on regulations shall be filed in accordance with the
14 State Rules Act.

15 C. The board shall adopt regulations:

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

18 (2) prescribing the information to be
19 furnished by an applicant or licensee concerning his
20 antecedents, immediate family, habits, character, associates,
21 criminal record, business activities and financial affairs,
22 past or present;

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

25 (4) prescribing the manner and method of

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1 collection and payment of fees;

2 (5) prescribing the manner and method of the
3 issuance of licenses, permits, registrations, certificates and
4 other actions of the board not elsewhere prescribed in the
5 Gaming Control Act;

6 (6) defining the area, games and gaming
7 devices allowed and the methods of operation of the games and
8 gaming devices for authorized gaming;

9 (7) prescribing under what conditions the
10 nonpayment of winnings is grounds for suspension or revocation
11 of a license of a gaming operator;

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

14 (9) prescribing accounting procedures,
15 security, collection and verification procedures required of
16 licensees and matters regarding financial responsibility of
17 licensees;

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

20 (11) restricting access to confidential
21 information obtained pursuant to the provisions of the Gaming
22 Control Act and ensuring that the confidentiality of that
23 information is maintained and protected;

24 (12) prescribing financial reporting and
25 internal control requirements for licensees;

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

4 (14) prescribing the frequency of and the
5 matters to be contained in audits of and periodic financial
6 reports from a gaming operator licensee consistent with
7 standards prescribed by the board;

8 (15) prescribing the procedures to be
9 followed by a gaming operator licensee for the exclusion of
10 persons from gaming establishments;

11 (16) establishing criteria and conditions
12 for the operation of progressive systems;

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

18 (18) establishing an applicant fee schedule
19 for processing applications that is based on costs of the
20 application review incurred by the board whether directly or
21 through payment by the board for costs charged for
22 investigations of applicants by state departments and agencies
23 other than the board, which regulation shall set a maximum fee
24 of one hundred thousand dollars (\$100,000).

25 Section 9. [NEW MATERIAL] EXECUTIVE DIRECTOR-- SECURITY

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1 DIRECTOR-- EMPLOYMENT-- QUALIFICATIONS. --

2 A. The executive director and the security
3 director shall be employed by, report directly to and serve at
4 the pleasure of the board.

5 B. The executive director shall have had at least
6 five years of responsible supervisory administrative
7 experience in a governmental gaming regulatory agency.

8 C. The security director shall have had at least
9 five years of responsible supervisory administrative
10 experience in a law enforcement agency, shall have graduated
11 from a law enforcement academy with a minimum of four hundred
12 hours of basic police training and have at least a bachelor's
13 degree from an accredited post-secondary educational
14 institution.

15 Section 10. [NEW MATERIAL] EXECUTIVE DIRECTOR--
16 SECURITY DIRECTOR-- POWERS-- DUTIES. --

17 A. The executive director shall implement those
18 policies of the board designated by the board as his
19 responsibilities. The security director shall implement those
20 policies of the board designated as his responsibilities.

21 B. The executive director shall employ all
22 personnel who work for the board except those designated as
23 security personnel by the board. The employees employed by
24 the executive director shall be covered employees pursuant to
25 the provisions of the Personnel Act.

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1 C. The security director shall employ those
2 persons designated as security personnel subject to proper
3 certification pursuant to the Law Enforcement Training Act.
4 Security personnel shall be covered employees pursuant to the
5 Personnel Act.

6 D. The executive director shall establish
7 organizational units he determines are appropriate to
8 administer the provisions of the Gaming Control Act.

9 E. The executive director:

10 (1) may delegate authority to subordinates
11 as he deems necessary and appropriate, clearly delineating the
12 delegated authority and the limitations on it, if any;

13 (2) shall take administrative action by
14 issuing orders and instructions consistent with the Gaming
15 Control Act and regulations of the board to assure
16 implementation of and compliance with the provisions of that
17 act and those regulations;

18 (3) may conduct research and studies that
19 will improve the operations of the board and the provision of
20 services to the citizens of the state;

21 (4) may provide courses of instruction and
22 practical training for employees of the board and other
23 persons involved in the activities regulated by the board with
24 the objectives of improving operations of the board and
25 achieving compliance with the law and regulations;

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1 (5) shall prepare an annual budget for the
2 board and submit it to the board for approval; and

3 (6) shall make recommendations to the board
4 of proposed regulations and any legislative changes needed to
5 provide better administration of the Gaming Control Act and
6 fair and efficient regulation of gaming activities in the
7 state.

8 F. The security director shall:

9 (1) conduct background investigations of
10 employees of the board, applicants and other persons as
11 required by the board;

12 (2) prepare an annual budget for the
13 security activities of the board and submit it to the board
14 for approval;

15 (3) conduct internal investigations of the
16 board's operations or contract with the attorney general to
17 conduct investigations of the board after consultation with
18 and approval by a majority of the board members;

19 (4) conduct investigations of gaming
20 activities and licensees necessary to provide for the secure
21 operation of gaming activities in the state and the
22 enforcement of the provisions of the Gaming Control Act and
23 its regulations;

24 (5) take administrative action by issuing
25 orders and instructions required for the security of the board

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1 consistent with the Gaming Control Act and regulations of the
2 board to assure implementation of and compliance with the
3 provisions of that act and those regulations;

4 (6) coordinate and cooperate with the
5 executive director at all times to the extent possible in
6 security matters affecting activities of the board and its
7 personnel; and

8 (7) make recommendations to the board of
9 proposed regulations and any legislative changes needed to
10 make the activities of licensees more secure and to provide
11 more effective and efficient security of the board or the
12 activities licensed pursuant to the provisions of the Gaming
13 Control Act.

14 G. The security director may:

15 (1) delegate authority to subordinates as he
16 deems necessary and appropriate, clearly delineating the
17 delegated authority and the limitations on it, if any; and

18 (2) provide courses of instruction and
19 practical training for employees of the security division and
20 for the security personnel of licensees with the objective of
21 providing effective, efficient and secure operation of the
22 board and gaming activities in the state.

23 Section 11. [NEW MATERIAL] INVESTIGATION OF EXECUTIVE
24 DIRECTOR AND SECURITY DIRECTOR CANDIDATES AND EMPLOYEES. --

25 A. A person who is under consideration in the

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1 final selection process for appointment as the executive
2 director or the security director shall file a disclosure
3 statement pursuant to the requirements of this section, and
4 the board shall not make an appointment of a person as
5 executive director or security director until a background
6 investigation is completed by the department of public safety
7 and a report is made to the board.

8 B. A person who has reached the final selection
9 process for employment by the executive director or security
10 director shall file a disclosure statement pursuant to the
11 requirements of this section if the executive director, the
12 security director or the board has directed the person do so.
13 The person shall not be further considered for employment
14 until a background investigation is completed by the
15 department of public safety and a report is made to the
16 employing authority.

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

22 (1) a full set of fingerprints made by a law
23 enforcement agency on forms supplied by the board;

24 (2) complete information and details with
25 respect to the person's antecedents, habits, immediate family,

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1 character, criminal record, business activities and business
2 associates, covering at least a ten-year period immediately
3 preceding the date of submitting the disclosure statement; and

4 (3) a complete description of any equity
5 interest held in a business connected with the gaming
6 industry.

7 D. In preparing an investigative report, the
8 department of public safety may request and receive criminal
9 history information from the federal bureau of investigation
10 or any other law enforcement agency or organization. The
11 department of public safety shall maintain confidentiality
12 regarding information received from a law enforcement agency
13 that may be imposed by the agency as a condition for providing
14 the information to the department.

15 E. A person required to file a disclosure
16 statement shall provide any assistance or information
17 requested by the department of public safety or the board and
18 shall cooperate in any inquiry or investigation.

19 F. If information required to be included in a
20 disclosure statement changes or if information is added after
21 the statement is filed, the person required to file it shall
22 provide that information in writing to the person requesting
23 the investigation. The supplemental information shall be
24 provided within thirty days after the change or addition.

25 G. The board shall not appoint a person as

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1 executive director or security director, and neither the
2 executive director nor the security director shall employ a
3 person, if the appointing or employing authority has
4 reasonable cause to believe that the person has:

5 (1) knowingly misrepresented or omitted a
6 material fact required in a disclosure statement;

7 (2) been convicted of a felony, a gaming
8 related offense or a crime involving fraud, theft or moral
9 turpitude within ten years immediately preceding the date of
10 submitting a disclosure statement required pursuant to this
11 section;

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

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

18 H. The board, the executive director and the
19 security director may exercise absolute discretion in
20 exercising their respective appointing and employing powers.

21 Section 12. [NEW MATERIAL] CONFLICTS OF INTEREST--
22 BOARD-- EXECUTIVE DIRECTOR. --

23 A. In addition to all other provisions of New
24 Mexico law regarding conflicts of interest of state officials
25 and employees, a member of the board, the executive director,

1 the security director, or a person in the immediate family of
2 or residing in the household of any of the foregoing persons,
3 shall not:

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

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

13 B. If a member of the board, the executive
14 director, the security director, or a person in the immediate
15 family of or residing in the household of any of the foregoing
16 persons, violates a provision of this section, the member of
17 the board, the executive director or the security director
18 shall be removed from office. A board member shall be removed
19 by the governor, and the executive director and the security
20 director shall be removed by the board.

21 Section 13. [NEW MATERIAL] ACTIVITIES REQUIRING
22 LICENSING. --

23 A. A person shall not conduct gaming unless he is
24 licensed as a gaming operator.

25 B. A person shall not sell, supply or distribute

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1 any gaming device or associated equipment for use or play in
2 this state or for use or play outside of this state from a
3 location within this state unless he is licensed as a
4 distributor or manufacturer, but a gaming operator licensee
5 may sell or trade in a gaming device or associated equipment
6 to a gaming operator licensee, distributor licensee or
7 manufacturer licensee.

8 C. A person shall not manufacture, fabricate,
9 assemble, program or make modifications to a gaming device or
10 associated equipment for use or play in this state or for use
11 or play outside of this state from any location within this
12 state unless he is a manufacturer licensee. A manufacturer
13 licensee may sell, supply or distribute only the gaming
14 devices or associated equipment that he manufactures,
15 fabricates, assembles, programs or modifies.

16 D. A gaming operator licensee or a person other
17 than a manufacturer licensee or distributor licensee shall not
18 possess or control a place where there is an unlicensed gaming
19 machine. Any unlicensed gaming machine, except one in the
20 possession of a licensee while awaiting transfer to a gaming
21 operator licensee for licensure of the machine, is subject to
22 forfeiture and confiscation by any law enforcement agency or
23 peace officer.

24 E. A person shall not service or repair a gaming
25 device or associated equipment unless he is licensed as a

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1 manufacturer or employed by a manufacturer licensee.

2 F. A person shall not engage in any activity for
3 which the board requires a license or permit without obtaining
4 the license or permit.

5 G. Except as provided in Subsection B of this
6 section, a person shall not purchase, lease or acquire
7 possession of a gaming device or associated equipment except
8 from a licensed distributor or manufacturer.

9 Section 14. [NEW MATERIAL] LICENSURE--APPLICATION.--

10 A. The board shall establish and issue the
11 following categories of licenses:

- 12 (1) manufacturer;
- 13 (2) distributor;
- 14 (3) gaming operator; and
- 15 (4) gaming machine.

16 B. The board shall issue certifications of
17 findings of suitability for key executives and other persons
18 for whom certification is required.

