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SENATE BILL 872
43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997
INTRODUCED BY
BEN D. ALTAMIRANO

AN ACT

RELATING TO GAMING; ENACTING THE TRIBAL GOVERNMENTAL GAMING
COMPACT ACT; ENACTING A TRIBAL-STATE GAMING COMPACT; ENACTING A
REVENUE SHARING AGREEMENT FOR TRIBAL GOVERNMENTAL 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; 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 9 of this act may be cited as the "Tribal Governmental
Gaming Compact Act".

Section 2. [NEW MATERIAL] FINDINGS. -- The legislature
finds that:

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1 A. it is the policy of the state that gaming is an
2 appropriate means for raising revenues for governmental and
3 charitable purposes;

4 B. the governor of New Mexico and the chief
5 executive officials of the tribal governments of the pueblos of
6 Acoma, Isleta, Nambe, Pojoaque, San Felipe, San Ildefonso, San
7 Juan, Santa Ana, Santa Clara, Taos, and Tesuque, the Jicarilla
8 Apache tribe and the Mescalero Apache tribe negotiated compacts
9 concerning class III gaming and an agreement concerning the
10 sharing of revenue with the state from class III gaming
11 conducted by these tribal governments;

12 C. Indian gaming in New Mexico has become an
13 important source of revenues for Indian tribal governments,
14 enabling them to provide services, infrastructure, jobs, and
15 economic development for their members and other New Mexicans;

16 D. the definition of Class III gaming in the Tribal
17 Governmental Gaming Compact Act is intended to allow for the
18 operation of tribal casinos and to restore charitable casino
19 nights as a lawful means for tax exempt organizations to raise
20 funds; and

21 E. due to legal questions as to the validity of the
22 compacts previously executed with Indian tribes concerning class
23 III gaming, because of the need for certain changes and
24 additional provisions to assure that tribal gaming enterprises
25 are regulated primarily by tribes with a reasonable degree of

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1 state as well as federal oversight and to provide a firm legal
2 foundation for Indian gaming in New Mexico, it is necessary and
3 appropriate that the legislature authorize the governor of the
4 state to execute new compacts for tribal governmental class III
5 gaming.

6 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
7 Tribal Governmental Gaming Compact Act:

8 A. "IGRA" means the Indian Gaming Regulatory Act, 25
9 USCA Sections 2701, et seq., including the regulations issued
10 pursuant to that act;

11 B. "tribe" means an Indian nation, tribe or pueblo
12 recognized by the federal government and located in whole or in
13 part within the exterior boundaries of the state;

14 C. "class III gaming" means:

15 (1) all forms of class III gaming as that term
16 is defined in IGRA; and

17 (2) any or all forms of casino style gaming
18 permitted by federal law and the state of Nevada, including slot
19 machines and all other forms of gaming machines; all forms of
20 poker, blackjack, and other casino style card games, both banked
21 and non-banked; craps; roulette; keno; pai gow; wheel of
22 fortune; faro; monte; all progressive and bonus forms of the
23 foregoing; pari-mutuel gaming; and lotteries; and

24 D. "gross gaming receipts" means the total amount of
25 money received by a tribal gaming enterprise from class III

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1 gaming activities, less amounts paid out to winners, and less
2 the actual cost of tribal regulatory activities (up to a total
3 of two hundred fifty thousand dollars (\$250,000) in such costs
4 annually) and minus federal and state regulatory fees and
5 expenses, and taxes, if any.

6 Section 4. [NEW MATERIAL] COMPACT ENACTMENT. --

7 A. The governor of the state is authorized and
8 directed to execute on behalf of the state a tribal-state gaming
9 compact concerning class III gaming with the following tribal
10 governments: the pueblos of Acoma, Isleta, Nambe, Pojoaque,
11 San Felipe, San Ildefonso, San Juan, Sandia, Santa Ana, Santa
12 Clara, Taos, and Tesuque, the Jicarilla Apache tribe and the
13 Mescalero Apache tribe in the form set forth in Section 5 of the
14 Tribal Governmental Gaming Compact Act.

15 B. The governor of the state is authorized and
16 directed, upon the written request of any other tribe within the
17 state, to execute on behalf of the state a tribal-state class
18 III gaming compact with the tribe in the form set forth in
19 Section 5 of the Tribal Governmental Gaming Compact Act.

20 C. Any compact executed by the governor pursuant to
21 Subsections A or B of this section, once approved by the
22 secretary of the interior, shall constitute a binding obligation
23 of the state.

24 Section 5. [NEW MATERIAL] COMPACT FORM -- Gaming compacts
25 executed by the governor of the state shall have the following

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1 form:

2 "TRIBAL-STATE GAMING COMPACT

3 THIS COMPACT is made and entered into this ____ day of
4 _____, _____, by and between the _____
5 (hereinafter referred to as "Tribe") and the STATE OF NEW MEXICO
6 (hereinafter referred to as "State").

7 RECITALS

8 WHEREAS, the State is a sovereign State of the United
9 States of America, having been admitted to the Union pursuant to
10 the Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310,
11 and is authorized to enter into contracts and agreements,
12 including this Compact, with the Tribe; and

13 WHEREAS, the Tribe is a sovereign federally recognized
14 Indian tribe and its governing body has authorized the officials
15 of the Tribe to enter into contracts and agreements of every
16 description, including this Compact, with the State; and

17 WHEREAS, the Congress of the United States has enacted the
18 Indian Gaming Regulatory Act of 1988, 25 U. S. C. §§ 2701-2721
19 (hereinafter "IGRA"), which permits Indian tribes to conduct
20 Class III Gaming on Indian Lands pursuant to a tribal-state
21 compact entered into for that purpose; and

22 WHEREAS, the Tribe owns or controls Indian Lands and by
23 Ordinance has adopted rules and regulations governing Class III
24 games played and related activities at any Gaming Facility; and

25 WHEREAS, by enactment of an amendment to Section 30-19-6

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1 NMSA 1978 in Section 10 of the act in which the Tribal
2 Governmental Gaming Compact Act is enacted, the State will
3 permit charitable organizations to conduct any or all forms of
4 casino-style gaming; and

5 WHEREAS, the State permits pari-mutuel wagering pursuant to
6 the Horse Racing Act; and

7 WHEREAS, the State authorized the establishment and
8 operation of a state-wide lottery in the New Mexico Lottery Act
9 for the purpose of raising governmental revenue; and

10 WHEREAS, such forms of Class III Gaming are, therefore,
11 permitted in the State within the meaning of the IGRA; and

12 WHEREAS, a Compact between the Tribe and the State for the
13 conduct of Class III Gaming on Indian Lands will satisfy the
14 State's obligation to comply with federal law and fulfill the
15 IGRA requirement for the lawful operation of Class III Gaming on
16 the Indian Lands in New Mexico; and

17 WHEREAS, the State and the Tribe, in recognition of the
18 sovereign rights of each party and in a spirit of cooperation to
19 promote the best interests of the citizens of the State and the
20 members of the Tribe, have engaged in negotiations and have
21 agreed to this Compact.

22 NOW, THEREFORE, the State and the Tribe agree as follows:

23 TERMS AND CONDITIONS

24 SECTION 1. Purpose and Objectives.

25 The purpose and objectives of the State and the Tribe in

1 making this Compact are as follows:

2 A. to evidence the good will and cooperative spirit
3 between the State and the Tribe;

4 B. to continue the development of an effective government-
5 to-government relationship between the State and the Tribe;

6 C. to provide for the regulation of Class III Gaming on
7 Indian Lands as required by the IGRA;

8 D. to fulfill the purpose and intent of the IGRA by
9 providing for tribal gaming as a means of generating tribal
10 revenues, thereby promoting tribal economic development, tribal
11 self-sufficiency, and strong tribal government;

12 E. to provide revenues to fund tribal government
13 operations or programs, to provide for the general welfare of
14 the tribal members and for other purposes allowed under the
15 IGRA;

16 F. to provide for the effective regulation of Class III
17 Gaming in which the Tribe shall have the sole proprietary
18 interest and be the primary beneficiary; and

19 G. to address the State's interest in the establishment,
20 by the Tribe, of rules and procedures for ensuring that Class
21 III Gaming is conducted fairly and honestly by the owners,
22 operators, employees and patrons of any Class III Gaming
23 enterprise on Indian Lands.

24 SECTION 2. Definitions.

25 For purposes of this Compact, the following definitions

1 pertain:

2 A. "Indian Lands" means:

3 1. all lands within the exterior boundaries of the
4 Tribe's reservation and its confirmed grants from prior
5 sovereigns; and

6 2. any other lands title to which is either held in
7 trust by the United States for the exclusive benefit of the
8 Tribe or a member thereof or is held by the Tribe or a member
9 thereof subject to restrictions against alienation imposed by
10 the United States, and over which the Tribe exercises
11 jurisdiction and governmental authority.

12 B. "Tribal Gaming Agency" means the tribal governmental
13 agency which will be identified to the State Gaming
14 Representative as the agency responsible for regulatory actions
15 of the Tribe set out in the Compact.

16 C. "State Gaming Representative" means that person
17 designated by the Legislature in Section 9 of the Tribal
18 Governmental Gaming Compact Act. The State Gaming
19 Representative will be responsible for regulatory actions of the
20 State set out in the Compact.

21 D. "Compact" means this compact between the State and the
22 Tribe.

23 E. "Gaming Facility" means the buildings or structures in
24 which Class III Gaming is conducted on Indian Lands.

25 F. "Gaming Operation" means each economic entity that is

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1 licensed by a tribe, operates the games, receives the revenues,
2 issues the prizes, and pays the expenses.

3 G. "Management Contract" means a contract within the
4 meaning of 25 USCA Sections 2710(d)(9) and 2711.

5 H. "Management Contractor" means any person or entity that
6 has entered into a Management Contract with the Tribe.

7 I. "Ordinance" means the gaming ordinance and any
8 amendments thereto adopted by the Tribal Council of the Tribe.

9 J. "Tribe" means _____.

10 K. "State" means the State of New Mexico.

11 SECTION 3. Authorized Class III Gaming.

12 A. The Tribe may conduct, only on Indian Lands, subject to
13 all of the terms and conditions of this Compact, any or all
14 forms of class III gaming as that term is defined in IGRA. The
15 term means any or all forms of casino style gaming permitted by
16 federal law and the state of Nevada, including but not limited
17 to slot machines and all other forms of gaming machines; all
18 forms of poker, blackjack, and other casino style card games,
19 both banked and non-banked; craps; roulette; keno; pai gow;
20 wheel of fortune; faro; monte; all progressive and bonus forms
21 of the foregoing; pari-mutuel gaming; and lotteries.

22 B. Subject to the foregoing, the Tribe shall establish, in
23 its discretion, by tribal law, such limitations as it deems
24 appropriate on the number and type of Class III Gaming
25 conducted, the locations of Class III Gaming on Indian Lands,

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1 the hours and days of operation, and betting and pot limits,
2 applicable to such gaming.

3 SECTION 4. Regulation of Class III Gaming.

4 A. Tribal Gaming Agency. The Tribal Gaming Agency will
5 assure that the Tribe:

- 6 1. operates all Class III Gaming pursuant to this
7 Compact, tribal law, IGRA, and other applicable
8 Federal law;
- 9 2. provides for the physical safety of patrons in
10 any Gaming Facility;
- 11 3. provides for the physical safety of personnel
12 employed by the gaming enterprise;
- 13 4. provides for the physical safeguarding of assets
14 transported to and from the Gaming Facility and
15 cashier's cage department;
- 16 5. provides for the protection of the property of
17 the patrons and the gaming enterprise from illegal
18 activity;
- 19 6. participates in licensing of primary management
20 officials and key employees of a Class III Gaming
21 enterprise;
- 22 7. detains persons who may be involved in illegal
23 acts for the purpose of notifying law enforcement
24 authorities;
- 25 8. records and investigates any and all unusual

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occurrences related to Class III Gaming within the Gaming Facility; and

9. provides true copies of all tribal laws and regulations affecting Class III Gaming conducted under the provisions of this Compact to the State Gaming Representative within thirty (30) days after the effective date of this Compact, and will provide true copies of any amendments thereto or additional laws or regulations affecting gaming within thirty (30) days after their enactment (or approval, if any).

B. Tribal Laws. Without affecting the generality of the foregoing, the Tribe shall adopt laws:

1. prohibiting participation as a patron in any Class III gaming by any person under the age at which a person may place a wager on a game of the New Mexico State Lottery. Any Tribe, at its sole option, may elect to set an age minimum that is higher than that set by the New Mexico Lottery Act;
2. prohibiting a key employee or primary management official to be employed who is under the age of eighteen (18) or who has not been licensed in accordance with Section 5, hereinafter;
3. governing any Management Contract regarding its Class III Gaming Activity such that they conform to

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the requirements of tribal law and IGRA;

4. prohibiting a gaming enterprise from cashing any paycheck or any type of government assistance check, including Social Security, Aid For Dependent Children, and other such checks for any patron;

5. requiring that each gaming machine in use at the tribal gaming facility must meet all technical standards imposed on such devices by the laws and regulations in force in the State of Nevada, including the standards applicable to minimum payout percentages;

6. requiring that within twelve months from the date on which this Compact takes effect, all gaming machines in use at the gaming facility be connected to a central computerized reporting and auditing system on the gaming facility premises, which shall collect on a continual basis the financial accounting and statistical performance data of each gaming machine in use at the gaming facility, and that such financial accounting and statistical performance data shall be available to the state gaming representative upon request; and

7. requiring the gaming enterprise to spend an amount that is no less than one-quarter of one percent of its gross gaming receipts annually to

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1 fund or support programs for the treatment and
2 assistance of compulsive gamblers; the Tribe, at its
3 sole option, shall contribute either to an
4 established program operated by the State or an
5 established program in the Tribe's local community
6 which treats compulsive gamblers.

7 C. Audit and Financial Statements. The Tribal Gaming
8 Agency shall require that all books and records relating to
9 Class III Gaming be maintained in accordance with generally
10 accepted accounting principles. All such books and records
11 shall be retained for a period of at least six (6) years from
12 the date of creation. Not less than annually, the Tribal Gaming
13 Agency shall require an audit and certified financial statements
14 covering all financial activities of the gaming enterprise by an
15 independent certified public accountant licensed by the State.
16 The financial statements shall be prepared in accordance with
17 generally accepted accounting principles and shall be submitted
18 to the Tribal Gaming Agency within one hundred twenty (120) days
19 of the close of the Tribe's fiscal year. The Tribe shall
20 maintain the following records concerning tribal gaming for not
21 less than six (6) years:

- 22 1. revenues, gross gaming receipts, expenses,
23 assets, liabilities and equity for each Gaming
24 Facility;
- 25 2. daily cash transactions for each Class III

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- Gaming at each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game drop box, and gaming room bank;
3. all markers, IOU'S, returned checks, hold check or other similar credit instruments;
 4. individual and statistical game records (except card games) to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;
 5. contracts, correspondence, and other transaction documents relating to all vendors and contractors;
 6. records of all tribal gaming enforcement activities;
 7. audits prepared by or on behalf of the Tribe; and
 8. personnel information on all Class III Gaming employees or agents, including rotation sheets, hours worked, employee profiles, and background checks.

D. Violations. The agents of the Tribal Gaming Agency shall have unrestricted access to the Gaming Facility during all hours of Class III Gaming activity, and shall have immediate and unrestricted access to any and all areas of the Gaming Facility

1 for the purpose of ensuring compliance with the provisions of
2 this Compact and the Ordinance. The agents shall report
3 immediately to the Tribal Gaming Agency any suspected violation
4 of this Compact, the Ordinance, or regulations of the Tribal
5 Gaming Agency by the gaming enterprise, Management Contractor,
6 or any person, whether or not associated with Class III Gaming.

7 E. State Gaming Representative.

8 1. Upon written request by the State to the Tribe,
9 the Tribe will provide information on primary
10 management officials, key employees, and suppliers,
11 sufficient to allow the State to conduct its own
12 background investigations, as it may deem necessary,
13 so that it may make an independent determination as
14 to the suitability of such individuals, consistent
15 with the standards set forth in Section 5,
16 hereinafter. The Tribe shall consider any
17 information or recommendations provided to it by the
18 State as to any such person or entity, but the Tribe
19 shall have the final say with respect to the hiring
20 or licensing of any such person or entity.

21 2. Notwithstanding that the Tribe has the primary
22 responsibility to administer and enforce the
23 regulatory requirements, the State Gaming
24 Representative authorized in writing by the Governor
25 of the State or by legislation duly enacted by the

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State Legislature shall have the right to inspect all Gaming Facilities, Class III Gaming activity, and all records relating to Class III Gaming (including those set forth in Section 5, hereinafter) of the Tribe, subject to the following conditions:

(a) with respect to public areas of a Gaming Facility, at any time without prior notice during normal business hours;

(b) with respect to private areas of a Gaming Facility not accessible to the public, at any time during normal business hours, immediately after notifying the Tribal Gaming Agency and Gaming Operation of his or her presence on the premises and presenting proper identification, and requesting access to such non-public areas of the gaming facility. The Tribe, at its sole discretion, may require an employee of the Gaming Operation and the Tribal Gaming Agency to accompany the State Gaming Representative at all times that the State Gaming Representative is on the premises of a Gaming Facility;

(c) with respect to inspection and copying of all management records relating to Class III Gaming, with 48 hours prior written notice, not

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including weekends. The reasonable costs of copying will be borne by the State; and (d) whenever the State Gaming Representative, or his designee, enters the premises of the Gaming Facility for any such inspection, such Representative or designee shall identify himself to security and supervisory personnel of the Gaming Facility.

3. The Tribe considers the information provided to the State pursuant to this Compact to be proprietary and commercial property of the Tribe. To the fullest extent allowed by State law, the State agrees to maintain in confidence and never to disclose to any third party any financial information, proprietary ideas, plans, methods, data, development inventions, or other proprietary information regarding the gaming enterprise of the Tribe, Class III Gaming conducted by the Tribe, or the operation thereof, which is provided to the State by the Tribe without the prior written approval of a duly authorized representative of the Tribe. These prohibitions shall not be construed to prohibit:

(a) the furnishing of any information to a law enforcement or regulatory agency of the Federal

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Government;

(b) the State from making known the names of persons, firms, or corporations conducting Class III Gaming pursuant to the terms of this Compact, locations at which such activities are conducted, or the dates on which such activities are conducted;

(c) publishing the terms of this Compact;

(d) disclosing information as necessary to audit, investigate, prosecute, or arbitrate violations of this Compact or other applicable laws or to defend suits against the State; and

(e) complying with subpoenas or court orders issued by courts of competent jurisdiction.

4. To the fullest extent allowed by State law, the Tribe shall have the right to inspect and copy State records concerning all Class III Gaming conducted by the Tribe with the Tribe bearing the reasonable cost of copying.

5. The Tribe shall reimburse the State for the actual costs the State incurs in carrying out any functions authorized by the terms of this Compact, in an amount not to exceed twenty-five thousand dollars (\$25,000.00) per year. All calculations of amounts due shall be based upon a fiscal year

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beginning October 1, and ending September 30, unless the parties select a different fiscal year.

Payments due the State shall be made no later than sixty (60) days after the beginning of each fiscal year. Payments due the State during any partial fiscal year this Compact is in effect shall be adjusted to reflect only that portion of the fiscal year. Within sixty (60) days after the end of each fiscal year in which this Compact is in effect, the State shall submit to the Tribe an accounting of actual costs incurred in carrying out any functions authorized by the terms of this Compact. Any amount of the twenty-five thousand dollars (\$25,000.00) not expended by the State on the actual costs shall be returned to the Tribe by the State within sixty (60) days after the fiscal year or treated as a prepayment of the Tribe's obligation during the subsequent fiscal year.

6. In the event the State believes that the Tribe is not administering and enforcing the regulatory requirements set forth herein, it may invoke the procedures set forth in Section 7 of this Compact.

F. Cash Reporting. The Tribe shall comply with all applicable provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. §§ 5311-5314, and all reporting

1 requirements of the Internal Revenue Service.

2 SECTION 5. Licensing Requirements.

3 A. License Required. The Gaming Facility operator,
4 (but not including the Tribe), including its principals, primary
5 management officials, and key employees, the Management
6 Contractor and its principals, primary management officials, and
7 key employees (if the Tribe hires a Management Contractor), any
8 person, corporation, or other entity that has supplied or
9 proposes to supply any gaming device to the Tribe or the
10 Management Contractor; and any person, corporation, or other
11 entity providing gaming services within or without a Gaming
12 Facility, shall apply for and receive a license from the Tribal
13 Gaming Agency before participating in any way in the operation
14 or conduct of any Class III Gaming on Indian Lands.

15 B. License Application. Each applicant for a license
16 shall file with the Tribal Gaming Agency a written application
17 in the form prescribed by the Tribal Gaming Agency, along with
18 the applicant's fingerprint card, current photograph, and the
19 fee required by the Tribal Gaming Agency.

20 1. The following Notice ("Privacy Act Notice")
21 shall be placed on the application form for a
22 principal, key employee, or a primary management
23 official before that form is filled out by an
24 applicant:

25 In compliance with the Privacy Act of 1974,

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the following information is provided:
Solicitations of the information on this form is authorized by 25 U.S.C. §§ 2701-2721. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming enterprise. The information will be used by members and staff of the Tribal Gaming Agency and the National Indian Gaming Commission who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal, or regulatory investigations or prosecutions or when, pursuant to a requirement by a tribe, or the National Indian Gaming Commission, when the information is relevant to the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming enterprise. Failure to consent to the

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disclosures indicated in this Notice will result in a tribe being unable to hire you in a primary management official or key employee position with a tribal gaming enterprise.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply an SSN may result in errors in processing your application.

2. Existing principals, key employees, and primary management officials shall be notified, in writing, that they shall either:

- (a) Complete a new application form that contains a Privacy Act notice; or
- (b) Sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that Notice.

3. The following Notice ("False Statement Notice") shall be placed on the application form for a principal, key employee or a primary management official before that form is filled out by an applicant:

A false statement on any part of your application may be grounds for not hiring

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you or for firing you after you begin work.
Also, you may be punished by fine or
imprisonment. See 18 U. S. C. § 1001. 4.

4. The Tribal Gaming Agency shall notify, in
writing, existing principals, key
employees, and primary management officials
that they shall either:

- (a) complete a new application form that
contains a False Statement Notice; or
- (b) sign a statement that contains the
False Statement Notice.

5. The Tribal Gaming Agency shall request from
each applicant, and from each principal, primary
management official, and key employee of each
applicant, all of the following information:

- (a) full name, other names used (oral or
written), Social Security Number(s), birth
date, place of birth, citizenship, gender,
and all languages spoken or written;
- (b) currently, and for the previous ten
(10) years, business and employment
positions held, ownership interests in
those businesses, business and residence
addresses, and driver's license numbers;
provided, that any applicant who is a

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principal, primary management official, key employee, Management Contractor, manufacturer or supplier of gaming devices, and/or a person providing gaming services, must provide such information currently, and from the age of eighteen (18).

(c) the names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the applicant during each period of residence listed in Paragraph B. 5. (b) of this Section;

(d) current business and residence telephone numbers;

(e) a description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses, and a description of any potential or actual conflict of interests between such businesses and Indian tribes;

(f) a description of any existing and previous business relationships in the gaming industry, including, but not limited to, ownership interests in those businesses;

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(g) the name and address of any licensing or regulatory agency with which the applicant has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(h) for each felony for which there is an ongoing prosecution, or a conviction, the charge, the date of the charge, the name and address of the court involved, and the disposition, if any;

(i) for each misdemeanor for which there is an ongoing prosecution or conviction (excluding minor traffic violations), the charge, the date of the charge, the name and address of the court involved, and the disposition, if any;

(j) for each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is not otherwise listed pursuant to Paragraph B. 5. (h) or B. 5. (i) of this Section, the criminal charge, the date of the charge, the name and address of the court involved, and the disposition, if

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any;

(k) the name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, as an applicant, principal, primary management official, or key employee, and whether or not such license or permit was granted;

(l) a current photograph;

(m) fingerprints, which shall be taken by officers of the tribal police department pursuant to a Memorandum of Understanding between the Tribe and the National Indian Gaming Commission ("Commission"); tribal police officers shall forward the fingerprint cards directly to the Commission;

(n) the fee required by the Tribal Gaming Agency; and

(o) any other information the Tribal Gaming Agency deems relevant.

C. Background Investigations.

1. Upon receipt of a completed application and required fee for licensing, the Tribal Gaming Agency shall conduct or cause to be conducted a

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background investigation to ensure that the applicant is qualified for licensing.

2. Background checks of applicants will be performed pursuant to the following procedures:

(a) the Tribal Gaming Agency shall provide applications to potential applicants upon request, and shall collect and maintain the applications;

(b) pursuant to a Memorandum of Understanding between the Tribe and the Commission, tribal police officers will collect fingerprints from all applicants and forward the fingerprint cards directly to the Commission. The Commission will obtain a criminal history record from the Federal Bureau of Investigation on each applicant and forward such information to the Tribal Gaming Agency;

(c) the Tribal Gaming Agency shall investigate the information provided in the applications. This investigation will include:

(1) contacting persons or entities identified in the application, and verifying by written or oral

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communication that the information contained in the application is accurate;

(2) interviewing a sufficient number of knowledgeable people, such as former employers, partners, business associates, and others referred to in the application, to provide a basis for the Tribal Gaming Agency to make a determination concerning whether the applicant meets applicable eligibility requirements;

(3) reviewing relevant financial records of the applicant for the three (3) years preceding the application; and

(4) contacting any state, federal, or other government agency that is referred to in the application;

(d) the Tribal Gaming Agency shall document any information it obtains that calls into question whether the applicant would meet the eligibility requirements under the Ordinance. The Tribal Gaming Agency shall then document in detail the

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disposition of these problem areas,
indicating the follow-up investigations
performed on the problem areas and the
result of such investigations;

(e) the Tribal Gaming Agency will review
the results of the investigation. This
review will include a determination as to
the scope of the investigation and whether
sufficient information was obtained and
verified. If such information is found not
sufficient, the Tribal Gaming Agency will
perform additional investigations; and
(f) once the investigation is complete,
the Tribal Gaming Agency will decide
whether the applicant meets the eligibility
criteria under the Ordinance.