19 C. The board shall issue work permits for gaming
20 employees.

21 D. A licensee shall not be issued more than one
22 type of license, but this provision does not prohibit a
23 licensee from owning, leasing, acquiring or having in his
24 possession licensed gaming machines if that activity is
25 otherwise allowed by the provisions of the Gaming Control Act.

1 A licensee shall not own a majority interest in, manage or
2 otherwise control a holder of another type of license issued
3 pursuant to the provisions of that act.

4 E. Applicants shall apply on forms provided by the
5 board and furnish all information requested by the board.
6 Submission of an application constitutes consent to a credit
7 check of the applicant and all persons having a substantial
8 interest in the applicant and any other background
9 investigations required pursuant to the Gaming Control Act or
10 deemed necessary by the board.

11 F. All licenses issued by the board pursuant to
12 the provisions of this section shall be reviewed for renewal
13 annually unless revoked, suspended, canceled or terminated.

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

15 H. The application for a license shall include:

16 (1) the name of the applicant;

17 (2) the location of the proposed operation;

18 (3) the gaming devices to be operated,
19 manufactured, distributed or serviced;

20 (4) the names of all persons having a direct
21 or indirect interest in the business of the applicant and the
22 nature of such interest; and

23 (5) such other information and details as
24 the board may require.

25 I. The board shall furnish to the applicant

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1 supplemental forms that the applicant shall complete and file
2 with the application. Such supplemental forms shall require
3 complete information and details with respect to the
4 applicant's antecedents, habits, immediate family, character,
5 criminal record, business activities, financial affairs and
6 business associates, covering at least a ten-year period
7 immediately preceding the date of filing of the application.

8 Section 15. [NEW MATERIAL] LICENSE, CERTIFICATION AND
9 WORK PERMIT FEES. --

10 A. License and other fees shall be established by
11 board regulation but shall not exceed the following amounts:

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

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

18 (3) gaming operator's license for a
19 racetrack, fifty thousand dollars (\$50,000) for the initial
20 license and ten thousand dollars (\$10,000) for annual renewal;

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

25 (5) gaming operator's license for a liquor

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1 establishment, one hundred fifty dollars (\$150) for the
2 initial license and twenty-five dollars (\$25.00) for annual
3 renewal;

4 (6) for each separate gaming machine
5 licensed to a person holding an operator's license, five
6 hundred dollars (\$500) for the initial license and one hundred
7 dollars (\$100) for annual renewal; and

8 (7) work permit, one hundred dollars (\$100)
9 annually.

10 B. The board shall establish the fee for
11 certifications or other actions by regulation, but no fee
12 established by the board shall exceed one thousand dollars
13 (\$1,000), except for fees established pursuant to Paragraph
14 (18) of Subsection C of Section 8 of the Gaming Control Act.

15 C. All license, certification or work permit fees
16 shall be paid to the board at the time and in the manner
17 established by regulations of the board.

18 Section 16. [NEW MATERIAL] ACTION BY BOARD ON
19 APPLICATIONS. --

20 A. A person that the board determines is qualified
21 to receive a license pursuant to the provisions of the Gaming
22 Control Act may be issued a license. The burden of proving
23 qualifications is on the applicant.

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

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

3 (2) a person whose prior activities,
4 criminal record, reputation, habits and associations do not
5 pose a threat to the public interest or to the effective
6 regulation and control of gaming or create or enhance the
7 dangers of unsuitable, unfair or illegal practices, methods
8 and activities in the conduct of gaming or the carrying on of
9 the business and financial arrangements incidental thereto;
10 and

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

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

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

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

22 (3) the applicant is sufficiently
23 capitalized under standards set by the board to conduct the
24 business covered by the license.

25 D. An application to receive a license,

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1 certification or work permit constitutes a request for a
2 determination of the applicant's general moral character,
3 integrity and ability to participate or engage in or be
4 associated with gaming. Any written or oral statement made in
5 the course of an official proceeding of the board or by a
6 witness testifying under oath that is relevant to the purpose
7 of the proceeding is absolutely privileged and does not impose
8 liability for defamation or constitute a ground for recovery
9 in any civil action.

10 E. The board shall not issue a license or
11 certification to an applicant who has been denied a license or
12 certification in this state or another state, who has had a
13 certification, permit or license issued pursuant to the gaming
14 laws of a state or the United States permanently suspended or
15 revoked for cause or who is currently under suspension or
16 subject to any other limiting action in this state or another
17 state involving gaming activities or licensure for gaming
18 activities.

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
22 and 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 17. [NEW MATERIAL] INVESTIGATION FOR LICENSES,
14 CERTIFICATIONS AND PERMITS. --The board shall conduct an
15 investigation of the applicant within thirty days after an
16 application is filed and supplemental information that the
17 board may require is received.

18 Section 18. [NEW MATERIAL] ELIGIBILITY REQUIREMENTS
19 FOR COMPANIES. --In order to be eligible to receive a license,
20 a company shall:

21 A. be incorporated or otherwise organized and in
22 good standing in this state or incorporated or otherwise
23 organized in another state, qualified to do business in this
24 state and in good standing in this state and in the state of
25 incorporation;

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1 B. comply with all of the requirements of the laws
2 of this state pertaining to the company;

3 C. maintain a ledger in the principal office of
4 the company in this state, which shall:

5 (1) at all times reflect the ownership
6 according to company records of every class of security issued
7 by the company; and

8 (2) be available for inspection by the board
9 at all reasonable times without notice; and

10 D. file notice of all changes of ownership of all
11 classes of securities issued by the company with the board
12 within thirty days of the change.

13 Section 19. [NEW MATERIAL] REGISTRATION WITH BOARD BY
14 COMPANY APPLICANTS--REQUIRED INFORMATION.--A company applicant
15 shall provide the following information to the board on forms
16 provided by the board:

17 A. the organization, financial structure and
18 nature of the business to be operated, including the names and
19 personal histories of all officers, directors and key
20 executives;

21 B. the rights and privileges acquired by the
22 holders of different classes of authorized securities;

23 C. the terms and conditions of all outstanding
24 loans, mortgages, trust deeds, pledges or any other
25 indebtedness or security interest evidenced by a security

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

5 D. remuneration to persons, other than directors,
6 officers and key executives, exceeding fifty thousand dollars
7 (\$50,000) per year;

8 E. bonus and profit-sharing arrangements within
9 the company;

10 F. management and service contracts pertaining to
11 the proposed gaming activity in this state;

12 G. balance sheets and profit and loss statements
13 for at least the three preceding fiscal years, or, if the
14 company has not been in business for a period of three years,
15 balance sheets and profit and loss statements from the time of
16 its commencement of business operations and projected for
17 three years from the time of its commencement of business
18 operations. All balance sheets and profit and loss statements
19 shall be certified by independent certified public
20 accountants; and

21 H. any further financial data that the board deems
22 necessary or appropriate.

23 Section 20. [NEW MATERIAL] INDIVIDUAL CERTIFICATION OF
24 OFFICERS, DIRECTORS AND OTHER PERSONS. --An officer, director,
25 equity security holder of five percent or more, partner,

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

16 Section 21. [NEW MATERIAL] REQUIREMENTS IF COMPANY IS
17 OR BECOMES A SUBSIDIARY--INVESTIGATIONS--RESTRICTIONS ON
18 UNSUITABLE PERSONS--OTHER REQUIREMENTS.--

19 A. If the company applicant or licensee is or
20 becomes a subsidiary, each nonpublicly traded holding company
21 and intermediary company with respect to the subsidiary
22 company shall:

23 (1) qualify to do business in New Mexico;

24 and

25 (2) register with the board and furnish to

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1 the board the following information:

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

5 (b) the names of all company officers
6 and directors within thirty days of their appointment or
7 election;

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

10 (d) the terms, position, rights and
11 privileges of the different classes of its outstanding
12 securities;

13 (e) the terms on which its securities
14 are to be, and during the preceding three years have been,
15 offered;

16 (f) the holder of and the terms and
17 conditions of all outstanding loans, mortgages, trust deeds,
18 pledges or any other indebtedness or security interest
19 pertaining to the applicant or licensee;

20 (g) the extent of the securities
21 holdings or other interest in the holding company or
22 intermediary company of all officers, directors, key
23 executives, underwriters, partners, principals, trustees or
24 any direct or beneficial owners, and the amount of any
25 remuneration paid them as compensation for their services in

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1 the form of salary, wages, fees or by contract pertaining to
2 the licensee;

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

6 (i) bonus and profit-sharing
7 arrangements within the holding company or intermediary
8 company;

9 (j) management and service contracts
10 pertaining to the licensee or applicant;

11 (k) options existing or to be created
12 in respect to the company's securities or other interests;

13 (l) balance sheets and profit and loss
14 statements, certified by independent certified public
15 accountants, for not more than the three preceding fiscal
16 years, or, if the holding company or intermediary company has
17 not been in existence more than three years, balance sheets
18 and profit and loss statements from the time of its
19 establishment, together with projections for three years from
20 the time of its establishment;

21 (m) any further financial statements
22 necessary or appropriate to assist the board in making its
23 determinations; and

24 (n) a current annual profit and loss
25 statement, a current annual balance sheet and a copy of the

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1 company's most recent federal income tax return within thirty
2 days after the return is filed.

3 B. All holders of five percent or more of the
4 equity security of a holding company or intermediary company
5 shall apply for a finding of suitability.

6 C. The board may in its discretion perform the
7 investigations concerning the officers, directors, key
8 executives, underwriters, security holders, partners,
9 principals, trustees or direct or beneficial owners of any
10 interest in any holding company or intermediary company as it
11 deems necessary, either at the time of initial registration or
12 at any time thereafter.

13 D. If at any time the board finds that any person
14 owning, controlling or holding with power to vote all or any
15 part of any class of securities of, or any interest in, any
16 holding company or intermediary company is unsuitable to be
17 connected with a licensee, it shall so notify both the
18 unsuitable person and the holding company or intermediary
19 company. The unsuitable person shall immediately offer the
20 securities or other interest to the issuing company for
21 purchase. The company shall purchase the securities or
22 interest offered upon the terms and within the time period
23 ordered by the board.

24 E. Beginning on the date when the board serves
25 notice that a person has been found to be unsuitable pursuant

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1 to Subsection D of this section, it is unlawful for the
2 unsuitable person to:

3 (1) receive any dividend or interest upon
4 any securities held in the holding company or intermediary
5 company, or any dividend, payment or distribution of any kind
6 from the holding company or intermediary company;

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

10 (3) receive remuneration in any form from
11 the licensee, or from any holding company or intermediary
12 company with respect to that licensee, for services rendered
13 or otherwise.

14 F. A holding company or intermediary company
15 subject to the provisions of Subsection A of this section
16 shall not make any public offering of any of its equity
17 securities unless such public offering has been approved by
18 the board.

19 G. This section does not apply to a holding
20 company or intermediary company that is a publicly traded
21 corporation, the stock of which is traded on recognized stock
22 exchanges, which shall instead comply with the provisions of
23 Section 22 of the Gaming Control Act.

24 Section 22. [NEW MATERIAL] REGISTRATION AND
25 CERTIFICATION OF PUBLICLY TRADED CORPORATIONS. --

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1 A. If a company applicant or company licensee is
2 or becomes a publicly traded corporation, it shall register
3 with the board and provide the following information:

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

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

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

14 (4) the organization, financial structure
15 and nature of the businesses the publicly traded corporation
16 operates;

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

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

1 company became a publicly traded corporation;

2 (7) the terms and conditions of all
3 outstanding indebtedness and evidence of security pertaining
4 directly or indirectly to the publicly traded corporation;

5 (8) remuneration exceeding fifty thousand
6 dollars (\$50,000) per year paid to persons other than
7 directors, officers and key executives who are actively and
8 directly engaged in the administration or supervision of the
9 gaming activities of the publicly traded corporation;

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

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

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

17 (12) balance sheets and profit and loss
18 statements, certified by independent certified public
19 accountants, for not less than the three fiscal years
20 preceding the date the company became a publicly traded
21 corporation;

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

24 (14) a description of the publicly traded
25 corporation's affiliated companies and intermediary companies

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1 and gaming licenses, permits and approvals held by those
2 entities.

3 B. The board shall consider the following criteria
4 in determining whether to certify a publicly traded
5 corporation:

6 (1) the business history of the publicly
7 traded corporation, including its record of financial
8 stability, integrity and success of its gaming operations in
9 other jurisdictions;

10 (2) the current business activities and
11 interests of the applicant, as well as those of its officers,
12 promoters, lenders and other sources of financing, or any
13 other persons associated with it;

14 (3) the current financial structure of the
15 publicly traded corporation as well as changes that could
16 reasonably be expected to occur to its financial structure as
17 a consequence of its proposed action;

18 (4) the present and proposed compensation
19 arrangements between the publicly traded corporation and its
20 directors, officers, key executives, securities holders,
21 lenders or other sources of financing;

22 (5) the equity investment, commitment or
23 contribution of present or prospective directors, key
24 executives, investors, lenders or other sources of financing;
25 and

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1 (6) the dealings and arrangements,
2 prospective or otherwise, between the publicly traded
3 corporation and its investment bankers, promoters, finders or
4 lenders and other sources of financing.

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

10 Section 23. [NEW MATERIAL] FINDING OF SUITABILITY
11 REQUIRED FOR DIRECTORS, OFFICERS AND KEY EXECUTIVES--REMOVAL
12 FROM POSITION IF FOUND UNSUITABLE--SUSPENSION OF SUITABILITY
13 BY BOARD. --

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

21 B. If any officer, director or key executive of a
22 holding company, intermediary company or publicly traded
23 corporation required to be found suitable pursuant to
24 Subsection A of this section fails to apply for a finding of
25 suitability within thirty days after being requested to do so

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

18 Section 24. [NEW MATERIAL] SUITABILITY OF INDIVIDUALS
19 ACQUIRING BENEFICIAL OWNERSHIP OF VOTING SECURITY IN PUBLICLY
20 TRADED CORPORATION-- REPORT OF ACQUISITION-- APPLICATION--
21 PROHIBITION. --

22 A. Each person who, individually or in association
23 with others, acquires, directly or indirectly, beneficial
24 ownership of five percent or more of any voting securities in
25 a publicly traded corporation registered with the board may be

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1 required to be found suitable if the board has reason to
2 believe that the acquisition of the ownership would otherwise
3 be inconsistent with the declared policy of this state.

4 B. Each person who, individually or in association
5 with others, acquires, directly or indirectly, beneficial
6 ownership of five percent or more of any class of voting
7 securities of a publicly traded corporation certified by the
8 board shall notify the board within ten days after acquiring
9 such interest.

10 C. Each person who, individually or in association
11 with others, acquires, directly or indirectly, the beneficial
12 ownership of more than ten percent of any class of voting
13 securities of a publicly traded corporation certified by the
14 board shall apply to the board for a finding of suitability
15 within thirty days after acquiring such interest.

16 D. Institutional investors that have been exempted
17 from or have received a waiver of suitability requirements
18 pursuant to regulations adopted by the board are not required
19 to comply with this section.

20 E. Any person required by the board or by the
21 provisions of this section to be found suitable shall apply
22 for a finding of suitability within thirty days after the
23 board requests that he do so.

24 F. Any person required by the board or the
25 provisions of this section to be found suitable who

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1 subsequently is found unsuitable by the board shall not hold
2 directly or indirectly the beneficial ownership of any
3 security of a publicly traded corporation that is registered
4 with the board beyond that period of time prescribed by the
5 board.

6 G. The board may, but is not required to, deem a
7 person qualified to hold a license or be found suitable as
8 required by this section if the person currently holds a valid
9 license issued by, or has been found suitable by, gaming
10 regulatory authorities in another jurisdiction, provided that
11 the board finds that the other jurisdiction has conducted a
12 thorough investigation of the applicant and has criteria
13 substantially similar to those of the board to determine when
14 a person is to be found suitable or to obtain a license.

15 Section 25. [NEW MATERIAL] REPORT OF PROPOSED ISSUANCE
16 OR TRANSFER OF SECURITIES--REPORT OF CHANGE IN CORPORATE
17 OFFICERS AND DIRECTORS--APPROVAL OF BOARD. --

18 A. Before a company licensee, other than a
19 publicly traded corporation, may issue or transfer five
20 percent or more of its securities to any person, it shall file
21 a report of its proposed action with the board, which report
22 shall request the approval of the board. The board shall have
23 ninety days within which to approve or deny the request. If
24 the board fails to act in ninety days, the request is deemed
25 approved. If the board denies the request, the company shall

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1 not issue or transfer five percent or more of its securities
2 to the person about whom the request was made.

3 B. A company licensee shall file a report of each
4 change of the corporate officers and directors with the board
5 within thirty days of the change. The board shall have ninety
6 days from the date the report is filed within which to approve
7 or disapprove such change. During the ninety-day period and
8 thereafter, if the board does not disapprove the change, an
9 officer or director is be entitled to exercise all powers of
10 the office to which he was elected or appointed.

11 C. A company licensee shall report to the board in
12 writing any change in company personnel who have been
13 designated as key executives. The report shall be made no
14 later than thirty days after the change.

15 D. The board may require that a company licensee
16 furnish the board with a copy of its federal income tax return
17 within thirty days after the return is filed.

18 Section 26. [NEW MATERIAL] GAMING OPERATOR LICENSEES--
19 GENERAL PROVISIONS-- PLAYER AGE LIMIT-- RULES FOR PLACEMENT. --

20 A. An applicant for licensure as a gaming operator
21 shall submit with the application a plan for assisting in the
22 prevention, education and treatment of compulsive gambling.
23 The plan shall include regular educational training sessions
24 for employees. Plan approval is a condition of issuance of
25 the license.

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1 B. A gaming operator licensee shall be granted a
2 license to operate a specific number of machines at a gaming
3 establishment identified in the license application and shall
4 be granted a license for each gaming machine.

5 C. A gaming operator licensee who desires to
6 change the number of machines in operation at a gaming
7 establishment shall apply to the board for an amendment to his
8 license authorizing a change in the number of machines.

9 D. Gaming machines may be available for play only
10 in an area restricted to persons twenty-one years of age or
11 older.

12 E. A gaming operator licensee shall not have
13 automated teller machines on the premises.

14 F. A gaming operator licensee shall not provide,
15 allow, contract or arrange to provide alcohol or food for no
16 charge or at reduced prices as an incentive or enticement for
17 patrons to game.

18 Section 27. [NEW MATERIAL] GAMING OPERATOR LICENSEES--
19 SPECIAL CONDITIONS FOR RACETRACKS--NUMBER OF GAMING MACHINES--
20 DAYS AND HOURS OF OPERATIONS. --

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

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

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

5 (2) the racetrack fails to maintain a
6 minimum of four live race days a week during its licensed race
7 meet unless otherwise approved by the board.

8 C. A gaming operator licensee that is a racetrack
9 may have an unlimited number of licensed gaming machines, but
10 the number of gaming machines to be located on the licensee's
11 premises shall be specified in the gaming operator's license.

12 D. A gaming operator licensee that is a racetrack
13 shall erect a permanent physical barrier to allow for multiple
14 uses of the premises by persons of all ages. For purposes of
15 this subsection, "permanent physical barrier" means a floor-
16 to-ceiling wall separating the general areas from the
17 restricted areas. The entrance to the area where gaming
18 machines are located shall display a sign that the premises
19 are restricted to persons twenty-one years of age or older.
20 Persons under the age of twenty-one shall not enter the area
21 where gaming machines are located.

22 E. Gaming machines on a racetrack gaming operator
23 licensee's premises may be played only on days when the
24 racetrack conducts live horse races or simulcast races and
25 during times established by regulation of the board, but the

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1 regulations shall provide for a maximum of twelve hours a day.

2 Section 28. [NEW MATERIAL] GAMING OPERATOR LICENSEES--
3 SPECIAL CONDITIONS FOR NONPROFIT ORGANIZATIONS AND LIQUOR
4 ESTABLISHMENTS--NUMBER OF GAMING MACHINES--DAYS AND HOURS OF
5 OPERATIONS.--

6 A. A nonprofit organization or a liquor
7 establishment may be issued a gaming operator's license to
8 operate licensed gaming machines on its premises.

9 B. No more than twenty-five gaming machines may be
10 offered for play on the premises of a nonprofit organization
11 gaming operator licensee. No more than three gaming machines
12 may be offered for play on the premises of a liquor
13 establishment.

14 C. No gaming machine on the premises of a
15 nonprofit organization gaming operator licensee or a liquor
16 establishment gaming operator licensee may award a prize that
17 exceeds one thousand dollars (\$1,000).

18 D. Gaming machines may be played on the premises
19 of a nonprofit organization gaming operator licensee from
20 12:00 noon until 12:00 midnight every day. Gaming machines
21 may be played on the premises of a liquor establishment gaming
22 operator licensee only during the hours that liquor may be
23 sold on the premises.

24 Section 29. [NEW MATERIAL] LICENSING OF MANUFACTURERS OF
25 GAMING DEVICES--EXCEPTION--DISPOSITION OF GAMING DEVICES.--

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

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

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

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

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

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

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

1 is unsuitable. Failure to include that condition in the
2 agreement is not a defense in any action brought pursuant to
3 this section to terminate the agreement.

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

- 8 (1) the board;
 - 9 (2) a laboratory selected by the board; or
 - 10 (3) gaming officials in Nevada or New Jersey
- 11 after January 1, 1990.

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

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

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

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

23 H. In addition to all other fees and charges
24 imposed pursuant to the Gaming Control Act, the board may
25 determine, charge and collect from each manufacturer an

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1 inspection fee, which shall not exceed the actual cost of
2 inspection and investigation.

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

6 Section 30. [NEW MATERIAL] LICENSING OF DISTRIBUTORS
7 OF GAMING DEVICES. --

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

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

13 (1) no new gaming device distributed by the
14 person may be approved;

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

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

23 (4) any association or agreement between the
24 distributor and a gaming operator licensee shall be
25 terminated. An agreement between a distributor licensee and a

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

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

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

14 Section 31. [NEW MATERIAL] SUITABILITY OF CERTAIN
15 PERSONS FURNISHING SERVICES OR PROPERTY OR DOING BUSINESS WITH
16 GAMING OPERATORS-- TERMINATION OF ASSOCIATION. --

17 A. The board may determine the suitability of any
18 person who furnishes services or property to a gaming operator
19 licensee under any arrangement pursuant to which the person
20 receives compensation based on earnings, profits or receipts
21 from gaming. The board may require the person to comply with
22 the requirements of the Gaming Control Act and with the
23 regulations of the board. If the board determines that the
24 person is unsuitable, it may require the arrangement to be
25 terminated.

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1 B. The board may require a person to apply for a
2 finding of suitability to be associated with a gaming operator
3 licensee if the person:

4 (1) does business on the premises of a
5 gaming establishment; or

6 (2) provides any goods or services to a
7 gaming operator licensee for compensation that the board finds
8 to be grossly disproportionate to the value of the goods or
9 services.