3. In conducting a background investigation, the
Tribal Gaming Agency and its agents shall keep
confidential the identity of each person
interviewed in the course of the investigation.

4. Within twenty (20) days of the receipt of a
completed application for licensing, and upon
request of an applicant, the Tribal Gaming Agency
may issue a temporary license to the applicant,
unless the background investigation undertaken

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discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant are apparent on the face of the application. The temporary license shall become void and be of no effect upon either:

- (a) the issuance of the license;
- (b) the issuance of a notice of denial; or
- (c) ninety (90) days after the temporary license is issued unless the state review time is enlarged as provided in Section 5. E. 2, whichever occurs earlier.

5. The Tribal Gaming Agency shall review a person's prior activities, criminal record, if any, and reputation, habits, and associations to make a finding concerning the eligibility or suitability of an applicant, or a principal, key employee or primary management official of an applicant, for employment or involvement in a gaming enterprise. After such consultation, the Tribal Gaming Agency shall either issue a license or deny the application. If the Tribal Gaming Agency determines that employment or involvement of the applicant poses a threat to the public interest, or to the effective regulation of Class III Gaming, or creates or enhances dangers of

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unsuitable, unfair, or illegal practices, methods, or activities in the conduct of Class III Gaming, the Tribal Gaming Agency shall deny the application.

6. The Tribal Gaming Agency shall retain the right to conduct additional background investigations of any person required to be licensed at any time while the license is valid.

D. Procedure for Forwarding Applications and Reports.

Procedures for forwarding applications and investigative reports to the Commission and State Gaming Representative.

1. When a key employee or primary management official begins work at a gaming enterprise authorized by this Compact, the Tribal Gaming Agency shall forward to the Commission and the State Gaming Representative a completed application for employment.

2. The Tribal Gaming Agency shall forward the report referred to in Paragraph D. 4. of this section to the Commission and the State Gaming Representative within sixty (60) days after an employee begins works or within sixty (60) days of the approval of this Compact by the Secretary of the Interior.

3. A key employee or primary management official

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who does not have a license shall not be employed after ninety (90) days.

4. The Tribal Gaming Agency shall prepare and forward to the Commission and the State Gaming Representative a report on each background investigation ("Investigative Report"). An Investigative Report shall include all of the following:

- (a) steps taken in conducting the background investigation;
- (b) results obtained;
- (c) conclusions reached; and
- (d) the basis for those conclusions.

5. The Tribal Gaming Agency shall submit with the Investigative Report a copy of the eligibility determination made under Paragraph C.5. of this section.

6. If a license is not issued to an applicant, the Tribal Gaming Agency shall notify the Commission and the State Gaming Representative.

7. With respect to principals, key employees and primary management officials, the Tribal Gaming Agency shall retain applications for employment and Investigative Reports (if any) for no less than three (3) years from the date of termination

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of employment.

E. Granting a Gaming License.

1. If within thirty (30) days after it receives an Investigative Report, neither the Commission nor the State Gaming Representative has notified the Tribal Gaming Agency that it has an objection to the issuance of a license pursuant to a license application filed by a principal, key employee, or a primary management official, the Tribal Gaming Agency may issue a license to such applicant.

2. The Tribal Gaming Agency shall respond to any request for additional information from the Commission or the State Gaming Representative concerning a principal, key employee, or primary management official who is the subject of an Investigative Report. Such a request shall suspend the thirty (30) day period under Paragraph E. 1. of this Section until the Commission or the State Gaming Representative receives the additional information. However, in no event shall a request for additional information by the State Gaming Representative extend the thirty (30) day period under Paragraph E. 1. of this section for a total period of more

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than sixty (60) days from the date the State Gaming Representative received the investigative report.

3. If, within the thirty (30) day period described above, the Commission or the State Gaming Representative provides the Tribal Gaming Agency with a statement itemizing objections to the issuance of a license to a principal, key employee or to primary management official for whom the Tribal Gaming Agency has provided an application and Investigative Report, the Tribal Gaming Agency shall reconsider the application taking into account the objections itemized by the Commission and/or the State Gaming Representative, and make a final decision whether to issue a license to such applicant.

F. Management Contract.

1. If the Tribe chooses to enter into a Management Contract, the Tribal Gaming Agency shall require that all principals, primary management officials, and key employees of the Contractor be licensed.

2. The Tribe may enter into a Management Contract only if the Management Contract:

(a) provides that all Class III Gaming

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covered by the Management Contract will be conducted in accordance with IGRA, the Ordinance, and this Compact;

(b) enumerates the responsibilities of each of the parties for each identifiable function, including:

- (1) maintaining and improving the Gaming Facility;
- (2) providing operating capital;
- (3) establishing operating days and hours;
- (4) hiring, firing, training, and promoting employees;
- (5) maintaining the gaming enterprise's books and records;
- (6) preparing the gaming enterprise's financial statements and reports;
- (7) paying for the services of the independent auditor engaged pursuant to 25 C.F.R. § 571.12;
- (8) hiring and supervising security personnel;
- (9) providing fire protection services;
- (10) setting advertising budget

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- and placing advertising;
 - (11) paying bills and expenses;
 - (12) establishing and administering employment practices;
 - (13) obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;
 - (14) complying with all applicable provisions of the Internal Revenue Code;
 - (15) paying the cost of public safety services; and
 - (16) if applicable, supplying the Commission with all information necessary for the Commission to comply with the National Environmental Policy Act;
- (c) provides for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at minimum:
- (1) include an adequate system of internal controls;

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- (2) permit the preparation of financial statements in accordance with generally accepted accounting principles;
- (3) be susceptible to audit;
- (4) permit the calculation and payment of the Management Contractor's fee; and
- (5) provide for the allocation of operating expenses or overhead expenses among the Tribe, the Management Contractor, and any other user of shared Gaming Facilities and services;

(d) requires the Management Contractor to provide the Tribe, not less frequently than monthly, verifiable financial reports or all information necessary to prepare such reports;

(e) requires the Management Contractor to provide immediate access to the Gaming Facility, including its books and records, by appropriate tribal officials, who shall have:

- (1) the right to verify the daily

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gross revenues and income from the gaming enterprise; and
(2) access to any other gaming-related information the Tribe deems appropriate;

(f) provides for a minimum guaranteed monthly payment to the Tribe in a sum certain that has preference over the retirement of development and construction costs;

(g) provides an agreed upon maximum dollar amount for the recoupment of development and construction costs;

(h) provides for a term not to exceed the period allowed by the IGRA;

(i) details the method of compensating and reimbursing the management Contractor. If a Management Contract provides for a percentage fee, such fee shall be either:

- (1) not more than thirty percent (30%) of the net revenues of the gaming enterprise if the Chairman of the Commission is satisfied that such percentage is reasonable considering the circumstances; or

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- (2) not more than forty percent (40%) of the net revenues if the Chairman of the Commission is satisfied that the capital investment required and income projections for the gaming enterprise require the additional fee;
- (j) provides the grounds and mechanisms for modifying or terminating the Management Contract;
- (k) contains a mechanism to resolve disputes between:
 - (1) the Management Contractor and customers, consistent with the procedures in the Ordinance;
 - (2) the Management Contractor and the Tribe; and
 - (3) the Management Contractor and the gaming enterprise employees;
- (1) indicates whether and to what extent contract assignments and subcontracting are permissible;
- (m) indicates whether and to what extent changes in the ownership interest in the Management Contract require advance approval by the Tribe; and

1 (n) states that the Management Contract
2 shall not be effective unless and until it
3 is approved by the Chairman of the
4 Commission, date of signature of the
5 parties notwithstanding.

6 3. The Tribe shall not enter into any Management
7 Contract if the Tribal Gaming Agency determines that
8 the Management Contractor or any principal, primary
9 management official, or key employee of the
10 Management Contractor is not licensed or is
11 ineligible to be licensed.

12 G. Access to Records. Any and all documents, records,
13 and other information pertaining to receipts and expenditures of
14 the tribal gaming enterprise, security and surveillance systems,
15 background investigations, technical information pertaining to
16 gaming devices, and other documents designated "confidential" by
17 the tribal gaming agency or the tribal gaming enterprise that
18 are received by the state gaming representative or his designee
19 shall not be considered public records of the state, and shall
20 not be disclosed by any state official to any member of the
21 public without the express prior written consent of the tribe.
22 Nothing herein, however, shall prevent the state gaming
23 representative or his designee from sharing information with
24 other state or federal agencies, as needed to perform its
25 functions under this compact, or from complying with a valid

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1 court order compelling production of such documents, but in the
2 event of any lawsuit in which production is sought by any party,
3 without a confidentiality order being imposed on these
4 documents, the state gaming representative or his designee (or
5 other state agency in possession of such records) shall give
6 notice to the tribe prior to producing any such records, and
7 shall not object to the tribe's intervention in such action for
8 the purpose of opposing such disclosure of records.

9 SECTION 6. Providers of Class III Gaming Equipment or Supplies.

10 A. Within thirty (30) days after the effective date of
11 this Compact, if it has not already done so, the Tribal Gaming
12 Agency will adopt standards for any and all Class III Gaming
13 equipment, devices or supplies to be purchased, leased, or
14 otherwise acquired by the Tribe after the effective date of this
15 Compact for use in any Gaming Facility which standards shall be
16 at least as strict as the comparable standards applicable to
17 Class III Gaming equipment, devices, or supplies within the
18 State of Nevada. Any and all Class III Gaming equipment,
19 devices, or supplies acquired by the Tribe after the date of
20 this Compact shall meet or exceed the standards thereby adopted,
21 and any and all Class III Gaming equipment, devices, or supplies
22 utilized by the Tribe in its Gaming Facilities as of the
23 effective date of this Compact shall be upgraded or replaced, if
24 necessary, so as to comply with such standards, by no later than
25 one (1) year after the effective date of this Compact.

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1 B. Prior to entering into any future lease or purchase
2 agreement Gaming equipment, the Tribe shall obtain sufficient
3 information and identification from the proposed seller or
4 lessor and all persons holding any direct or indirect financial
5 interest in the lessor or the lease-purchase agreement to permit
6 the Tribe to license those persons in accordance with Section 5,
7 hereof.

8 C. The seller, lessor, manufacturer, or distributor shall
9 provide, assemble, and install all Class III Gaming equipment,
10 devices, and supplies in a manner approved and licensed by the
11 Tribe.

12 SECTION 7. Dispute Resolution.

13 A. In the event either party believes that the other
14 party has failed to comply with or has otherwise breached any
15 provision of this Compact, such party may invoke the following
16 procedure:

17 1. the party asserting noncompliance shall serve
18 written notice on the other party. The notice shall
19 identify the specific Compact provision believed to
20 have been violated and shall specify the factual and
21 legal basis for the alleged noncompliance. The
22 notice shall specifically identify the date, time,
23 and nature of the alleged noncompliance.

24 Representatives of the State and Tribe shall
25 thereafter meet within thirty (30) days in an effort

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to resolve the dispute;

2. in the event an allegation by the complaining party is not resolved to the satisfaction of such party within ninety (90) days after service of the notice set forth in Paragraph (A)(1) of this Section, the complaining party may serve upon the other party a notice to cease conduct of the particular game(s) or activities alleged by the complaining party to be in noncompliance. Upon receipt of such notice, the responding party may elect to stop the game(s) or activities specified in the notice or invoke arbitration and continue the game(s) or activities pending the results of arbitration. The responding party shall act upon one of the foregoing options within thirty (30) days of receipt of notice from the complaining party;

3. arbitration under this authority shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association, except that the arbitrators shall be attorneys who are licensed members of the State Bar of New Mexico or of the bar of another state, in good standing. The State will select one arbitrator, the Tribe a second arbitrator, and the two so chosen shall select a third arbitrator. If the third arbitrator is not

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chosen in this manner within ten (10) days after the second arbitrator is selected, the third arbitrator will be chosen in accordance with the rules of the American Arbitration Association;

4. all parties shall bear their own costs of arbitration and attorney fees; and

5. the results of arbitration shall be enforceable by an action for injunctive or mandatory injunctive relief against the State and the Tribe in any court of competent jurisdiction. For purposes of any such action, the State and the Tribe acknowledge that any action or failure to act on the part of any agent or employee of the State or the Tribe, contrary to a decision of the arbitrators in an arbitration proceeding conducted under the provisions of this Section, occurring after such decision, shall be wholly unauthorized and ultra vires acts, not protected by the sovereign immunity of the State or the Tribe.