10 C. If the board determines that a person is
11 unsuitable to be associated with a gaming operator licensee,
12 the association shall be terminated. Any agreement that
13 entitles a business other than gaming to be conducted on the
14 premises of a gaming establishment, or entitles a person other
15 than a licensee to conduct business with the gaming operator
16 licensee, is subject to termination upon a finding of
17 unsuitability of the person seeking association with a gaming
18 operator licensee. Every agreement shall be deemed to include
19 a provision for its termination without liability on the part
20 of the gaming operator licensee upon a finding by the board of
21 the unsuitability of the person seeking or having an
22 association with the gaming operator licensee. Failure to
23 include that condition in the agreement is not a defense in
24 any action brought pursuant to this section to terminate the
25 agreement. If the application is not presented to the board

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1 within thirty days following demand or the unsuitable
2 association is not terminated, the board may pursue any remedy
3 or combination of remedies provided in the Gaming Control Act.

4 Section 32. [NEW MATERIAL] REASONS FOR INVESTIGATIONS
5 BY BOARD-- COMPLAINT BY BOARD-- BOARD TO APPOINT HEARING
6 EXAMINER-- REVIEW BY BOARD-- ORDER OF BOARD. --

7 A. The board shall make appropriate investigations
8 to:

9 (1) determine whether there has been any
10 violation of the Gaming Control Act or of any regulations
11 adopted pursuant to that act;

12 (2) determine any facts, conditions,
13 practices or matters that it deems necessary or proper to aid
14 in the enforcement of the Gaming Control Act or regulations
15 adopted pursuant to that act;

16 (3) aid in adopting regulations;

17 (4) secure information as a basis for
18 recommending legislation relating to the Gaming Control Act;
19 or

20 (5) determine whether a licensee is able to
21 meet its financial obligations, including all financial
22 obligations imposed by the Gaming Control Act, as they become
23 due.

24 B. If after an investigation the board is
25 satisfied that a license, registration, finding of suitability

1 or prior approval by the board of any transaction for which
2 approval was required by the provisions of the Gaming Control
3 Act should be limited, conditioned, suspended or revoked, or
4 that a fine should be levied, the board shall initiate a
5 hearing by filing a complaint and transmitting a copy of it to
6 the licensee, together with a summary of evidence in its
7 possession bearing on the matter and the transcript of
8 testimony at any investigative hearing conducted by or on
9 behalf of the board. The complaint shall be a written
10 statement of charges that sets forth in ordinary and concise
11 language the acts or omissions with which the respondent is
12 charged. It shall specify the statutes or regulations that
13 the respondent is alleged to have violated but shall not
14 consist merely of charges raised in the language of the
15 statutes or regulations. The summary of the evidence shall be
16 confidential and made available only to the respondent until
17 such time as it is offered into evidence at any public hearing
18 on the matter.

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

21 D. Upon filing the complaint the board shall
22 appoint a hearing examiner to conduct further proceedings.

23 E. The hearing examiner shall conduct proceedings
24 in accordance with the Gaming Control Act and the regulations
25 adopted by the board. At the conclusion of the proceedings,

1 the hearing examiner may recommend that the board take any
2 appropriate action, including revocation, suspension,
3 limitation or conditioning of a license or imposition of a
4 fine not to exceed fifty thousand dollars (\$50,000) for each
5 violation or any combination or all of the foregoing actions.

6 F. The hearing examiner shall prepare a written
7 decision containing his recommendation to the board and shall
8 serve it on all parties. Any respondent who disagrees with
9 the hearing examiner's recommendation may request the board,
10 within ten days of service of the recommendation, to review
11 the recommendation.

12 G. Upon proper request, the board shall review the
13 recommendation. The board may remand the case to the hearing
14 examiner for the presentation of additional evidence upon a
15 showing of good cause why such evidence could not have been
16 presented at the previous hearing.

17 H. The board shall by a majority vote accept,
18 reject or modify the recommendation.

19 I. If the board limits, conditions, suspends or
20 revokes any license or imposes a fine or limits, conditions,
21 suspends or revokes any registration, finding of suitability
22 or prior approval, it shall issue a written order specifying
23 its action.

24 J. The board's order is effective unless and until
25 reversed upon judicial review, except that the board may stay

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1 its order pending a rehearing or judicial review upon such
2 terms and conditions as it deems proper.

3 Section 33. [NEW MATERIAL] EMERGENCY ORDERS OF
4 BOARD.--The board may issue an emergency order for suspension,
5 limitation or conditioning of a license, registration, finding
6 of suitability or work permit or may issue an emergency order
7 requiring a gaming operator licensee to exclude an individual
8 licensee from the premises of the gaming operator licensee's
9 gaming establishment or not to pay an individual licensee any
10 remuneration for services or any profits, income or accruals
11 on his investment in the licensed gaming establishment in the
12 following manner:

13 A. an emergency order may be issued only when the
14 board believes that:

15 (1) a licensee has willfully failed to
16 report, pay or truthfully account for and pay over any fee
17 imposed by the provisions of the Gaming Control Act or
18 willfully attempted in any manner to evade or defeat any fee
19 or payment thereof;

20 (2) a licensee or gaming employee has
21 cheated at a game; or

22 (3) the emergency order is necessary for the
23 immediate preservation of the public peace, health, safety,
24 morals, good order or general welfare;

25 B. the emergency order shall set forth the grounds

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1 upon which it is issued, including a statement of facts
2 constituting the alleged emergency necessitating such action;

3 C. the emergency order is effective immediately
4 upon issuance and service upon the licensee or resident agent
5 of the licensee or gaming employee or, in cases involving
6 registration or findings of suitability, upon issuance and
7 service upon the person involved or resident agent of that
8 person; the emergency order may suspend, limit, condition or
9 take other action in relation to the license of one or more
10 persons in an operation without affecting other individual
11 licensees or the gaming operator licensee. The emergency
12 order remains effective until further order of the board or
13 final disposition of the case; and

14 D. within five days after issuance of an emergency
15 order, the board shall cause a complaint to be filed and
16 served upon the person involved; thereafter, the person
17 against whom the emergency order has been issued and served is
18 entitled to a hearing before the board and to judicial review
19 of the decision and order of the board in accordance with the
20 provisions of the board's regulations.

21 Section 34. [NEW MATERIAL] EXCLUSION OR EJECTION OF
22 CERTAIN PERSONS FROM GAMING ESTABLISHMENTS-- PERSONS
23 INCLUDED. --

24 A. The board shall by regulation provide for the
25 establishment of a list of persons who are to be excluded or

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1 ejected from a gaming establishment. The list may include any
2 person whose presence in the gaming establishment is
3 determined by the board to pose a threat to the public
4 interest or licensed gaming activities.

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

7 (1) prior conviction for a crime that is a
8 felony under state or federal law, a crime involving moral
9 turpitude or a violation of the gaming laws of any
10 jurisdiction;

11 (2) violation or conspiracy to violate the
12 provisions of the Gaming Control Act relating to:

13 (a) the failure to disclose an interest
14 in a gaming activity for which the person must obtain a
15 license; or

16 (b) willful evasion of fees or taxes;
17 (3) notorious or unsavory reputation that
18 would adversely affect public confidence and trust that the
19 gaming industry is free from criminal or corruptive
20 influences; or

21 (4) written order of any other governmental
22 agency in this state or any other state that authorizes the
23 exclusion or ejection of the person from an establishment at
24 which gaming is conducted.

25 C. A gaming operator licensee has the right,

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1 without a list established by the board, to exclude or eject a
2 person from its gaming establishment who poses a threat to the
3 public interest or for any business reason.

4 D. Race, color, creed, national origin or
5 ancestry, age, disability or sex shall not be grounds for
6 placing the name of a person on the list or for exclusion or
7 ejection under Subsection A or C of this section.

8 Section 35. [NEW MATERIAL] INTERNAL CONTROL SYSTEMS. --

9 A. Each gaming operator licensee shall adopt
10 internal control systems that shall include provisions for:

11 (1) safeguarding its assets and revenues,
12 especially the recording of cash and evidences of
13 indebtedness;

14 (2) making and maintaining reliable records,
15 accounts and reports of transactions, operations and events,
16 including reports to the board; and

17 (3) a system by which the amount wagered on
18 each gaming machine and the amount paid out by each gaming
19 machine is recorded on a daily basis, which results may be
20 obtained by the board by appropriate means as described in
21 regulations adopted by the board; all manufacturers are
22 required to have such a system available for gaming operators
23 for the gaming machines that it supplies for use in New
24 Mexico, and all distributors shall make such a system
25 available to gaming operators.

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1 B. The internal control system shall be designed
2 to reasonably ensure that:

3 (1) assets are safeguarded;

4 (2) financial records are accurate and
5 reliable;

6 (3) transactions are performed only in
7 accordance with management's general or specific
8 authorization;

9 (4) transactions are recorded adequately to
10 permit proper reporting of gaming revenue and of fees and
11 taxes and to maintain accountability of assets;

12 (5) access to assets is allowed only in
13 accordance with management's specific authorization;

14 (6) recorded accountability for assets is
15 compared with actual assets at reasonable intervals and
16 appropriate action is taken with respect to any discrepancies;
17 and

18 (7) functions, duties and responsibilities
19 are appropriately segregated and performed in accordance with
20 sound accounting and management practices by competent,
21 qualified personnel.

22 C. A gaming operator licensee and an applicant for
23 a gaming operator's license shall describe, in the manner the
24 board may approve or require, its administrative and
25 accounting procedures in detail in a written system of

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1 internal control. A gaming operator licensee and an applicant
2 for a gaming operator's license shall submit a copy of its
3 written system to the board. Each written system shall
4 include:

5 (1) an organizational chart depicting
6 appropriate segregation of functions and responsibilities;

7 (2) a description of the duties and
8 responsibilities of each position shown on the organizational
9 chart;

10 (3) a detailed, narrative description of the
11 administrative and accounting procedures designed to satisfy
12 the requirements of Subsection A of this section;

13 (4) a written statement signed by the
14 licensee's chief financial officer and either the licensee's
15 chief executive officer or a licensed owner attesting that the
16 system satisfies the requirements of this section;

17 (5) if the written system is submitted by an
18 applicant, a letter from an independent certified public
19 accountant stating that the applicant's written system has
20 been reviewed by the accountant and complies with the
21 requirements of this section; and

22 (6) other items as the board may require.

23 D. The board shall adopt and publish minimum
24 standards for internal control procedures.

25 Section 36. [NEW MATERIAL] GAMING EMPLOYEES--ISSUANCE

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1 OF WORK PERMITS-- REVOCATION OF WORK PERMITS. --

2 A. A person shall not be employed as a gaming
3 employee unless the person holds a valid work permit issued by
4 the board.

5 B. A work permit shall be issued and may be
6 revoked by the board as provided in regulations adopted by the
7 board.

8 C. Any person whose work permit has been denied or
9 revoked may seek judicial review.

10 Section 37. [NEW MATERIAL] AGE REQUIREMENT FOR PATRONS
11 AND GAMING EMPLOYEES. -- A person under the age of twenty-one
12 years shall not:

13 A. play, be allowed to play, place wagers on or
14 collect winnings from, whether personally or through an agent,
15 any game authorized or offered to play pursuant to the Gaming
16 Control Act; or

17 B. be employed as a gaming employee.

18 Section 38. [NEW MATERIAL] CALCULATION OF NET TAKE--
19 CERTAIN EXPENSES NOT DEDUCTIBLE. -- In calculating net take from
20 gaming machines, the actual cost to the licensee of any
21 personal property distributed to a patron as the result of a
22 legitimate wager may be deducted as a loss, except for travel
23 expenses, food, refreshments, lodging or services. For the
24 purposes of this section, "as the result of a legitimate
25 wager" means that the patron must make a wager prior to

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1 receiving the personal property, regardless of whether the
2 receipt of the personal property is dependent on the outcome
3 of the wager.