B. Nothing in Subsection 7(A) shall be construed to waive, limit or restrict any remedy which is otherwise available to either party to enforce or resolve disputes concerning the provisions of this Compact. Nothing in this Compact shall be deemed a waiver of the Tribe's sovereign immunity. Nothing in this Compact shall be deemed a waiver of the State's sovereign

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1 immunity.

2 SECTION 8. Protection of Patrons.

3 A. Liability to Patrons. To insure the personal safety
4 and protection of patrons and other invitees of the Tribe's
5 Gaming Facilities operated under the provisions of this Compact,
6 the Tribe shall at all times maintain in effect a policy of
7 public liability insurance, insuring the Tribe, its agents and
8 employees against any claims, demands or liability that may
9 arise as a result of personal injury to any person (other than
10 an employee of the gaming establishment) occurring anywhere on
11 the premises of any gaming establishment operated by the Tribe
12 under the provisions of this Compact, or as a result of any act
13 or omission of any agent or employee of such gaming
14 establishment while in the course of his or her employment,
15 which policy shall provide personal injury coverage of no less
16 than One Million Dollars (\$1,000,000) per injured person and Ten
17 Million Dollars (\$10,000,000) aggregate per policy year.

18 1. The Tribe agrees that in the event of any claim
19 made against it or its gaming enterprise, or any agent or
20 employee thereof, arising out of any personal injury as
21 described above, neither the Tribe nor its insurer will assert
22 any defense of immunity from suit as to such claim for
23 compensatory damages up to the amount of One Million Dollars
24 (\$1,000,000) per injured person, in any action filed in a court
25 of competent jurisdiction to be tried to the court; provided,

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1 however, that this agreement not to assert such defense shall be
2 strictly limited as provided herein, and shall not apply to any
3 claim for punitive damages, or to any claim for which a jury
4 trial is demanded, or to any claim for any loss or damage other
5 than that arising from actual bodily injury or death, or to any
6 claim for damages in excess of the amounts set forth herein.
7 Nothing herein shall be construed as stating or implying that
8 the Tribe has waived or agreed not to assert its immunity from
9 suit for any other purpose or in any other circumstance other
10 than the limited purposes and circumstances expressly set forth
11 herein, nor shall anything herein be construed as an admission
12 of liability as to any claim for damages or as an agreement or
13 indication of willingness to pay any amount as damages absent a
14 judicial determination of fault, and the Tribe or its insurer,
15 or both, shall in every instance have the right to defend any
16 such claim fully on the merits.

17 2. The Tribe shall provide to the State Gaming
18 Representative annually a certificate of insurance showing that
19 its gaming enterprise and its agents and employees engaged
20 therein, are insured to the extent and in the circumstances
21 required by this Section, or that it is self-insured to such
22 extent and in such circumstances. If the State Gaming
23 Representative so requests in writing, the certificate of
24 insurance may be furnished directly to the State Gaming
25 Representative from the insurance carrier or the insuring agency

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1 for the insured Tribe.

2 B. Public Health and Safety. The Tribe will establish
3 for its Gaming Facilities health, safety, and construction
4 standards that are at least as stringent as the current editions
5 of the National Electrical Code, the Uniform Building Code, the
6 Uniform Mechanical Code, the Uniform Fire Code, and the Uniform
7 Plumbing Code, and any and all gaming facilities or additions
8 thereto constructed by the Tribe hereafter shall be constructed
9 and all facilities shall be maintained so as to comply with such
10 standards. Inspections will be conducted with respect to these
11 standards at least annually. If the State Gaming Representative
12 requests sufficiently in advance of an annual inspection, the
13 representative may be present during such inspection. The Tribe
14 agrees to correct any deficiencies noted in such inspections
15 within a reasonable period of time. The Tribal Gaming Agency
16 will provide copies of such inspection reports to the State
17 Gaming Representative, if requested to do so in writing.

18 SECTION 9. Effective Date.

19 This Compact shall be effective immediately upon the
20 occurrence of the last of the following:

- 21 A. execution by the Tribe's Governor or President after
22 approval by the Tribal Council;
- 23 B. execution by the Governor of the State;
- 24 C. approval by the Secretary of the Interior; and
- 25 D. publication in the Federal Register.

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1 SECTION 10. Criminal Jurisdiction.

2 The Tribe and the State acknowledge that under the
3 provisions of Section 23 of IGRA, especially that portion
4 codified at 18 U.S.C. § 1166(d), jurisdiction to prosecute
5 violations of state gambling laws made applicable by that
6 section to Indian country is vested exclusively within the
7 United States, unless the Tribe and the State agree in a compact
8 entered into under IGRA to acknowledge such jurisdiction in the
9 State. The Tribe and the State hereby agree that, in the event
10 of any violation of any state gambling law within the Indian
11 Lands by any person who is not a member of the Tribe, the State
12 shall have and may exercise jurisdiction, concurrent with that
13 of the United States, to prosecute such person, under its laws
14 and in its courts; provided, however, that this concurrent
15 jurisdiction shall (1) not take effect unless and until the
16 State and the Tribe shall have entered into a Memorandum of
17 Understanding ("MOU") with respect to the manner in which State
18 and tribal law enforcement agencies shall cooperate with each
19 other and with federal authorities in the detection of
20 violations, apprehension and detention of any suspected
21 violator, and the investigation and prosecution of any charges
22 brought by the State pursuant to this Section and (2) continue
23 so long as the MOU remains in effect. For the purposes of
24 negotiating and executing such a Memorandum of Understanding,
25 the Legislature authorizes the State District Attorney for the

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1 Judicial District in which the Tribes' lands are located to act
2 on behalf of the State.

3 SECTION 11. Binding Effect and Duration.

4 A. This Compact shall be binding upon the State and Tribe
5 for a term of fifteen (15) years from the date it becomes
6 effective and will automatically renew for an additional five
7 (5) year period unless modified or terminated by written
8 agreement of both parties.

9 B. Before the date that is one year prior to the
10 expiration of the fifteen (15) year initial term, and/or before
11 the date that is one year prior to the expiration of the five
12 (5) year renewal period, either party may serve written notice
13 on the other of its desire to renegotiate this Compact.

14 C. In the event that either party gives written notice to
15 the other of its desire to renegotiate this Compact pursuant to
16 Subsection (B) of this Section, the Tribe may, pursuant to the
17 procedures of IGRA, request the State to enter into negotiations
18 for a new compact governing the conduct of Class III Gaming. If
19 the parties are unable to conclude a successor compact, this
20 Compact shall remain in full force and effect pending exhaustion
21 of the administrative and judicial remedies set forth in IGRA
22 and any other applicable federal law.

23 D. Notwithstanding the foregoing, at any time while this
24 Compact remains in effect, either party may, by written notice
25 to the other party, request reopening negotiations with respect

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1 to any provision of this Compact, or with respect to any issue
2 not addressed in the Compact, specifying such provision or issue
3 in such notice. No such request shall be unreasonably refused,
4 but neither party shall be required to agree to any change in
5 the Compact, and no agreement to supplement or amend this
6 Compact in any respect shall have any validity until the same
7 shall have been approved in writing by the Tribe, the State, and
8 the Secretary of the Interior and notice of such approval
9 published in the Federal Register.

10 E. The Tribe may operate Class III Gaming only while this
11 Compact or any renegotiated compact is in effect.

12 SECTION 12. Severability.

13 In the event that any Section or provision of this Compact
14 is held invalid by any court of competent jurisdiction, it is
15 the intent of the parties that the remaining sections or
16 provisions of this Compact, and any amendments thereto, shall
17 continue in full force and effect.

18 SECTION 13. Notice to Parties.

19 Unless otherwise indicated, all notices, payments,
20 requests, reports, information, or demand which any party hereto
21 may desire or may be required to give to the other party hereto,
22 shall be in writing, and shall be personally delivered or sent
23 by first-class mail sent to the other party at its address
24 appearing below or such other address as any party shall
25 hereinafter inform the other party hereto by written notice

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1 given as aforesaid:

2 Notice to the Tribe shall be sent to

3 Office of the Governor or President Tribal Gaming Agency

4 Notice to the State shall be sent to

5 Governor's Office Office of Attorney General

6 State of New Mexico State of New Mexico

7 Santa Fe, New Mexico Santa Fe, New Mexico

8 Every notice, payment, request, report, information, or demand
9 so given shall be deemed effective upon receipt, or if mailed,
10 upon receipt or the expiration of the third day following the
11 day of mailing, whichever occurs first, except that any notice
12 of change of address shall be effective only upon receipt by the
13 party to whom said notice is addressed.

14 SECTION 14. Entire Agreement.

15 This Compact is the entire agreement between the parties
16 and supersedes all prior agreements, whether written or oral,
17 with respect to the subject matter hereof. Neither this Compact
18 nor any provision herein may be changed, waived, discharged, or
19 terminated orally, but only by an instrument, in writing, signed
20 by the Tribe and the State, and approved by the Secretary of the
21 Interior.

22 SECTION 15. Filing of Compact with Secretary of State.

23 Upon the effective date of this Compact, a certified copy
24 shall be filed by the Tribe with the New Mexico Secretary of
25 State, and a copy shall be transmitted to the New Mexico

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1 Attorney General. Any subsequent amendment or modification of
2 this Compact shall be filed with the New Mexico Secretary of
3 State and a copy shall be transmitted to the New Mexico Attorney
4 General. "

5 Section 6. [NEW MATERIAL] REVENUE SHARING AGREEMENTS
6 AUTHORIZED AND REQUIRED. --

7 A. The governor of the state shall not enter into
8 any tribal-state gaming compact on behalf of the state unless
9 the Tribe requesting the compact agrees to enter into a revenue
10 sharing agreement with the state.

11 B. The governor of the state is hereby authorized
12 and directed to execute on behalf of the state tribal-state
13 revenue sharing agreements with the following tribal
14 governments: the pueblos of Acoma, Isleta, Nambe, Pojoaque,
15 San Felipe, San Ildefonso, San Juan, Sandia, Santa Ana, Santa
16 Clara, Taos, and Tesuque, the Jicarilla Apache tribe and the
17 Mescalero Apache tribe in the form set forth in Section 7 of the
18 Tribal Governmental Gaming Compact Act.

19 C. The governor of the state is hereby authorized
20 and directed to execute on behalf of the state a tribal-state
21 revenue sharing agreement in the form set forth in Section 7 of
22 the Tribal Governmental Gaming Compact Act.

23 D. Any tribal-state revenue sharing agreement
24 executed by the governor pursuant to Subsections A or B of this
25 section shall constitute a binding obligation of the state, once

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1 the agreement takes effect.

2 Section 7. [NEW MATERIAL] FORM OF REVENUE SHARING
3 AGREEMENT. --

4 Revenue sharing agreements with tribes concerning class III
5 gaming revenues shall have the following form:

6 "TRIBAL- STATE
7 REVENUE SHARING AGREEMENT

8 This Agreement made between the State of New Mexico
9 (hereinafter referred to as "State") and the _____
10 (hereinafter referred to as "Tribe"), parties to a Compact
11 between the Tribe and the State, executed more or less
12 contemporaneously with this Agreement. The parties agree as
13 follows:

14 1. Summary. The Tribe agrees to contribute certain of its
15 Class III Gaming revenues, as described below, to the State, on
16 the terms and conditions contained in this Agreement.

17 2. Purpose. The purpose of this Agreement is to
18 compensate the State for maintaining market exclusivity of
19 tribal gaming. Tribal revenue sharing will, therefore, be
20 limited to the extent that competing games are conducted outside
21 Indian Lands. This Agreement is intended to recognize the
22 existing lawful levels of gaming permitted under State law and
23 public policy. A central purpose of this Agreement is that if
24 such existing lawful levels of gaming are increased, except as
25 referred to under Paragraph 5(B) of this Agreement, the Tribe's

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1 revenue sharing obligation hereunder shall terminate.

2 3. Revenue to State Government. The parties agree that,
3 after the effective date hereof, the Tribe shall make semi-
4 annual payments to the General Fund of the State ("State General
5 Fund") in the amount calculated pursuant to Paragraph 4 of this
6 Agreement.

7 4. Calculation of Revenue to State Government.

8 A. The total revenue the Tribe will pay to the State
9 Government pursuant to Paragraph 3 of this Agreement shall be
10 Five Percent (5%) of the gross gaming receipts at each Gaming
11 Facility derived from Class III games of chance which are
12 protected by the limitations in Paragraph 5 of this Agreement
13 and elsewhere herein.

14 B. For purposes of these payments, all calculations
15 of amounts due shall be based upon a calendar year beginning
16 January 1 and ending December 31, unless the parties agree on a
17 different fiscal year. The semi-annual payments due to the
18 State Government pursuant to these terms shall be paid no later
19 than twenty-five (25) days after December 31 and June 30 of each
20 year (or commensurate dates if the fiscal year agreed upon is
21 different from the calendar year). Any payments due and owing
22 from the Tribe in the year the Compact is approved, or the final
23 year the Compact is in force, shall reflect the gross gaming
24 receipts, but only for the portion of the year the Compact is in
25 effect. Any adjustments to revenue sharing payments arising

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1 from the annual audit report required under the Compact will be
2 reflected in the next following semi-annual payment under this
3 Revenue Sharing Agreement.