4 Section 39. [NEW MATERIAL] LIMITATIONS ON TAXES AND
5 LICENSE FEES. -- A political subdivision of the state shall not
6 impose a license fee or tax on any licensee licensed pursuant
7 to the Gaming Control Act except for the imposition of
8 property taxes.

9 Section 40. [NEW MATERIAL] USE OF CHIPS, TOKENS OR
10 LEGAL TENDER REQUIRED FOR ALL GAMING. -- All gaming shall be
11 conducted with chips, tokens or other similar objects approved
12 by the board or with the legal currency of the United States.

13 Section 41. [NEW MATERIAL] COMMUNICATION OR DOCUMENT
14 OF APPLICANT OR LICENSEE ABSOLUTELY PRIVILEGED-- PRIVILEGE NOT
15 WAIVED-- DISCLOSURE OF PRIVILEGED INFORMATION PROHIBITED. --

16 A. Any communication or document of an applicant
17 or licensee is absolutely privileged and does not impose
18 liability for defamation or constitute a ground for recovery
19 in any civil action if it is required by:

20 (1) law or the regulations of the board; or
21 (2) a subpoena issued by the board to be
22 made or transmitted to the board.

23 B. The privilege created pursuant to Subsection A
24 of this section is not waived or lost because the document or
25 communication is disclosed to the board.

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1 C. Notwithstanding the powers granted to the board
2 by the Gaming Control Act, the board:

3 (1) may release or disclose any privileged
4 information, documents or communications provided by an
5 applicant or licensee only with the prior written consent of
6 the applicant or licensee or pursuant to a lawful court order
7 after timely notice of the proceedings has been given to the
8 applicant or licensee;

9 (2) shall maintain all privileged
10 information, documents and communications in a secure place
11 accessible only to members of the board; and

12 (3) shall adopt procedures and regulations
13 to protect the privileged nature of information, documents and
14 communications provided by an applicant or licensee.

15 Section 42. [NEW MATERIAL] MOTION FOR RELEASE OF
16 PRIVILEGED INFORMATION. --An application to a court for an
17 order requiring the board to release any information declared
18 by law to be confidential shall be made only by petition in
19 district court. A hearing shall be held on the petition not
20 less than ten days and not more than twenty days after the
21 date of service of the petition on the board, the attorney
22 general and all persons who may be affected by the entry of
23 that order. A copy of the petition, all papers filed in
24 support of it and a notice of hearing shall be served.

25 Section 43. [NEW MATERIAL] GAMING MACHINE CENTRAL

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1 SYSTEM --The board shall develop and operate a central system
2 into which all licensed gaming machines are connected. The
3 central system shall be capable of:

4 A. monitoring continuously, retrieving and
5 auditing the operations, financial data and program
6 information of the network;

7 B. disabling from operation or play any gaming
8 machine in the network that does not comply with the
9 provisions of the Gaming Control Act or the regulations of the
10 board;

11 C. communicating, through program modifications or
12 other means equally effective, with all gaming machines
13 licensed by the board;

14 D. interacting, reading, communicating and linking
15 with gaming machines from a broad spectrum of manufacturers
16 and associated equipment; and

17 E. providing linkage to each gaming machine in the
18 network at a reasonable and affordable cost to the state and
19 the gaming operator licensee and allowing for program
20 modifications and system updating at a reasonable cost.

21 Section 44. [NEW MATERIAL] MACHINE SPECIFICATIONS. --To
22 be eligible for licensure, each gaming machine shall meet all
23 specifications established by regulations of the board and:

24 A. be unable to be manipulated in a manner that
25 affects the random probability of winning plays or in any

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1 other manner determined by the board to be undesirable;

2 B. have at least one mechanism that accepts coins
3 or currency, but does not accept bills of denominations
4 greater than twenty dollars (\$20.00);

5 C. be capable of having play suspended through the
6 central system by the executive director until he resets the
7 gaming machine;

8 D. house nonresettable mechanical and electronic
9 meters within a readily accessible locked area of the gaming
10 machine that maintain a permanent record of all money inserted
11 into the machine, all cash payouts of winnings, all refunds of
12 winnings, all credits played for additional games and all
13 credits won by players;

14 E. have a printing mechanism capable of printing
15 out, at the request of an the executive director, readings on
16 the electronic meters of the machine;

17 F. be capable of printing a ticket voucher stating
18 the value of a cash prize won by the player at the completion
19 of each game, the date and time of day the game was played in
20 a twenty-four-hour format showing hours and minutes, the
21 machine serial number, the sequential number of the ticket
22 voucher and an encrypted validation number for determining the
23 validity of a winning ticket voucher;

24 G. be capable of being linked to the board's
25 central system for the purpose of being monitored continuously

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1 as required by the board;

2 H. provide for a payback value for each credit
3 wagered, determined over time, of not less than eighty percent
4 or more than ninety-six percent;

5 I. offer only games authorized and examined by the
6 board; and

7 J. display the gaming machine license issued for
8 that machine in an easily accessible place, before and during
9 the time that a machine is available for use.

10 Section 45. [NEW MATERIAL] POSTING OF GAMING MACHINE
11 ODDS. --The odds of winning on each gaming machine shall be
12 posted on or near each gaming machine. The board shall
13 provide the manner in which the odds shall be determined and
14 posted by regulation.

15 Section 46. [NEW MATERIAL] EXAMINATION OF GAMING
16 DEVICES-- COST ALLOCATION. --

17 A. The board shall examine prototypes of gaming
18 devices of manufacturers seeking a license as required.

19 B. The board by regulation shall require a
20 manufacturer to pay the anticipated actual costs of the
21 examination of a gaming device in advance and, after the
22 completion of the examination, shall refund overpayments or
23 charge and collect amounts sufficient to reimburse the board
24 for underpayment of actual costs.

25 C. The board may contract for the examination of

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1 gaming devices to meet the requirements of this section.

2 Section 47. [NEW MATERIAL] GAMING TAX--IMPOSITION--
3 ADMINISTRATION. --

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

7 B. The gaming tax is an amount equal to ten
8 percent of the gross receipts of manufacturer licensees from
9 the sale or other transfer of gaming devices in or into the
10 state; ten percent of the gross receipts of distributor
11 licensees from the distribution of gaming devices in the
12 state; and twenty-five percent of the net take of every gaming
13 operator licensee.

14 C. The gaming tax imposed on a licensee is in lieu
15 of all state and local gross receipts taxes on that portion of
16 the licensee's gross receipts attributable to gaming
17 activities.

18 D. The gaming tax shall be administered and
19 collected by the taxation and revenue department in
20 cooperation with the board. The provisions of the Tax
21 Administration Act apply to the collection and administration
22 of the tax.

23 E. In addition to the gaming tax, a gaming
24 operator licensee that is a racetrack shall pay twenty percent
25 of the net take to purses to be distributed in accordance with

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1 regulations adopted by the state racing commission.

2 Section 48. [NEW MATERIAL] CIVIL ACTIONS TO RESTRAIN
3 VIOLATIONS OF GAMING CONTROL ACT. --

4 A. The attorney general, at the request of the
5 board, may institute a civil action in any court of this state
6 against any person to enjoin a violation of a prohibitory
7 provision of the Gaming Control Act.

8 B. An action brought against a person pursuant to
9 this section shall not preclude a criminal action or
10 administrative proceeding against that person.

11 Section 49. [NEW MATERIAL] TESTIMONIAL IMMUNITY. --

12 A. The board may order a person to answer a
13 question or produce evidence and confer immunity pursuant to
14 this section. If, in the course of an investigation or
15 hearing conducted pursuant to the Gaming Control Act, a person
16 refuses to answer a question or produce evidence on the ground
17 that he will be exposed to criminal prosecution by doing so,
18 then the board may by approval of three members, after the
19 written approval of the attorney general, issue an order to
20 answer or to produce evidence with immunity.

21 B. If a person complies with an order issued
22 pursuant to Subsection A of this section, he shall be immune
23 from having a responsive answer given or responsive evidence
24 produced, or evidence derived from either, used to expose him
25 to criminal prosecution, except that the person may be

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1 prosecuted for any perjury committed in the answer or
2 production of evidence and may also be prosecuted for contempt
3 for failing to act in accordance with the order of the board.
4 An answer given or evidence produced pursuant to the grant of
5 immunity authorized by this section may be used against the
6 person granted immunity in a prosecution of the person for
7 perjury or a proceeding against him for contempt.

8 Section 50. [NEW MATERIAL] CRIME--MANIPULATION OF GAMING
9 DEVICE WITH INTENT TO CHEAT.--A person who manipulates, with the
10 intent to cheat, any component of a gaming device in a manner
11 contrary to the designed and normal operational purpose of the
12 component, including varying the pull of the handle of a slot
13 machine with knowledge that the manipulation affects the outcome
14 of the game or with knowledge of any event that affects the
15 outcome of the game, is guilty of a fourth degree felony and
16 shall be sentenced pursuant to the provisions of Section 31-18-15
17 NMSA 1978.

18 Section 51. [NEW MATERIAL] CRIME--USE OF COUNTERFEIT OR
19 UNAPPROVED TOKENS, CURRENCY OR DEVICES--POSSESSION OF CERTAIN
20 DEVICES, EQUIPMENT, PRODUCTS OR MATERIALS.--

21 A. A person who, in playing any game designed to be
22 played with, to receive or to be operated by tokens approved by
23 the board or by lawful currency of the United States, knowingly
24 uses tokens other than those approved by the board, uses currency
25 that is not lawful currency of the United States or uses currency

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1 not of the same denomination as the currency intended to be used
2 in that game is guilty of a third degree felony and shall be
3 sentenced pursuant to the provisions of Section 31-18-15 NMSA
4 1978.

5 B. A person who knowingly has on his person or in his
6 possession within a gaming establishment any device intended to
7 be used by him to violate the provisions of the Gaming Control
8 Act is guilty of a third degree felony and shall be sentenced
9 pursuant to the provisions of Section 31-18-15 NMSA 1978.

10 C. A person, other than a duly authorized employee of
11 a gaming operator acting in furtherance of his employment within
12 a gaming establishment, who knowingly has on his person or in his
13 possession within a gaming establishment any key or device known
14 by him to have been designed for the purpose of and suitable for
15 opening, entering or affecting the operation of any game, dropbox
16 or any electronic or mechanical device connected to the game or
17 dropbox or for removing money or other contents from them is
18 guilty of a third degree felony and shall be sentenced pursuant
19 to the provisions of Section 31-18-15 NMSA 1978.

20 D. A person who knowingly and with intent to use them
21 for cheating has on his person or in his possession any
22 paraphernalia for manufacturing slugs is guilty of a third degree
23 felony and shall be sentenced pursuant to the provisions of
24 Section 31-18-15 NMSA 1978. As used in this subsection,
25 "paraphernalia for manufacturing slugs" means the equipment,

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1 products and materials that are intended for use or designed for
2 use in manufacturing, producing, fabricating, preparing, testing,
3 analyzing, packaging, storing or concealing a counterfeit
4 facsimile of tokens approved by the board or a lawful coin of the
5 United States, the use of which is unlawful pursuant to the
6 Gaming Control Act. The term includes:

- 7 (1) lead or lead alloy;
- 8 (2) molds, forms or similar equipment capable
9 of producing a likeness of a gaming token or coin;
- 10 (3) melting pots or other receptacles;
- 11 (4) torches; and
- 12 (5) tongs, trimming tools or other similar
13 equipment.