4 5. Limitations. The Tribe's obligation to make the
5 payments provided for in Paragraphs 3 and 4 of this Agreement
6 shall apply and continue only so long as there is a binding
7 Compact in effect between the Tribe and the State which Compact
8 provides for the play of Class III games of chance, but shall
9 terminate in the event of any of the following conditions:

10 A. if the State passes, amends, or repeals any law,
11 or takes any other action, which would directly or indirectly
12 attempt to restrict, or has the effect of restricting, the scope
13 of Indian gaming.

14 B. if the State permits any expansion of non-tribal
15 Class III Gaming in the State. Notwithstanding this general
16 prohibition against permitted expansion of gaming activities,
17 the State may permit (1) the existing State lottery, (2) any
18 veterans, fraternal, or other non-profit membership organization
19 to operate one or more electronic gaming machines on such
20 organization's premises for the benefit of its members, but only
21 for the benefit of such organization's members, and only if such
22 devices are required to meet the standards applicable to such
23 devices in the State of Nevada by no later than one year after
24 the date of enactment of legislation making such devices lawful,
25 and (3) any horse racing tracks to operate electronic gaming

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1 devices on days on which live horse racing or simulcast of horse
2 races occurring at horse racing tracks elsewhere within New
3 Mexico are conducted at such tracks; provided, however, that for
4 any day on which electronic gaming devices are permitted to be
5 operated under this provision at any horse racing track located
6 within 150 miles of a Gaming Facility owned by the Tribe, one-
7 half of the gross gaming receipts derived from electronic gaming
8 devices at such Gaming Facility for such day would be exempt
9 from any revenue sharing obligation under the provisions of this
10 Agreement (except that if electronic gaming devices are operated
11 at such horse racing track for more than 12 hours on any such
12 day, all of the Tribe's revenues from electronic gaming devices
13 on such day shall be exempt from any revenue sharing obligation
14 under the provisions of this Agreement), and provided further
15 that there will be no exemption from State taxes imposed on
16 gross receipts of such electronic gaming devices at horse racing
17 tracks. Notwithstanding the reference to permitted live horse
18 racing dates, any increase in the number of permitted live horse
19 racing dates on which electronic gaming devices are permitted to
20 be operated shall constitute an unpermitted expansion of gaming.

21 6. Effect of Variance.

22 A. In the event the acts or omissions of the State
23 cause the Tribe's obligation to make payments under Paragraph 4
24 of this Agreement to terminate under the provisions of Paragraph
25 5 of this Agreement, such cessation of obligation to pay will

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1 not adversely affect the validity of the Compact, but the
2 maximum amount that the Tribe agrees to reimburse the State for
3 actual documented regulatory costs under Section 4(E)(5) of the
4 Compact shall automatically increase to One Hundred Thousand
5 Dollars (\$100,000) per year.

6 B. In the event a Tribe's revenue sharing payment to
7 the State is less than one hundred thousand dollars (\$100,000)
8 per year, the maximum amount that the Tribe agrees to reimburse
9 the State for actual documented regulatory costs under Section
10 (4)(E)(5) of the Compact shall automatically increase to one
11 hundred thousand dollars per year (\$100,000) less the amount of
12 the revenue sharing payment.

13 7. Interpretation. This Agreement shall be broadly
14 construed to accomplish its purpose.

15 8. Dispute Resolution. In the event either party fails to
16 comply with or otherwise breaches any provision of this
17 Agreement, the aggrieved party may invoke the dispute resolution
18 procedure set out in the Compact.

19 9. Effective Date. This Agreement shall become effective
20 on the date that the Compact between the State and the Tribe
21 becomes effective.

22 10. Amendments. Any amendment to this Agreement shall be
23 in writing and signed by both parties. The terms and conditions
24 of this Agreement shall remain in effect until amended, modified
25 or terminated, by agreement of the parties.

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1 11. Third-Party Beneficiaries. This Agreement is not
2 intended to create any third-party beneficiaries and is entered
3 into solely for the benefit of the Tribe and the State.

4 12. Definitions. Unless otherwise provided herein, terms
5 in this Agreement shall have the same meanings as such terms are
6 given in Section 2 of the Compact. "

7 Section 8. [NEW MATERIAL] RATIFICATION AND APPROVAL. --
8 The ratification and approval of forms of a tribal-state gaming
9 compact and revenue-sharing agreement by this state shall not be
10 binding or obligatory until it shall have been likewise approved
11 by the tribal government as a party to a state-tribal gaming
12 compact and revenue-sharing agreement with the state, and by the
13 Secretary of the Interior, notice of which approval has been
14 published in the Federal Register as provided by IGRA.

15 Section 9. [NEW MATERIAL] STATE GAMING REPRESENTATIVE. --
16 The director of the alcohol and gaming division of the
17 regulation and licensing department shall be the state gaming
18 representative for the purposes of implementing tribal-state
19 gaming compacts.

20 Section 10. [NEW MATERIAL] SHORT TITLE. --Sections 1
21 through 70 of this act may be cited as the "Gaming Control Act".

22 Section 11. [NEW MATERIAL] POLICY.--It is the state
23 policy on gaming that:

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

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

9 A. "administrator" means the executive director or
10 the security director;

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

15 C. "affiliated company" means a company that:

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

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

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

24 E. "application" means a request for the issuance of
25 a license or for approval of an act or transaction for which

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

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

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

9 H. "certification" means a notice of approval by the
10 board of the premises on which gaming activity is conducted or
11 of a person required to be certified by the board;

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

16 J. "distributor" means a person who supplies gaming
17 devices to a gaming operator but does not manufacture gaming
18 devices;

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

21 (1) voting stock or similar security;

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

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

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

L. "executive director" means the chief administrative officer appointed by the board;

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

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

O. "gaming" means offering games for play or the use or play of a game by a gaming establishment patron;

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

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

1 game; "gaming device" does not include a system or device that
2 affects a game solely by stopping its operation so that the
3 outcome remains undetermined;

4 R. "gaming employee" means a person connected
5 directly with a gaming activity; "gaming employee" does not
6 include:

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

10 (2) secretarial or janitorial personnel;

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

12 (4) other nongaming personnel;

13 S. "gaming establishment" means the premises on or in
14 which gaming is conducted;

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

21 U. "gaming operator" means a person who conducts
22 gaming;

23 V. "holding company" means a company that directly or
24 indirectly owns or has the power or right to control a company
25 that is an applicant or licensee, but a company that does not

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1 have a beneficial ownership of more than ten percent of the
2 equity securities of a publicly traded corporation is not a
3 holding company;

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

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

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

13 (2) an insurance company as defined in Section
14 2(a)(17) of the federal Investment Company Act of 1940;

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

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

19 (5) collective trust funds as defined in Section
20 3(c)(11) of the federal Investment Company Act of 1940;

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

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

3 Y. "intermediary company" means a company that:

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

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

8 Z. "key executive" means an executive who is a
9 department head of a licensee having the power to exercise
10 significant influence over decisions concerning any part of the
11 licensed operations of the licensee or whose compensation
12 exceeds an amount established by the board in a regulation;

13 AA. "license" means an authorization required by the
14 board for engaging in gaming activities;

15 BB. "licensee" means a person to whom a valid license
16 has been issued;

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

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

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1 administrators:

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

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

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

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

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

14 (2) has a federal tax number;

15 (3) 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 (4) has been in continuous existence since
19 before January 1, 1997;

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 corporation
6 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. "security director" means the head of the
23 security division appointed by the board;

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

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

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

7 Section 13. [NEW MATERIAL] LIMITED GAMING ACTIVITY
8 PERMITTED. -- Gaming activity is permitted in New Mexico only if
9 it is conducted in compliance with and pursuant to:

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

14 Section 14. [NEW MATERIAL] GAMING CONTROL BOARD
15 CREATED. --

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

1 an attorney who has been admitted to practice before the
2 supreme court of New Mexico; and at least one member of the
3 board shall have at least five years of previous employment in
4 a top-level supervisory and administrative position in a
5 governmental gaming regulatory agency.

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

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

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

1 in this section.

2 E. The governor shall choose a chairman annually
3 from the board's membership.

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

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

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

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

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

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1 (3) complete disclosure of any equity interest
2 held by the prospective board member or a member of his
3 immediate family in a business connected with gaming; and

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

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

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

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

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

25 (3) exhibited a history of willful disregard

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1 for the gaming laws of this or any other state or the United
2 States; or

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

6 K. The senate may in its discretion not confirm a
7 prospective board member.

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

12 Section 15. [NEW MATERIAL] BOARD- - MEETINGS- - QUORUM- -
13 RECORDS. - -

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

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

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

25 D. All proceedings of the board shall be recorded

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1 by audiotape or other equivalent verbatim audio recording
2 device.

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

8 Section 16. [NEW MATERIAL] BOARD'S POWERS AND DUTIES. --

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

16 B. The board shall:

- 17 (1) employ the administrators;
18 (2) create a security division of the board;
19 (3) the board shall adopt and publish
20 regulations regarding licensure and specifications for gaming
21 devices within six months of the appointment of the original
22 members. No license shall be issued pursuant to the
23 provisions of the Gaming Control Act prior to six months
24 following the publication of the regulations regarding
25 licensure and specification for gaming devices;

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1 (4) make the final decision on issuance,
2 denial, suspension and revocation of all licenses pursuant to
3 and consistent with the provisions of the Gaming Control Act;

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

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

11 (6) meet at least once each month;

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

18 (8) offer seminars on the premises of gaming
19 establishments to gaming operator licensees and their
20 employees to provide information on identification of
21 compulsive gamblers and methods that can be used to prevent
22 compulsive gambling.

23 C. The board may:

24 (1) impose civil fines not to exceed twenty-
25 five thousand dollars (\$25,000) for the first violation and

1 fifty thousand dollars (\$50,000) for subsequent violations of
2 any prohibitory provision of the Gaming Control Act or any
3 prohibitory provision of a regulation adopted pursuant to that
4 act;

5 (2) conduct investigations;

6 (3) subpoena persons and documents to compel
7 access to or the production of documents and records,
8 including books and memoranda, in the custody or control of
9 any licensee;

10 (4) compel the appearance of employees of a
11 licensee or persons for the purpose of ascertaining compliance
12 with provisions of the Gaming Control Act or a regulation
13 adopted pursuant to its provisions;

14 (5) administer oaths and take depositions to
15 the same extent and subject to the same limitations as would
16 apply if the deposition were pursuant to discovery rules in a
17 civil action in the district court;

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

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

22 (8) conduct audits of applicants, licensees
23 and persons affiliated with licensees;

24 (9) inspect, examine, photocopy and audit all
25 documents and records of an applicant or licensee relevant to

1 his gaming activities in the presence of the applicant or
2 licensee or his agent;

3 (10) require verification of income and all
4 other matters pertinent to the gaming activities of an
5 applicant or licensee affecting the enforcement of any
6 provisions of the Gaming Control Act;

7 (11) inspect all places where gaming
8 activities are conducted and inspect all property connected
9 with gaming in those places;

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

14 (13) inspect, examine, photocopy and audit all
15 documents and records of any affiliate of an applicant or
16 licensee who the board knows or reasonably suspects is
17 involved in the financing, operation or management of the
18 applicant or licensee. The inspection, examination,
19 photocopying and audit shall be in the presence of a
20 representative of the affiliate or its agent when practicable;
21 and

22 (14) except for the powers specified in
23 Paragraphs (1) and (6) of this subsection, carry out all or
24 part of the foregoing powers and activities through the
25 executive director or security director.

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1 Section 17. [NEW MATERIAL] BOARD REGULATIONS--
2 DISCRETIONARY REGULATIONS-- PROCEDURE-- REQUIRED PROVISIONS. --

3 A. The board may adopt any regulation:

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

6 (2) deemed necessary to implement the
7 provisions of the Gaming Control Act.

8 B. No regulation shall be adopted, amended or
9 repealed without a public hearing on the proposed action
10 before the board or a hearing officer designated by it. The
11 public hearing shall be held in Santa Fe. Notice of the
12 subject matter of the regulation, the action proposed to be
13 taken, the time and place of the hearing, the manner in which
14 interested persons may present their views and the method by
15 which copies of the proposed regulation, amendment or repeal
16 may be obtained shall be published once at least thirty days
17 prior to the hearing date in a newspaper of general
18 circulation and mailed at least thirty days prior to the
19 hearing date to all persons who have made a written request
20 for advance notice of hearing. All regulations and actions
21 taken on regulations shall be filed in accordance with the
22 State Rules Act.

23 C. The board shall adopt regulations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 Section 18. [NEW MATERIAL] ADMINISTRATORS--EMPLOYMENT--
9 QUALIFICATIONS. --

10 A. Two administrators, an executive director and a
11 security director, shall be employed by, report directly to
12 and serve at the pleasure of the board.

13 B. The executive director shall have had at least
14 five years of responsible supervisory administrative
15 experience in public or business administration.

16 C. The security director shall have had at least
17 five years of responsible supervisory administrative
18 experience in a law enforcement agency, shall have graduated
19 from a law enforcement academy with a minimum of four hundred
20 hours of basic police training and have at least a bachelor's
21 degree from an accredited post-secondary educational
22 institution.

23 Section 17. [NEW MATERIAL] EXECUTIVE DIRECTOR--
24 DUTIES. --

25 A. The executive director shall:

- 1 (1) implement the policies of the board that
- 2 are not assigned to the security director;
- 3 (2) employ all personnel of the board, except
- 4 security personnel, who shall be covered employees pursuant to
- 5 the provisions of the Personnel Act;
- 6 (3) take administrative action by issuing
- 7 orders and instructions consistent with the Gaming Control Act
- 8 and regulations of the board to assure implementation of and
- 9 compliance with the provisions of that act and those
- 10 regulations;
- 11 (4) prepare an annual budget for the board for
- 12 divisions under his direction and submit it to the board;
- 13 (5) coordinate and cooperate with the security
- 14 director at all times to the extent possible in matters
- 15 affecting activities of the board and its personnel; and
- 16 (6) make recommendations to the board of
- 17 proposed regulations and any legislative changes needed to
- 18 provide better administration of the Gaming Control Act and
- 19 fair and efficient regulation of gaming activities in the
- 20 state.
- 21 B. The executive director may:
- 22 (1) establish subdivisions of the board as he
- 23 determines are appropriate to administer the provisions of the
- 24 Gaming Control Act;
- 25 (2) delegate authority to subordinates as he

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1 deems necessary and appropriate, clearly delineating the
2 delegated authority and the limitations on it, if any;

3 (3) conduct research and studies that will
4 improve the operations of the board and the provision of
5 services to the citizens of the state; and

6 (4) provide courses of instruction and
7 practical training for employees of the board and other
8 persons involved in the activities regulated by the board with
9 the objectives of improving operations of the board and
10 achieving compliance with the law and regulations.

11 Section 20. [NEW MATERIAL] SECURITY DIRECTOR--DUTIES. --

12 A. The security director shall:

13 (1) implement all policies of the board
14 assigned to him by the board;

15 (2) employ all security personnel, some of
16 whom shall be designated as New Mexico peace officers subject
17 to proper certification pursuant to the Law Enforcement
18 Training Act and all of whom shall be covered employees
19 pursuant to the provisions of the Personnel Act;

20 (3) conduct background investigations of
21 employees of the board and applicants, their affiliates and
22 employees as required by the board;

23 (4) prepare an annual budget for the security
24 division of the board and submit it to the board for approval;

25 (5) conduct internal investigations of the

1 board or contract with the attorney general to conduct
2 investigations of the board after consultation with and
3 approval by a majority of the board members;

4 (6) conduct investigations of gaming
5 activities and licensees necessary to provide for the secure
6 operation of gaming activities in the state and the
7 enforcement of the provisions of the Gaming Control Act and
8 its regulations;

9 (7) take administrative action by issuing
10 orders and instructions required for the security of the board
11 consistent with the Gaming Control Act and regulations of the
12 board to assure implementation of and compliance with the
13 provisions of that act and those regulations;

14 (8) coordinate and cooperate with the
15 executive director at all times to the extent possible in
16 security matters affecting activities of the board and its
17 personnel; and

18 (9) make recommendations to the board of
19 proposed regulations and any legislative changes needed to
20 make the activities of licensees more secure and to provide
21 more effective and efficient security of the board or the
22 activities licensed pursuant to the provisions of the Gaming
23 Control Act.

24 B. The security director may:

25 (1) establish subdivisions of the security

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1 division as he determines are appropriate for the secure
2 operation of the board, the investigation of gaming activities
3 and licensees and the enforcement of the provisions of the
4 Gaming Control Act and its regulations;

5 (2) delegate authority to subordinates as he
6 deems necessary and appropriate, clearly delineating the
7 delegated authority and the limitations on it, if any; and

8 (3) provide courses of instruction and
9 practical training for employees of the security division and
10 for the security personnel of licensees with the objective of
11 providing effective, efficient and secure operation of the
12 board and gaming activities in the state.

13 Section 21. [NEW MATERIAL] INVESTIGATION OF
14 ADMINISTRATOR CANDIDATES AND EMPLOYEES. --

15 A. A person who is under consideration in the final
16 selection process for appointment as an administrator shall
17 file a disclosure statement pursuant to the requirements of
18 this section, and the board shall not make an appointment of a
19 person as an administrator until a background investigation is
20 completed and a report is made to the board.

21 B. A person who has reached the final selection
22 process for employment by an administrator shall file a
23 disclosure statement pursuant to the requirements of this
24 section if the administrator or the board has directed that
25 person do so. The person shall not be further considered for

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1 employment until a background investigation is completed and a
2 report is made to the administrator.

3 C. Forms for the disclosure statements required by
4 this section shall be developed by the board in cooperation
5 with the department of public safety. At a minimum, the
6 following information shall be required of a person submitting
7 a statement:

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

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

15 (3) a complete description of any equity
16 interest held in a business connected with the gaming
17 industry.

18 D. In preparing an investigative report, the
19 department of public safety or the board may request and
20 receive criminal history information from the federal bureau
21 of investigation or any other law enforcement agency or
22 organization. The department and the board shall maintain
23 confidentiality regarding information received from a law
24 enforcement agency that may be imposed by the agency as a
25 condition for providing the information.

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1 E. All persons required to file a disclosure
2 statement shall provide any assistance or information
3 requested by the department of public safety or the board and
4 shall cooperate in any inquiry or investigation.

5 F. If information required to be included in a
6 disclosure statement changes or if information is added after
7 the statement is filed, the person required to file it shall
8 provide that information in writing to the person requesting
9 the investigation. The supplemental information shall be
10 provided within thirty days after the change or addition.

11 G. The board shall not appoint a person as an
12 administrator, and an administrator shall not employ a person,
13 if the board or the administrator has reasonable cause to
14 believe that the person has:

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

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

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

25 (4) had a permit or license issued pursuant to

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1 the gaming laws of this or any other state or the United
2 States permanently suspended or revoked for cause.

3 H. Both the board and an administrator may exercise
4 absolute discretion in their respective appointing and
5 employing powers.

6 Section 22. [NEW MATERIAL] CONFLICTS OF INTEREST--
7 BOARD-- ADMINISTRATORS. --

8 A. In addition to all other provisions of New
9 Mexico law regarding conflicts of interest of state officials
10 and employees, a member of the board, an administrator, a
11 person in the immediate family of or residing in the household
12 of a member of the board or an administrator shall not:

13 (1) directly or indirectly, individually, as a
14 proprietor or as a member, stockholder, director or officer of
15 a company, have an interest in a business engaged in gaming
16 activities in New Mexico or another jurisdiction; or

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

22 B. If a member of the board, an administrator or a
23 person in the immediate family of or residing in the household
24 of a member of the board or an administrator violates a
25 provision of this section the member of the board or the

1 administrator shall be removed from his office or position. A
2 member of the board shall be removed from the board by the
3 governor. An administrator shall be terminated from his
4 position by the board.

5 Section 23. [NEW MATERIAL] ACTIVITIES REQUIRING
6 LICENSING. --

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

9 B. A person shall not sell, supply or distribute
10 any gaming device or associated equipment to a gaming operator
11 licensee for use or play in this state unless he is licensed
12 by the board as a distributor.

13 C. A person shall not manufacture, fabricate,
14 assemble, program or make modifications to a gaming device or
15 associated equipment for use or play in this state or for use
16 or play outside of this state from any location within this
17 state unless he is licensed by the board as a manufacturer.
18 In New Mexico, a manufacturer licensee may sell or supply only
19 to a distributor licensee or a person out of state and only
20 the gaming devices or associated equipment that he
21 manufactures, fabricates, assembles, programs or modifies.

22 D. A gaming operator licensee may sell or trade in
23 a gaming device or associated equipment to a distributor
24 licensee or a manufacturer licensee.

25 E. A person shall not sell or supply a gaming

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1 machine from a location within the state to a location outside
2 of the state unless that person is a distributor licensee or a
3 manufacturer licensee.

4 F. A gaming operator licensee or a person other
5 than a manufacturer licensee or distributor licensee shall not
6 possess or control a place where there is an unlicensed gaming
7 machine. Any unlicensed gaming machine, except one in the
8 possession of a licensee while awaiting transfer to a gaming
9 operator licensee for licensure of the machine, is subject to
10 forfeiture and confiscation by any law enforcement agency or
11 peace officer.

12 G. A person shall not service or repair a gaming
13 device or associated equipment unless he is a manufacturer
14 licensee, a distributor licensee or employed by a manufacturer
15 licensee or a distributor licensee.

16 H. A person shall not engage in any activity for
17 which the board requires a license or permit without obtaining
18 the license or permit.

19 I. Except as provided in Subsections C and D of
20 this section, a person shall not purchase, lease or acquire
21 possession of a gaming device or associated equipment except
22 from a distributor licensee.

23 Section 24. [NEW MATERIAL] LICENSURE-- APPLICATION. --

24 A. The board shall establish the following
25 categories of licenses:

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- (1) manufacturer;
- (2) distributor;
- (3) gaming operator; and
- (4) gaming machine.

B. The board shall issue certifications for:

- (1) the premises of a gaming establishment, a manufacturer or a distributor; and
- (2) key executives.

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

D. A licensee shall not be issued more than one type of license but this provision does not prohibit a licensee from owning, leasing, acquiring or having in his possession licensed gaming machines if that activity is otherwise allowed by the provisions of the Gaming Control Act. A licensee shall not own a majority interest in, manage or otherwise control a holder of another type of license issued pursuant to the provisions of that act.

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

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

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

5 H. The application for a license shall include:

6 (1) the name of the applicant;

7 (2) the location of the proposed operation;

8 (3) the gaming devices to be operated,

9 manufactured, distributed or serviced;

10 (4) the names of all persons having a direct
11 or indirect interest in the business of the applicant and the
12 nature of such interest; and

13 (5) such other information and details as the
14 board may require.

15 I. The board shall furnish to the applicant
16 supplemental forms that the applicant shall complete and file
17 with the application. Such supplemental forms shall require
18 complete information and details with respect to the
19 applicant's antecedents, immediate family, habits, character,
20 criminal record, business activities, financial affairs and
21 business associates, covering at least a ten-year period
22 immediately preceding the date of filing of the application.

23 Section 25. [NEW MATERIAL] LICENSE CERTIFICATION AND
24 WORK PERMIT FEES. --

25 A. License and other fees shall be established by

1 board regulation but shall not exceed the following amounts:

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

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

8 (3) gaming operator's license for a nonprofit
9 organization, one thousand dollars (\$1,000) for the initial
10 license and two hundred dollars (\$200) for annual renewal;

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

15 (5) premises certification, five hundred
16 dollars (\$500) annually; and

17 (6) work permit, one hundred dollars (\$100)
18 annually.

19 B. The board shall establish the fee for
20 certifications or other actions by regulation, but no fee
21 established by the board shall exceed one thousand dollars
22 (\$1,000) except for those fees that reimburse the board for
23 the costs of background investigations.

24 C. All license, certification or work permit fees
25 shall be paid to the board at the time and in the manner

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1 established by regulations of the board.

2 Section 26. [NEW MATERIAL] ACTION BY BOARD ON
3 APPLICATIONS. - -

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

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

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

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

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

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

23 (1) the applicant has adequate business
24 probity, competence and experience in business;

25 (2) the proposed financing of the applicant is

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1 adequate for the nature of the proposed license and from a
2 suitable source; any lender or other source of money or credit
3 that the board finds does not meet the standards set forth in
4 Subsection B of this section shall be deemed unsuitable; and

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

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

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

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1 activities.

2 F. The board shall investigate the qualifications
3 of each applicant before a license, certification or work
4 permit is issued by the board and shall continue to observe
5 and monitor the conduct of all licensees or certification or
6 work permit holders and the persons having a material
7 involvement directly or indirectly with a licensee.

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

11 H. After issuance, a license, certification or
12 permit shall continue in effect upon proper payment of the
13 initial and renewal fees, subject to the power of the board to
14 revoke, suspend, condition or limit licenses, certification or
15 permits.

16 I. The board has full and absolute power and
17 authority to deny an application for any cause it deems
18 reasonable. If an application is denied, the board shall
19 prepare and file its written decision on which its order
20 denying the application is based.

21 Section 27. [NEW MATERIAL] INVESTIGATION-- APPLICANTS
22 FOR LICENSES, CERTIFICATIONS OR PERMITS. --The board shall
23 conduct an investigation of the applicant within thirty days
24 after an application is filed and supplemental information
25 that the board may require is received.