14 E. Possession of more than two items of the
15 equipment, products or material described in Subsection D of this
16 section permits a rebuttable inference that the possessor
17 intended to use them for cheating.

18 Section 52. [NEW MATERIAL] CRIME--CHEATING. -- A person who
19 knowingly cheats at any game is guilty of a fourth degree felony
20 and upon conviction shall be sentenced pursuant to the provisions
21 of Section 31-18-15 NMSA 1978.

22 Section 53. [NEW MATERIAL] CRIME--POSSESSION OF GAMING
23 DEVICE MANUFACTURED, SOLD OR DISTRIBUTED IN VIOLATION OF LAW. -- A
24 person who knowingly possesses any gaming device that has been
25 manufactured, sold or distributed in violation of the Gaming

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1 Control Act is guilty of a fourth degree felony and shall be
2 sentenced pursuant to the provisions of Section 31-18-15 NMSA
3 1978.

4 Section 54. [NEW MATERIAL] CRIME--REPORTING AND RECORD
5 VIOLATIONS--PENALTY.--A person who, in an application, book or
6 record required to be maintained by the Gaming Control Act or by
7 a regulation adopted under that act or in a report required to be
8 submitted by that act or a regulation adopted under that act,
9 knowingly makes a statement or entry that is false or misleading
10 or fails to maintain or make an entry the person knows is
11 required to be maintained or made is guilty of a fourth degree
12 felony and shall be sentenced pursuant to the provisions of
13 Section 31-18-15 NMSA 1978.

14 Section 55. [NEW MATERIAL] CRIME--UNLAWFUL MANUFACTURE,
15 SALE, DISTRIBUTION, MARKING, ALTERING OR MODIFICATION OF DEVICES
16 ASSOCIATED WITH GAMING--UNLAWFUL INSTRUCTION--PENALTY.--

17 A. A person who manufactures, sells or distributes a
18 device that is intended by him to be used to violate any
19 provision of the Gaming Control Act is guilty of a fourth degree
20 felony and shall be sentenced pursuant to the provisions of
21 Section 31-18-15 NMSA 1978.

22 B. A person who marks, alters or otherwise modifies
23 any gaming device in a manner that affects the result of a wager
24 by determining win or loss or alters the normal criteria of
25 random selection that affects the operation of a game or that

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1 determines the outcome of a game is guilty of a fourth degree
2 felony and shall be sentenced pursuant to the provisions of
3 Section 31-18-15 NMSA 1978.

4 Section 56. [NEW MATERIAL] UNDERAGE GAMING--PENALTY FOR
5 PERMITTING OR PARTICIPATION. --

6 A. A person who knowingly permits an individual who
7 the person knows is younger than twenty-one years of age to
8 participate in gaming is guilty of a misdemeanor and shall be
9 sentenced pursuant to the provisions of Section 31-19-1 NMSA
10 1978.

11 B. An individual who participates in gaming when he
12 is younger than twenty-one years of age at the time of
13 participation is guilty of a misdemeanor and shall be sentenced
14 pursuant to the provisions of Section 31-19-1 NMSA 1978.

15 Section 57. [NEW MATERIAL] CRIME--GENERAL PENALTIES FOR
16 VIOLATION OF ACT. --A person who willfully violates, attempts to
17 violate or conspires to violate any of the provisions of the
18 Gaming Control Act specifying prohibited acts, the classification
19 of which is not specifically stated in that act, is guilty of a
20 misdemeanor and shall be sentenced pursuant to the provisions of
21 Section 31-19-1 NMSA 1978.

22 Section 58. [NEW MATERIAL] DETENTION AND QUESTIONING OF A
23 PERSON SUSPECTED OF VIOLATING ACT--LIMITATIONS ON LIABILITY--
24 POSTING OF NOTICE. --

25 A. A gaming operator licensee or its officers,

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1 employees or agents may question a person in its gaming
2 establishment suspected of violating any of the provisions of the
3 Gaming Control Act. No gaming operator licensee or any of its
4 officers, employees or agents is criminally or civilly liable:

5 (1) on account of any such questioning; or

6 (2) for reporting to the board or law

7 enforcement authorities the person suspected of the violation.

8 B. A gaming operator licensee or any of its officers,
9 employees or agents who has reasonable cause for believing that
10 there has been a violation of the Gaming Control Act in the
11 gaming establishment by a person may detain that person in the
12 gaming establishment in a reasonable manner and for a reasonable
13 length of time. Such a detention does not render the gaming
14 operator licensee or his officers, employees or agents criminally
15 or civilly liable unless it is established by clear and
16 convincing evidence detention was unreasonable under the
17 circumstances.

18 C. No gaming operator licensee or its officers,
19 employees or agents are entitled to the immunity from liability
20 provided for in Subsection B of this section unless there is
21 displayed in a conspicuous place in the gaming establishment a
22 notice in boldface type clearly legible and in substantially this
23 form:

24 "Any gaming operator licensee or any of his officers,
25 employees or agents who have reasonable cause for

1 believing that any person has violated any provision
2 of the Gaming Control Act prohibiting cheating in
3 gaming may detain that person in the establishment. "

4 Section 59. [NEW MATERIAL] ADMINISTRATIVE APPEAL OF BOARD
5 ACTION. --

6 A. Any person aggrieved by an action taken by the
7 board or one of its agents may request and receive a hearing for
8 the purpose of reviewing the action. To obtain a hearing the
9 aggrieved person shall file a request for hearing with the board
10 within thirty days after the date the action is taken. Failure
11 to file the request within the specified time is an irrevocable
12 waiver of the right to a hearing, and the action complained of
13 shall be final with no further right to review, either
14 administratively or by a court.

15 B. The board shall adopt procedural regulations to
16 govern the procedures to be followed in administrative hearings
17 pursuant to the provisions of this section. At a minimum, the
18 regulations shall provide:

- 19 (1) for the hearings to be public;
20 (2) for the appointment of a hearing officer to
21 conduct the hearing and make his recommendation to the board not
22 more than ten days after the completion of the hearing;
23 (3) procedures for discovery;
24 (4) assurance that procedural due process
25 requirements are satisfied;

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1 (5) for the maintenance of a record of the
2 hearing proceedings and assessment of costs of any transcription
3 of testimony that is required for judicial review purposes; and

4 (6) for the hearing to be held in Santa Fe for
5 enforcement hearings and hearings on actions of statewide
6 application, and to be held in the place or area affected for
7 enforcement hearings and hearings on actions of limited local
8 concern.

9 C. Actions taken by the board after a hearing
10 pursuant to the provisions of this section shall be:

11 (1) written and shall state the reasons for the
12 action;

13 (2) made public when taken;

14 (3) communicated to all persons who have made a
15 written request for notification of the action taken; and

16 (4) taken not more than thirty days after the
17 submission of the hearing officer's report to the board.

18 Section 60. [NEW MATERIAL] JUDICIAL REVIEW OF
19 ADMINISTRATIVE ACTIONS. --

20 A. Any person adversely affected by an action taken
21 by the board after review pursuant to the provisions of Section
22 59 of the Gaming Control Act may appeal the action to the court
23 of appeals. The appeal shall be on the record made at the
24 hearing. To support his appeal, the appellant shall make
25 arrangements with the board for a sufficient number of

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1 transcripts of the record of the hearing on which the appeal is
2 based. The appellant shall pay for the preparation of the
3 transcripts.

4 B. On appeal, the court of appeals shall set aside
5 the administrative action only if it is found to be:

6 (1) arbitrary, capricious or an abuse of
7 discretion;

8 (2) not supported by substantial evidence in
9 the whole record; or

10 (3) otherwise not in accordance with law.

11 Section 61. [NEW MATERIAL] LOCAL OPTION. -- In any county
12 or municipality in which the local option provision of the Gaming
13 Control Act has been accepted by the voters, play on gaming
14 machines is prohibited or permitted in accordance with the
15 outcome of the referendum.

16 Section 62. [NEW MATERIAL] LOCAL OPTION ELECTION--
17 RACETRACKS--NONPROFIT ORGANIZATIONS--LICENSED LIQUOR
18 ESTABLISHMENTS--PROCEDURE. --

19 A. A county, not including incorporated
20 municipalities within its boundaries, or an incorporated
21 municipality is a local option district if the option of
22 permitting play on electronic gaming machines on the premises of
23 liquor establishments and certain nonprofit organizations in that
24 county or incorporated municipality is adopted by the registered
25 voters of that county or municipality.

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1 B. An incorporated municipality may have a local
2 option referendum in that municipality, even if the county in
3 which the incorporated municipality is located has had a
4 referendum and resolved the local option question for the county.

5 C. Based on the content of the petition, a local
6 governing body of a proposed local option district shall place
7 the following question on the ballot:

8 "Shall play on electronic gaming machines on the premises
9 of liquor establishments and certain nonprofit organizations be
10 permitted in (name of proposed local option district), effective
11 July 1, 19___? ___YES ___NO".

12 D. The procedures for adopting the local option
13 provision for electronic gaming are:

14 (1) at any time from the effective date of the
15 Gaming Control Act, the registered voters of any proposed local
16 option district may petition the governing body by filing one or
17 more petitions in the appropriate office to hold a referendum to
18 determine whether the proposed local option district shall adopt
19 the local option provision of the Gaming Control Act. Each
20 petition shall state the question that will be presented on the
21 ballot. If the aggregate of the signatures of the registered
22 voters on all the petitions equals or exceeds five percent of the
23 number of registered voters of the proposed local option district
24 at the time of the last general election, the governing body
25 shall call an election within ninety days of the verification of

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1 the petition. The latest date for filing a petition shall be
2 three months after the date on which the first signature was
3 obtained;

4 (2) except as otherwise provided in this
5 section, the election shall be called and conducted and votes
6 shall be counted and canvassed substantially in the manner
7 provided by law for general elections within the county for a
8 county referendum or pursuant to the Municipal Election Code for
9 a municipal referendum;

10 (3) except as otherwise provided in this
11 section, contests, recounts and rechecks shall be permitted for a
12 county referendum as provided for in the case of candidates for
13 county offices in general elections or for a municipal referendum
14 as provided for in the Municipal Election Code for candidates for
15 municipal office. Applications for contests, recounts or
16 rechecks may be filed by any person who voted in the election,
17 and service shall be made upon the county clerk or municipal
18 clerk. The payment of the costs and expenses of the contest,
19 recount or recheck shall be assessed for a county referendum in
20 the manner provided by the Election Code for contests in a
21 general election of candidates for county offices or for a
22 municipal referendum pursuant to the Municipal Election Code for
23 candidates for municipal office;

24 (4) if a majority of all the votes cast in a
25 referendum election seeking to permit play on electronic gaming

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1 machines on the premises of liquor establishments and certain
2 nonprofit organizations is in favor of the local option provision
3 to permit play on electronic gaming machines in the local option
4 district, the chairman of the governing body shall declare by
5 order entered upon the records of the local option district that
6 the local option district has adopted the local option provision
7 of the Gaming Control Act permitting play on electronic gaming
8 machines and shall notify the board of the results; and

9 (5) no election shall be held pursuant to this
10 section within forty-two days of any primary, general, municipal
11 or school district election unless the election is held on the
12 day of any primary, general, municipal or school district
13 election.

14 Section 63. [NEW MATERIAL] RESUBMISSION OF LOCAL OPTION
15 QUESTION. --

16 A. In a local option district in which the local
17 option provision of the Gaming Control Act has been rejected by
18 the voters, it is permissible after the expiration of three years
19 from the date of the election at which the local option provision
20 was rejected to have another local option election in the
21 district by following the procedures provided for in that act.

22 B. In a local option district in which the local
23 option provision of the Gaming Control Act has been accepted by
24 the voters, it is permissible after the expiration of twelve
25 years from the date of election at which the local option

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1 provision was accepted to have another local option election that
2 may allow voters to rescind the local option provision previously
3 adopted in the county or municipality by following the procedures
4 provided for in that act.

5 Section 64. Section 7-1-2 NMSA 1978 (being Laws 1965,
6 Chapter 248, Section 2, as amended) is amended to read:

7 "7-1-2. APPLICABILITY. -- The Tax Administration Act applies
8 to and governs:

9 A. the administration and enforcement of the
10 following taxes or tax acts as they now exist or may hereafter be
11 amended:

12 (1) Income Tax Act;
13 (2) Withholding Tax Act;
14 (3) Gross Receipts and Compensating Tax Act and
15 any state gross receipts tax;

16 (4) Liquor Excise Tax Act;

17 (5) Local Liquor Excise Tax Act;

18 [~~(6)~~] ~~Banking and Financial Corporations Tax~~
19 ~~Act;~~

20 ~~(7)~~] (6) any municipal local option gross
21 receipts tax;

22 [~~(8)~~] (7) any county local option gross
23 receipts tax;

24 [~~(9)~~] (8) Special Fuels Supplier Tax Act;

25 [~~(10)~~] (9) Gasoline Tax Act;

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1 [~~(11)~~] (10) petroleum products loading fee,
2 which fee shall be considered a tax for the purpose of the Tax
3 Administration Act;
4 [~~(12)~~] (11) Alternative Fuel Tax Act;
5 [~~(13)~~] (12) Cigarette Tax Act;
6 [~~(14)~~] (13) Estate Tax Act;
7 [~~(15)~~] (14) Railroad Car Company Tax Act;
8 [~~(16)~~] (15) Investment Credit Act;
9 [~~(17)~~] (16) Corporate Income and Franchise Tax
10 Act;
11 [~~(18)~~] (17) Uniform Division of Income for Tax
12 Purposes Act;
13 [~~(19)~~] (18) Multistate Tax Compact;
14 [~~(20)~~] (19) Tobacco Products Tax Act;
15 [~~(21)~~] (20) Filmmaker's Credit Act; and
16 [~~(22)~~] (21) the telecommunications relay
17 service surcharge imposed by Section 63-9F-11 NMSA 1978, which
18 surcharge shall be considered a tax for the purposes of the Tax
19 Administration Act;

20 B. the administration and enforcement of the
21 following taxes, surtaxes, advanced payments or tax acts as they
22 now exist or may hereafter be amended:

- 23 (1) Resources Excise Tax Act;
- 24 (2) Severance Tax Act;
- 25 (3) any severance surtax;

- 1 (4) Oil and Gas Severance Tax Act;
- 2 (5) Oil and Gas Conservation Tax Act;
- 3 (6) Oil and Gas Emergency School Tax Act;
- 4 (7) Oil and Gas Ad Valorem Production Tax Act;
- 5 (8) Natural Gas Processors Tax Act;
- 6 (9) Oil and Gas Production Equipment Ad Valorem
- 7 Tax Act;

- 8 (10) Copper Production Ad Valorem Tax Act; and
- 9 (11) any advance payment required to be made by
- 10 any act specified in this subsection, which advance payment shall
- 11 be considered a tax for the purposes of the Tax Administration
- 12 Act;

13 C. the administration and enforcement of the
14 following taxes, surcharges, fees or acts as they now exist or
15 may hereafter be amended:

- 16 (1) Weight Distance Tax Act;
- 17 (2) Special Fuels Tax Act;
- 18 (3) the workers' compensation fee authorized by
- 19 Section 52-5-19 NMSA 1978, which fee shall be considered a tax
- 20 for purposes of the Tax Administration Act;
- 21 (4) Uniform Unclaimed Property Act;
- 22 (5) 911 emergency surcharge and the network and
- 23 database surcharge, which surcharges shall be considered taxes
- 24 for purposes of the Tax Administration Act;
- 25 (6) the solid waste assessment fee authorized

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1 by the Solid Waste Act, which fee shall be considered a tax for
2 purposes of the Tax Administration Act; [~~and~~]

3 (7) the water conservation fee imposed by
4 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
5 for the purposes of the Tax Administration Act; and

6 (8) the gaming tax imposed pursuant to the
7 Gaming Control Act; and

8 D. the administration and enforcement of all other
9 laws, with respect to which the department is charged with
10 responsibilities pursuant to the Tax Administration Act, but only
11 to the extent that the other laws do not conflict with the Tax
12 Administration Act. "

13 Section 65. A new Section 7-1-6.40 NMSA 1978 is enacted to
14 read:

15 "7-1-6.40 [NEW MATERIAL] DISTRIBUTION OF GAMING TAX TO
16 COUNTIES AND MUNICIPALITIES. --A distribution pursuant to Section
17 7-1-6.1 NMSA shall be made of five percent of the net receipts
18 attributable to the gaming tax in the following manner:

19 A. among municipalities in the same proportion as the
20 gaming tax revenue raised pursuant to the Gaming Control Act from
21 racetrack gaming operator licensees located within a municipality
22 bears to the total gaming tax revenue raised in the state from
23 all racetrack licensees; and

24 B. among counties in the same proportion as the
25 gaming tax revenue raised pursuant to the Gaming Control Act from

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1 racetrack gaming operator licensees located in a county outside
2 the boundaries of any municipality bears to the total gaming tax
3 revenue raised in the state from all racetrack licensees. "

4 Section 66. Section 10-15-1 NMSA 1978 (being Laws 1974,
5 Chapter 91, Section 1, as amended) is amended to read:

6 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
7 MEETINGS-- EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS. --

8 A. In recognition of the fact that a representative
9 government is dependent upon an informed electorate, it is
10 declared to be public policy of this state that all persons are
11 entitled to the greatest possible information regarding the
12 affairs of government and the official acts of those officers and
13 employees who represent them. The formation of public policy or
14 the conduct of business by vote shall not be conducted in closed
15 meeting. All meetings of any public body except the legislature
16 and the courts shall be public meetings, and all persons so
17 desiring shall be permitted to attend and listen to the
18 deliberations and proceedings. Reasonable efforts shall be made
19 to accommodate the use of audio and video recording devices.

20 B. All meetings of a quorum of members of any board,
21 commission, administrative adjudicatory body or other
22 policymaking body of any state agency, any agency or authority of
23 any county, municipality, district or any political subdivision,
24 held for the purpose of formulating public policy, including the
25 development of personnel policy, rules, regulations or

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1 ordinances, discussing public business or for the purpose of
2 taking any action within the authority of or the delegated
3 authority of any board, commission or other policymaking body are
4 declared to be public meetings open to the public at all times,
5 except as otherwise provided in the constitution of New Mexico or
6 the Open Meetings Act. No public meeting once convened that is
7 otherwise required to be open pursuant to the Open Meetings Act
8 shall be closed or dissolved into small groups or committees for
9 the purpose of permitting the closing of the meeting.

10 C. If otherwise allowed by law or rule of the public
11 body, a member of a public body may participate in a meeting of
12 the public body by means of a conference telephone or other
13 similar communications equipment when it is otherwise difficult
14 or impossible for the member to attend the meeting in person,
15 provided that each member participating by conference telephone
16 can be identified when speaking, all participants are able to
17 hear each other at the same time and members of the public
18 attending the meeting are able to hear any member of the public
19 body who speaks during the meeting.

20 D. Any meetings at which the discussion or adoption
21 of any proposed resolution, rule, regulation or formal action
22 occurs and at which a majority or quorum of the body is in
23 attendance, and any closed meetings, shall be held only after
24 reasonable notice to the public. The affected body shall
25 determine at least annually in a public meeting what notice for a

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1 public meeting is reasonable when applied to that body. That
2 notice shall include broadcast stations licensed by the federal
3 communications commission and newspapers of general circulation
4 that have provided a written request for such notice.

5 E. A public body may recess and reconvene a meeting
6 to a day subsequent to that stated in the meeting notice if,
7 prior to recessing, the public body specifies the date, time and
8 place for continuation of the meeting, and, immediately following
9 the recessed meeting, posts notice of the date, time and place
10 for the reconvened meeting on or near the door of the place where
11 the original meeting was held and in at least one other location
12 appropriate to provide public notice of the continuation of the
13 meeting. Only matters appearing on the agenda of the original
14 meeting may be discussed at the reconvened meeting.

15 F. Meeting notices shall include an agenda containing
16 a list of specific items of business to be discussed or
17 transacted at the meeting or information on how the public may
18 obtain a copy of such an agenda. Except in the case of an
19 emergency, the agenda shall be available to the public at least
20 twenty-four hours prior to the meeting. Except for emergency
21 matters, a public body shall take action only on items appearing
22 on the agenda. For purposes of this subsection, an "emergency"
23 refers to unforeseen circumstances that, if not addressed
24 immediately by the public body, will likely result in injury or
25 damage to persons or property or substantial financial loss to

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1 the public body.

2 G. The board, commission or other policymaking body
3 shall keep written minutes of all its meetings. The minutes
4 shall include at a minimum the date, time and place of the
5 meeting, the names of members in attendance and those absent, the
6 substance of the proposals considered and a record of any
7 decisions and votes taken that show how each member voted. All
8 minutes are open to public inspection. Draft minutes shall be
9 prepared within ten working days after the meeting and shall be
10 approved, amended or disapproved at the next meeting where a
11 quorum is present. Minutes shall not become official until
12 approved by the policymaking body.

13 H. The provisions of Subsections A, B and G of this
14 section do not apply to:

15 (1) meetings pertaining to issuance,
16 suspension, renewal or revocation of a license, except that a
17 hearing at which evidence is offered or rebutted shall be open.
18 All final actions on the issuance, suspension, renewal or
19 revocation of a license shall be taken at an open meeting;

20 (2) limited personnel matters; provided that
21 for purposes of the Open Meetings Act, "limited personnel
22 matters" means the discussion of hiring, promotion, demotion,
23 dismissal, assignment or resignation of or the investigation or
24 consideration of complaints or charges against any individual
25 public employee; provided further that this subsection is not to

1 be construed as to exempt final actions on personnel from being
2 taken at open public meetings, nor does it preclude an aggrieved
3 public employee from demanding a public hearing. Judicial
4 candidates interviewed by any commission shall have the right to
5 demand an open interview;

6 (3) deliberations by a public body in
7 connection with an administrative adjudicatory proceeding. For
8 purposes of this paragraph, an "administrative adjudicatory
9 proceeding" means a proceeding brought by or against a person
10 before a public body in which individual legal rights, duties or
11 privileges are required by law to be determined by the public
12 body after an opportunity for a trial-type hearing. Except as
13 otherwise provided in this section, the actual administrative
14 adjudicatory proceeding at which evidence is offered or rebutted
15 and any final action taken as a result of the proceeding shall
16 occur in an open meeting;

17 (4) the discussion of personally identifiable
18 information about any individual student, unless the student, his
19 parent or guardian requests otherwise;

20 (5) meetings for the discussion of bargaining
21 strategy preliminary to collective bargaining negotiations
22 between the policymaking body and a bargaining unit representing
23 the employees of that policymaking body and collective bargaining
24 sessions at which the policymaking body and the representatives
25 of the collective bargaining unit are present;

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1 (6) that portion of meetings at which a
2 decision concerning purchases in an amount exceeding two thousand
3 five hundred dollars (\$2,500) that can be made only from one
4 source and that portion of meetings at which the contents of
5 competitive sealed proposals solicited pursuant to the
6 Procurement Code are discussed during the contract negotiation
7 process. The actual approval of purchase of the item or final
8 action regarding the selection of a contractor shall be made in
9 an open meeting;

10 (7) meetings subject to the attorney-client
11 privilege pertaining to threatened or pending litigation in which
12 the public body is or may become a participant;

13 (8) meetings for the discussion of the
14 purchase, acquisition or disposal of real property or water
15 rights by the public body; ~~and~~

16 (9) those portions of meetings of committees or
17 boards of public hospitals that receive less than fifty percent
18 of their operating budget from direct public funds and
19 appropriations where strategic and long-range business plans are
20 discussed; and

21 (10) that portion of a meeting of the gaming
22 control board dealing with information made confidential pursuant
23 to the provisions of the Gaming Control Act.