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1 Section 28. [NEW MATERIAL] ELIGIBILITY REQUIREMENTS FOR
2 COMPANIES. --In order to be eligible to receive a license, a
3 company shall:

4 A. be incorporated or otherwise organized and in
5 good standing in this state or incorporated or otherwise
6 organized in another state, qualified to do business in this
7 state and in good standing in this state and in the state of
8 incorporation;

9 B. comply with all of the requirements of the laws
10 of this state pertaining to the company;

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

13 (1) at all times reflect the ownership
14 according to company records of every class of security issued
15 by the company; and

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

18 D. file notice of all changes of ownership of all
19 classes of securities issued by the company with the board
20 within thirty days of the change.

21 Section 29. [NEW MATERIAL] REGISTRATION WITH BOARD BY
22 COMPANY APPLICANTS--REQUIRED INFORMATION. --A company applicant
23 shall provide the following information to the board on forms
24 provided by the board:

25 A. the organization, financial structure and nature

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- 1 of the business to be operated, including the names and
2 personal histories of all officers, directors and key
3 executives;
- 4 B. the rights and privileges acquired by the
5 holders of different classes of authorized securities;
- 6 C. the terms and conditions of all outstanding
7 loans, mortgages, trust deeds, pledges or any other
8 indebtedness or security interest evidenced by a security
9 instrument pertaining to the proposed gaming operation or
10 other licensed activity in this state and the name and address
11 of the person who is servicing the loan, mortgage, trust deed,
12 pledge or other indebtedness or security device interest;
- 13 D. remuneration to persons, other than directors,
14 officers and key executives, exceeding fifty thousand dollars
15 (\$50,000) per year;
- 16 E. bonus and profit-sharing arrangements within the
17 company;
- 18 F. management and service contracts pertaining to
19 the proposed gaming activity in this state;
- 20 G. balance sheets and profit and loss statements
21 for at least the three preceding fiscal years, or, if the
22 company has not been in business for a period of three years,
23 balance sheets and profit and loss statements from the time of
24 its commencement of business operations and projected for
25 three years from the time of its commencement of business

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1 operations. All balance sheets and profit and loss statements
2 shall be certified by independent certified public
3 accountants; and

4 H. any further financial data that the board deems
5 necessary or appropriate.

6 Section 30. [NEW MATERIAL] INDIVIDUAL CERTIFICATION OF
7 OFFICERS, DIRECTORS AND OTHER PERSONS. -- An officer, director,
8 equity security holder of five percent or more, partner,
9 general partner, limited partner, trustee or beneficiary of
10 the company that holds or has applied for a license shall be
11 certified individually, according to the provisions of the
12 Gaming Control Act, and if in the judgment of the board the
13 public interest is served by requiring any or all of the
14 company's key executives to be certified, the company shall
15 require those persons to apply for certification. A person
16 who is required to be certified pursuant to this section shall
17 apply for certification within thirty days after becoming an
18 officer, director, equity security holder of five percent or
19 more, partner, general partner, limited partner of five
20 percent or more, trustee, beneficiary or key executive. A
21 person who is required to be certified pursuant to a decision
22 of the board shall apply for certification within thirty days
23 after the board so requests.

24 Section 31. [NEW MATERIAL] REQUIREMENTS IF COMPANY IS
25 OR BECOMES A SUBSIDIARY-- INVESTIGATIONS-- RESTRICTIONS ON

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1 UNSUITABLE PERSONS-- OTHER REQUIREMENTS. --

2 A. If the company applicant or licensee is or
3 becomes a subsidiary, each nonpublicly traded holding company
4 and intermediary company with respect to the subsidiary
5 company shall:

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

7 (2) register with the board and furnish to the
8 board the following information:

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

12 (b) the names of all company officers and
13 directors within thirty days of their appointment or election;

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

16 (d) the terms, position, rights and
17 privileges of the different classes of its outstanding
18 securities;

19 (e) the terms on which its securities are
20 to be, and during the preceding three years have been,
21 offered;

22 (f) the holder of and the terms and
23 conditions of all outstanding loans, mortgages, trust deeds,
24 pledges or any other indebtedness or security interest
25 pertaining to the applicant or licensee;

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1 (g) the extent of the securities holdings
2 or other interest in the holding company or intermediary
3 company of all officers, directors, key executives,
4 underwriters, partners, principals, trustees or any direct or
5 beneficial owners, and the amount of any remuneration paid
6 them as compensation for their services in the form of salary,
7 wages, fees or by contract pertaining to the licensee;

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

11 (i) bonus and profit-sharing arrangements
12 within the holding company or intermediary company;

13 (j) management and service contracts
14 pertaining to the licensee or applicant;

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

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

25 (m) any further financial statements

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1 necessary or appropriate to assist the board in making its
2 determinations; and

3 (n) a current annual profit and loss
4 statement, a current annual balance sheet and a copy of the
5 company's most recent federal income tax return within thirty
6 days after the return is filed.

7 B. All holders of five percent or more of the
8 equity security of a holding company or intermediary company
9 shall apply for a finding of suitability.

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

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

1 interest offered upon the terms and within the time period
2 ordered by the board.

3 E. Beginning on the date when the board serves
4 notice that a person has been found to be unsuitable pursuant
5 to Subsection D of this section, it is unlawful for the
6 unsuitable person to:

7 (1) receive any dividend or interest upon any
8 securities held in the holding company or intermediary
9 company, or any dividend, payment or distribution of any kind
10 from the holding company or intermediary company;

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

14 (3) receive remuneration in any form from the
15 licensee, or from any holding company or intermediary company
16 with respect to that licensee, for services rendered or
17 otherwise.

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

23 G. This section does not apply to a holding company
24 or intermediary company that is a publicly traded corporation,
25 the stock of which is traded on recognized stock exchanges,

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1 which shall instead comply with the provisions of Section 23
2 of the Gaming Control Act.

3 Section 32. [NEW MATERIAL] REGISTRATION AND
4 CERTIFICATION OF PUBLICLY TRADED CORPORATIONS. - -

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

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

14 (2) the names of all officers within thirty
15 days of their respective appointments;

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

18 (4) the organization, financial structure and
19 nature of the businesses the publicly traded corporation
20 operates;

21 (5) the terms, position, rights and privileges
22 of the different classes of securities outstanding as of the
23 date the company became a publicly traded corporation;

24 (6) the terms on which the company's
25 securities were issued during the three years preceding the

1 date on which the company became a publicly traded corporation
2 and the terms on which the publicly traded corporation's
3 securities are to be offered to the public as of the date the
4 company became a publicly traded corporation;

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

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

13 (9) bonus and profit-sharing arrangements
14 within the publicly traded corporation directly or indirectly
15 relating to its gaming activities;

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

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

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

25 (13) any further financial statements deemed

1 necessary or appropriate by the board; and

2 (14) a description of the publicly traded
3 corporation's affiliated companies and intermediary companies
4 and gaming licenses, permits and approvals held by those
5 entities.

6 B. The board shall consider the following criteria
7 in determining whether to certify a publicly traded
8 corporation:

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

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

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

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

25 (5) the equity investment, commitment or

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1 contribution of present or prospective directors, key
2 executives, investors, lenders or other sources of financing;
3 and

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

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

13 Section 33. [NEW MATERIAL] FINDING OF SUITABILITY
14 REQUIRED FOR DIRECTORS, OFFICERS AND KEY EXECUTIVES--REMOVAL
15 FROM POSITION IF FOUND UNSUITABLE--SUSPENSION OF SUITABILITY
16 BY BOARD. --

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

24 B. If any officer, director or key executive of a
25 holding company, intermediary company or publicly traded

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

21 Section 34. [NEW MATERIAL] SUITABILITY OF INDIVIDUALS
22 ACQUIRING BENEFICIAL OWNERSHIP OF VOTING SECURITY IN PUBLICLY
23 TRADED CORPORATION-- REPORT OF ACQUISITION-- APPLICATION--
24 PROHIBITION. --

25 A. Each person who, individually or in association

1 with others, acquires, directly or indirectly, beneficial
2 ownership of five percent or more of any voting securities in
3 a publicly traded corporation registered with the board may be
4 required to be found suitable if the board has reason to
5 believe that the acquisition of the ownership would otherwise
6 be inconsistent with the declared policy of this state.

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

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

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

23 E. Any person required by the board or by the
24 provisions of this section to be found suitable shall apply
25 for a finding of suitability within thirty days after the

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1 board requests that he do so.

2 F. Any person required by the board or the
3 provisions of this section to be found suitable who
4 subsequently is found unsuitable by the board shall not hold
5 directly or indirectly the beneficial ownership of any
6 security of a publicly traded corporation that is registered
7 with the board beyond that period of time prescribed by the
8 board.

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

18 Section 35. [NEW MATERIAL] REPORT OF PROPOSED ISSUANCE
19 OR TRANSFER OF SECURITIES--REPORT OF CHANGE IN CORPORATE
20 OFFICERS AND DIRECTORS--APPROVAL OF BOARD. --

21 A. Before a company licensee, other than a publicly
22 traded corporation, may issue or transfer five percent or more
23 of its securities to any person, it shall file a report of its
24 proposed action with the board, which report shall request the
25 approval of the board. The board shall have ninety days

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1 within which to approve or deny the request. If the board
2 fails to act in ninety days, the request is deemed approved.
3 If the board denies the request, the company shall not issue
4 or transfer five percent or more of its securities to the
5 person about whom the request was made.

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

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

18 D. The board may require that a company licensee
19 furnish the board with a copy of its federal income tax return
20 within thirty days after the return is filed with the federal
21 government.

22 Section 36. [NEW MATERIAL] GAMING OPERATOR LICENSEES--
23 GENERAL PROVISIONS-- PLAYER AGE LIMIT-- RULES FOR PLACEMENT. --

24 A. A gaming operator licensee shall be granted a
25 license to operate a specific number of machines at a gaming

1 establishment identified in the license application and shall
2 be granted a license for each gaming machine.

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

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

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

20 E. A gaming operator licensee shall not have
21 automated teller machines on the premises.

22 F. A gaming operator licensee shall not provide,
23 allow, contract or arrange to provide alcohol or food for no
24 charge or at reduced prices as an incentive or enticement for
25 patrons to game.

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1 Section 37. [NEW MATERIAL] GAMING OPERATOR LICENSEES--
2 SPECIAL CONDITIONS FOR NONPROFIT ORGANIZATIONS-- NUMBER OF
3 GAMING MACHINES-- DAYS AND HOURS OF OPERATIONS. --

4 A. A nonprofit organization may be issued a gaming
5 operator's license to operate licensed gaming machines on its
6 premises.

7 B. A nonprofit organization gaming operator
8 licensee may offer for play five gaming machines for each one
9 hundred members of that organization, but no more than twenty-
10 five gaming machines may be offered for play on the premises
11 of a nonprofit organization gaming operator licensee.

12 C. No gaming machine on the premises of a nonprofit
13 organization having a gaming operator's license may award a
14 prize that exceeds one thousand dollars (\$1,000).

15 D. Gaming machines may be played on the premises of
16 a nonprofit organization gaming operator licensee 12:00 noon
17 until 12:00 midnight every day.

18 E. A nonprofit organization gaming operator licensee
19 shall permit only members of that organization and bona fide
20 guests of those members to use or play video gaming machines on
21 the premises of the gaming operator licensee.

22 F. A nonprofit organization gaming operator licensee,
23 after deducting expenses of that organization from the net take,
24 shall distribute the amount of net take remaining to fulfill the
25 purposes of the nonprofit organization or to organizations with

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1 at least one office located in New Mexico that are described in
2 Section 501(c)(3) of the federal Internal Revenue Code of 1986
3 and have received an exemption from payment of federal income
4 taxes pursuant to Section 501(a) of that act.

5 G. A nonprofit organization gaming operator licensee
6 shall submit an accounting of distributions made pursuant to
7 Subsection F of this section to the board by December 31 of each
8 calendar year.

9 Section 38. [NEW MATERIAL] LICENSING OF MANUFACTURERS OF
10 GAMING DEVICES--EXCEPTION--DISPOSITION OF GAMING DEVICES.--

11 A. It is unlawful for any person to operate, carry
12 on, conduct or maintain any form of manufacturing of any
13 gaming device or associated equipment for use or play in New
14 Mexico or any form of manufacturing of any gaming device or
15 associated equipment in New Mexico for use or play outside of
16 New Mexico without first obtaining and maintaining a
17 manufacturer's license.

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

19 (1) no new gaming device manufactured by the
20 person may be approved for use in this state;

21 (2) any previously approved gaming device
22 manufactured by the person is subject to revocation of
23 approval if the reasons for the revocation of the license also
24 apply to that gaming device;

25 (3) no new gaming device or associated

1 equipment made by the manufacturer may be distributed, sold,
2 transferred or offered for use or play in New Mexico; and

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

6 C. An agreement between a manufacturer licensee and
7 a distributor licensee or a gaming operator licensee in New
8 Mexico shall be deemed to include a provision for its
9 termination without liability for the termination on the part
10 of either party upon a finding by the board that either party
11 is unsuitable. Failure to include that condition in the
12 agreement is not a defense in any action brought pursuant to
13 this section to terminate the agreement.

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

- 18 (1) the board; or
19 (2) a laboratory selected by the board.