24 I. If any meeting is closed pursuant to the
25 exclusions contained in Subsection H of this section, the

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1 closure:

2 (1) if made in an open meeting, shall be
3 approved by a majority vote of a quorum of the policymaking body;
4 the authority for the closure and the subject to be discussed
5 shall be stated with reasonable specificity in the motion calling
6 for the vote on a closed meeting; the vote shall be taken in an
7 open meeting; and the vote of each individual member shall be
8 recorded in the minutes. Only those subjects announced or voted
9 upon prior to closure by the policymaking body may be discussed
10 in a closed meeting; and

11 (2) if called for when the policymaking body is
12 not in an open meeting, shall not be held until public notice,
13 appropriate under the circumstances, stating the specific
14 provision of the law authorizing the closed meeting and stating
15 with reasonable specificity the subject to be discussed is given
16 to the members and to the general public.

17 J. Following completion of any closed meeting, the
18 minutes of the open meeting that was closed or the minutes of the
19 next open meeting if the closed meeting was separately scheduled
20 shall state that the matters discussed in the closed meeting were
21 limited only to those specified in the motion for closure or in
22 the notice of the separate closed meeting. This statement shall
23 be approved by the public body under Subsection G of this section
24 as part of the minutes."

25 Section 67. Section 30-19-1 NMSA 1978 (being Laws 1963,

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1 Chapter 303, Section 19-1, as amended) is amended to read:

2 "30-19-1. DEFINITIONS RELATING TO GAMBLING.--As used in
3 Chapter 30, Article 19 NMSA 1978:

4 A. "antique gambling device" means a gambling device
5 twenty-five years of age or older and substantially in original
6 condition that is not used for gambling or commercial gambling or
7 located in a gambling place;

8 B. "bet" means a bargain in which the parties agree
9 that, dependent upon chance, even though accompanied by some
10 skill, one stands to win or lose anything of value specified in
11 the agreement. A bet does not include:

12 (1) bona fide business transactions that are
13 valid under the law of contracts, including [~~without limitation~~]:

14 (a) contracts for the purchase or sale, at
15 a future date, of securities or other commodities; and

16 (b) agreements to compensate for loss
17 caused by the happening of the chance, including [~~without~~
18 ~~limitation~~] contracts for indemnity or guaranty and life or
19 health and accident insurance;

20 (2) offers of purses, prizes or premiums to the
21 actual contestants in any bona fide contest for the determination
22 of skill, speed, strength or endurance or to the bona fide owners
23 of animals or vehicles entered in such contest;

24 (3) a lottery as defined in this section; or

25 (4) betting otherwise permitted by law;

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1 ~~[C. "lottery" means an enterprise other than the New~~
2 ~~Mexico state lottery established and operated pursuant to the New~~
3 ~~Mexico Lottery Act wherein, for a consideration, the participants~~
4 ~~are given an opportunity to win a prize, the award of which is~~
5 ~~determined by chance, even though accompanied by some skill. As~~
6 ~~used in this subsection, "consideration" means anything of~~
7 ~~pecuniary value required to be paid to the promoter in order to~~
8 ~~participate in such enterprise;~~

9 ~~D.]~~ C. "gambling device" means a contrivance other
10 than an antique gambling device that is not licensed for use
11 pursuant to the Gaming Control Act and that, for a consideration,
12 affords the player an opportunity to obtain anything of value,
13 the award of which is determined by chance, even though
14 accompanied by some skill, ~~[and]~~ whether or not the prize is
15 automatically paid by the device; ~~[and]~~

16 ~~[E.]~~ D. "gambling place" means ~~[any]~~ a building or
17 tent, ~~[any]~~ a vehicle, whether self-propelled or not, or ~~[any]~~ a
18 room within any of them that is not within the premises of a
19 person licensed as a lottery retailer or that is not licensed
20 pursuant to the Gaming Control Act, one of whose principal uses
21 is:

- 22 (1) making and settling of bets;
- 23 (2) receiving, holding, recording or forwarding
- 24 bets or offers to bet;
- 25 (3) conducting lotteries; or

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1 (4) playing gambling devices; and
2 E. "lottery" means an enterprise wherein, for a
3 consideration, the participants are given an opportunity to win a
4 prize, the award of which is determined by chance, even though
5 accompanied by some skill. "Lottery" does not include the New
6 Mexico state lottery established and operated pursuant to the New
7 Mexico Lottery Act or gaming that is licensed and operated
8 pursuant to the Gaming Control Act. As used in this subsection,
9 "consideration" means anything of pecuniary value required to be
10 paid to the promoter in order to participate in a gambling or
11 gaming enterprise."

12 Section 68. Section 30-19-6 NMSA 1978 (being Laws 1963,
13 Chapter 303, Section 19-6, as amended) is amended to read:

14 "30-19-6. [~~PERMISSIVE LOTTERY~~] CHARITABLE LOTTERIES--
15 PERMITTED GAMBLING--CONDITIONS.--

16 A. Nothing in [~~Article 19~~] Chapter 30, Article 19
17 NMSA 1978 [~~shall be construed to apply to any~~] prohibits a sale
18 or drawing of [any] a prize at [any] a fair held in this state
19 for the benefit of [any] a church, public library or religious
20 society [situate or being] located in this state, or for
21 charitable purposes when all the proceeds of [such] the fair
22 [shall be] are expended in this state for the benefit of [such]
23 the church, public library, religious society or charitable
24 purposes. A [~~lottery shall be operated~~] sale or drawing
25 conducted pursuant to this subsection is for the benefit of the

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1 organization or charitable purpose only ~~[when]~~ if the entire
2 proceeds of the ~~[lottery]~~ sale or drawing go to the organization
3 or charitable purpose and no part of such proceeds go to any
4 individual member or employee ~~[thereof]~~ of the organization.

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

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

22 ~~[D. Nothing in Article 19, Chapter 30 NMSA 1978 shall~~
23 ~~be construed to apply to any lottery operated by an organization~~
24 ~~exempt from the state income tax pursuant to Subsection C of~~
25 ~~Section 7-2-4 NMSA 1978 and not subject to the provisions of~~

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1 ~~Subsection A of this section; provided that:~~

2 ~~(1) no more than two lotteries shall be~~
3 ~~operated in any year by such an organization;~~

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

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

12 D. Nothing in Chapter 30, Article 19 NMSA 1978
13 prohibits an organization that is exempt from state income tax
14 pursuant to Section 7-2-4 NMSA 1978 from conducting bingo games,
15 raffles, lotteries or table games, including poker, craps,
16 blackjack, roulette and the like, at a fundraising event if:

17 (1) the fundraising event is conducted no more
18 than twice in a calendar year by the qualifying organization;

19 (2) the only persons authorized to participate
20 in the operation or management of the fundraising event are:

21 (a) bona fide members of the qualifying
22 organization who are not paid for their services in the operation
23 or management of the event; or

24 (b) persons who provide goods or services
25 for the fundraising event for a flat fee or an hourly fee

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1 pursuant to a written contract with the qualifying organization:

2 (3) no person receives any part of the proceeds
3 of the fundraising event except:

4 (a) as payment for prizes purchased at no
5 more than the reasonable retail prices for the prizes; or

6 (b) pursuant to a contract described in
7 Subparagraph (b) of Paragraph (2) of this subsection;

8 (4) the net proceeds of the fundraising event
9 are expended in the state for the benefit of the qualifying
10 organization or purposes for which it was formed;

11 (5) gross revenue, expenses, prizes paid and
12 the date, time and location of the fundraising event are reported
13 to the alcohol and gaming division of the regulation and
14 licensing department within thirty days after the event;

15 (6) the qualifying organization conducting the
16 fundraising event maintains records for a period of one year
17 after the date of the event that accurately show the gross
18 revenue generated by the event, details of the expenses of
19 conducting the event and details of how the gross revenue is
20 used, and the qualifying organization makes the records available
21 for review by the director of the alcohol and gaming division of
22 the regulation and licensing department or the attorney general,
23 or both, at their request;

24 (7) no more than four gambling devices are
25 operated during the fundraising event, two of which may be video

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1 gaming machines or slot machines and shall be played with tokens
2 or chips, but not United States coins or currency, provided by
3 the qualifying organization;

4 (8) no person less than the age of twenty-one
5 is allowed to participate in the operation or management of the
6 fundraising event or to play any game at the event; and

7 (9) the fundraising event is conducted pursuant
8 to regulations and a permit issued by the alcohol and gaming
9 division of the regulation and licensing department.

10 E. The provisions of the Gaming Control Act, the
11 Bingo and Raffle Act and the New Mexico Lottery Act do not apply
12 to the activities described in Subsection D of this section."

13 Section 69. Section 60-7A-19 NMSA 1978 (being Laws 1981,
14 Chapter 39, Section 96) is amended to read:

15 "60-7A-19. COMMERCIAL GAMBLING ON LICENSED PREMISES. --

16 A. It is a violation of the Liquor Control Act for a
17 licensee to knowingly allow commercial gambling on the licensed
18 premises.

19 B. In addition to any criminal penalties, any person
20 who violates Subsection A of this section may have his license
21 suspended or revoked or a fine imposed, or both, pursuant to the
22 Liquor Control Act.

23 C. [~~For purposes of~~] As used in this section:

24 (1) "commercial gambling" means:

25 [~~(1)~~] (a) participating in the earnings of

1 or operating a gambling place;

2 [~~(2)~~] (b) receiving, recording or
3 forwarding bets or offers to bet;

4 [~~(3)~~] (c) possessing facilities with the
5 intent to receive, record or forward bets or offers to bet;

6 [~~(4)~~] (d) for gain, becoming a custodian
7 of anything of value bet or offered to be bet;

8 [~~(5)~~] (e) conducting a lottery where both
9 the consideration and the prize are money, or whoever with intent
10 to conduct a lottery possesses facilities to do so; or

11 [~~(6)~~] (f) setting up for use for the
12 purpose of gambling, or collecting the proceeds of, any gambling
13 device or game; and

14 (2) "commercial gambling" does not mean:

15 (a) activities authorized pursuant to the
16 New Mexico Lottery Act;

17 (b) the conduct of activities pursuant to
18 Subsection D of Section 30-19-6 NMSA 1978; and

19 (c) gaming authorized pursuant to the
20 Gaming Control Act on the premises of a gaming operator licensee
21 licensed pursuant to that act."

22 Section 70. SEVERABILITY. -- If any part or application of
23 the Gaming Control Act is held invalid, the remainder of its
24 application to other situations or persons shall not be affected.

25 Section 71. EMERGENCY. -- It is necessary for the public

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1 peace, health and safety that this act take effect immediately.

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