20 E. The board may inspect every gaming device that
21 is manufactured:

- 22 (1) for use in New Mexico; or
23 (2) in New Mexico for use outside of New

24 Mexi co.

25 F. The board may inspect every gaming device that

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1 is offered for play within New Mexico by a gaming operator
2 licensee.

3 G. The board may inspect all associated equipment
4 that is manufactured and sold for use in New Mexico or
5 manufactured in New Mexico for use outside of New Mexico.

6 H. In addition to all other fees and charges
7 imposed pursuant to the Gaming Control Act, the board may
8 determine, charge and collect from each manufacturer an
9 inspection fee, which shall not exceed the actual cost of
10 inspection and investigation.

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

14 Section 39. [NEW MATERIAL] LICENSING OF DISTRIBUTORS OF
15 GAMING DEVICES. --

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

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

21 (1) no new gaming device distributed by the
22 person may be approved;

23 (2) any previously approved gaming device
24 distributed by the distributor is subject to revocation of
25 approval if the reasons for the revocation of the license also

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1 apply to that gaming device;

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

6 (4) any association or agreement between the
7 distributor and a gaming operator licensee shall be
8 terminated. An agreement between a distributor licensee and a
9 gaming operator licensee shall be deemed to include a
10 provision for its termination without liability on the part of
11 either party upon a finding by the board that the other party
12 is unsuitable. Failure to include that condition in the
13 agreement is not a defense in any action brought pursuant to
14 this section to terminate the agreement.

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

17 D. In addition to all other fees and charges
18 imposed by the Gaming Control Act, the board may determine,
19 charge and collect from each distributor an inspection fee,
20 which shall not exceed the actual cost of inspection and
21 investigation.

22 Section 40. [NEW MATERIAL] CERTIFICATION OF SUITABILITY
23 OF CERTAIN PERSONS FURNISHING SERVICES OR PROPERTY OR DOING
24 BUSINESS WITH GAMING OPERATORS-- TERMINATION OF ASSOCIATION. --

25 A. The board may determine the suitability of any

1 person who furnishes services or property to a gaming operator
2 licensee under any arrangement pursuant to which the person
3 receives compensation based on earnings, profits or receipts
4 from gaming. The board may require the person to comply with
5 the requirements of the Gaming Control Act and with the
6 regulations of the board. If the board determines that the
7 person is unsuitable, it may require the arrangement to be
8 terminated.

9 B. The board may require a person to apply for a
10 finding of suitability to be associated with a gaming operator
11 licensee if the person:

12 (1) does business on the premises of a gaming
13 establishment; or

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

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

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

12 D. The board may issue a certification to a person
13 found suitable pursuant to this section.

14 Section 41. [NEW MATERIAL] REASONS FOR INVESTIGATIONS
15 BY BOARD-- COMPLAINT BY BOARD-- BOARD TO APPOINT HEARING
16 EXAMINER-- REVIEW BY BOARD-- ORDER OF BOARD. --

17 A. The board shall make appropriate investigations
18 to:

19 (1) determine whether there has been any
20 violation of the Gaming Control Act or of any regulations
21 adopted pursuant to that act;

22 (2) determine any facts, conditions, practices
23 or matters that it deems necessary or proper to aid in the
24 enforcement of the Gaming Control Act or regulations adopted
25 pursuant to that act;

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(3) aid in adopting regulations;
(4) secure information as a basis for recommending legislation relating to the Gaming Control Act;
or

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

B. If after an investigation the board is satisfied that a license, registration, finding of suitability or prior approval by the board of any transaction for which approval was required by the provisions of the Gaming Control Act should be limited, conditioned, suspended or revoked, or that a fine should be levied, the board shall initiate a hearing by filing a complaint and transmitting a copy of it to the licensee, together with a summary of evidence in its possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the board. The complaint shall be a written statement of charges that sets forth in ordinary and concise language the acts or omissions with which the respondent is charged. It shall specify the statutes or regulations that the respondent is alleged to have violated but shall not consist merely of charges raised in the language of the statutes or regulations. The summary of the evidence shall be

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1 confidential and made available only to the respondent until
2 such time as it is offered into evidence at any public hearing
3 on the matter.

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

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

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

16 F. The hearing examiner shall prepare a written
17 decision containing his recommendation to the board and shall
18 serve it on all parties. Any respondent who disagrees with
19 the hearing examiner's recommendation may request the board,
20 within ten days of service of the recommendation, to review
21 the recommendation.

22 G. Upon proper request, the board shall review the
23 recommendation. The board may remand the case to the hearing
24 examiner for the presentation of additional evidence upon a
25 showing of good cause why such evidence could not have been

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1 presented at the previous hearing.

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

4 I. If the board limits, conditions, suspends or
5 revokes any license or imposes a fine or limits, conditions,
6 suspends or revokes any registration, finding of suitability
7 or prior approval, it shall issue a written order specifying
8 its action.

9 J. The board's order is effective unless and until
10 reversed upon judicial review, except that the board may stay
11 its order pending a rehearing or judicial review upon such
12 terms and conditions as it deems proper.

13 Section 42. [NEW MATERIAL] EMERGENCY ORDERS OF BOARD. --
14 The board may issue an emergency order for suspension,
15 limitation or conditioning of a license, registration, finding
16 of suitability or work permit or may issue an emergency order
17 requiring a gaming operator licensee to exclude an individual
18 licensee from the premises of the gaming operator licensee's
19 gaming establishment or not to pay an individual licensee any
20 remuneration for services or any profits, income or accruals
21 on his investment in the licensed gaming establishment in the
22 following manner:

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

25 (1) a licensee has willfully failed to report,

1 pay or truthfully account for and pay over any fee imposed by
2 the provisions of the Gaming Control Act or willfully
3 attempted in any manner to evade or defeat any fee or payment
4 thereof;

5 (2) a licensee or gaming employee has cheated
6 at a game; or

7 (3) the emergency order is necessary for the
8 immediate preservation of the public peace, health, safety,
9 morals, good order or general welfare;

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

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

24 D. within five days after issuance of an emergency
25 order, the board shall cause a complaint to be filed and

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1 served upon the person or entity involved; thereafter, the
2 person or entity against whom the emergency order has been
3 issued and served is entitled to a hearing before the board
4 and to judicial review of the decision and order of the board
5 in accordance with the provisions of the board's regulations.

6 Section 43. [NEW MATERIAL] EXCLUSION OR EJECTION OF
7 CERTAIN PERSONS FROM GAMING ESTABLISHMENTS-- PERSONS
8 INCLUDED. --

9 A. The board shall by regulation provide for the
10 establishment of a list of persons who are to be excluded or
11 ejected from a gaming establishment. The list may include any
12 person whose presence in the gaming establishment is
13 determined by the board to pose a threat to the public
14 interest or licensed gaming activities.

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

17 (1) prior conviction for a crime that is a
18 felony under state or federal law, a crime involving moral
19 turpitude or a violation of the gaming laws of any
20 jurisdiction;

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

23 (a) the failure to disclose an interest
24 in a gaming activity for which the person must obtain a
25 license; or

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

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

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

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

Section 44. [NEW MATERIAL] INTERNAL CONTROL SYSTEMS. --

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

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

(2) making and maintaining reliable records, accounts and reports of transactions, operations and events,

1 including reports to the board; and

2 (3) a system by which the amount wagered on
3 each gaming machine and the amount paid out by each gaming
4 machine is recorded on a daily basis, which results may be
5 obtained by the board by appropriate means as described in
6 regulations adopted by the board; all manufacturers are
7 required to have such a system available for gaming operators
8 for the gaming machines that it supplies for use in New
9 Mexico, and all distributors shall make such a system
10 available to gaming operators.

11 B. The internal control system shall be designed to
12 reasonably ensure that:

13 (1) assets are safeguarded;

14 (2) financial records are accurate and
15 reliable;

16 (3) transactions are performed only in
17 accordance with management's general or specific
18 authorization;

19 (4) transactions are recorded adequately to
20 permit proper reporting of gaming revenue and of fees and
21 taxes and to maintain accountability of assets;

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

24 (6) recorded accountability for assets is
25 compared with actual assets at reasonable intervals and

1 appropriate action is taken with respect to any discrepancies;
2 and

3 (7) functions, duties and responsibilities are
4 appropriately segregated and performed in accordance with
5 sound accounting and management practices by competent,
6 qualified personnel.

7 C. A gaming operator licensee and an applicant for
8 a gaming operator's license shall describe, in the manner the
9 board may approve or require, its administrative and
10 accounting procedures in detail in a written system of
11 internal control. A gaming operator licensee and an applicant
12 for a gaming operator's license shall submit a copy of its
13 written system to the board. Each written system shall
14 include:

15 (1) an organizational chart depicting
16 appropriate segregation of functions and responsibilities;

17 (2) a description of the duties and
18 responsibilities of each position shown on the organizational
19 chart;

20 (3) a detailed, narrative description of the
21 administrative and accounting procedures designed to satisfy
22 the requirements of Subsection A of this section;

23 (4) a written statement signed by the
24 licensee's chief financial officer and either the licensee's
25 chief executive officer or a licensed owner attesting that the

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1 system satisfies the requirements of this section;

2 (5) if the written system is submitted by an
3 applicant, a letter from an independent certified public
4 accountant stating that the applicant's written system has
5 been reviewed by the accountant and complies with the
6 requirements of this section; and

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

8 D. The board shall adopt and publish minimum
9 standards for internal control procedures.

10 Section 45. [NEW MATERIAL] GAMING EMPLOYEES--ISSUANCE
11 OF WORK PERMITS--REVOCATION OF WORK PERMITS.--

12 A. A person shall not be employed as a gaming
13 employee unless the person holds a valid work permit issued by
14 the board.

15 B. A work permit shall be issued and may be revoked
16 by the board as provided in regulations adopted by the board.

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

19 Section 46. [NEW MATERIAL] AGE REQUIREMENT FOR PATRONS
20 AND GAMING EMPLOYEES.--A person under the age of twenty-one
21 years shall not:

22 A. play, be allowed to play, place wagers on or
23 collect winnings from, whether personally or through an agent,
24 any game authorized or offered for play pursuant to the Gaming
25 Control Act; or

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1 B. be employed as a gaming employee.

2 Section 47. [NEW MATERIAL] CALCULATION OF NET TAKE--
3 CERTAIN EXPENSES NOT DEDUCTIBLE. --In calculating net take from
4 gaming machines, the actual cost to the licensee of any
5 personal property distributed to a patron as the result of a
6 legitimate wager may be deducted as a loss, except for travel
7 expenses, food, refreshments, lodging or services. For the
8 purposes of this section, "as the result of a legitimate
9 wager" means that the patron must make a wager prior to
10 receiving the personal property, regardless of whether the
11 receipt of the personal property is dependent on the outcome
12 of the wager.

13 Section 48. [NEW MATERIAL] LIMITATIONS ON TAXES AND
14 LICENSE FEES. --A political subdivision of the state shall not
15 impose a license fee or tax on any licensee licensed pursuant
16 to the Gaming Control Act except for the imposition of
17 property taxes.

18 Section 49. [NEW MATERIAL] USE OF CHIPS, TOKENS OR
19 LEGAL TENDER REQUIRED FOR ALL GAMING. --All gaming shall be
20 conducted with chips, tokens or other similar objects approved
21 by the board or with the legal currency of the United States.

22 Section 50. [NEW MATERIAL] COMMUNICATION OR DOCUMENT OF
23 APPLICANT OR LICENSEE ABSOLUTELY PRIVILEGED-- PRIVILEGE NOT
24 WAIVED-- DISCLOSURE OF PRIVILEGED INFORMATION PROHIBITED. --

25 A. Any communication or document of an applicant or

1 licensee is absolutely privileged and does not impose
2 liability for defamation or constitute a ground for recovery
3 in any civil action if it is required by:

- 4 (1) law or the regulations of the board; or
- 5 (2) a subpoena issued by the board to be made
6 or transmitted to the board.

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

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

- 12 (1) shall not release or disclose any
13 privileged information, documents or communications provided
14 by an applicant or licensee without the prior written consent
15 of the applicant or licensee or pursuant to a lawful court
16 order after timely notice of the proceedings has been given to
17 the applicant or licensee;

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

- 21 (3) shall adopt procedures and regulations to
22 protect the privileged nature of information, documents and
23 communications provided by an applicant or licensee.

24 Section 51. [NEW MATERIAL] MOTION FOR RELEASE OF
25 PRIVILEGED INFORMATION. --An application to a court for an

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1 order requiring the board to release any information declared
2 by law to be confidential shall be made only by petition in
3 district court. A hearing shall be held on the petition not
4 less than ten days and not more than twenty days after the
5 date of service of the petition on the board, the attorney
6 general and all persons who may be affected by the entry of
7 that order. A copy of the petition, all papers filed in
8 support of it and a notice of hearing shall be served.

9 Section 52. [NEW MATERIAL] GAMING MACHINE TELEPHONIC
10 INTERMITTENT MONITORING SYSTEM --The board shall develop and
11 operate a telephonic intermittent monitoring system into which
12 all licensed gaming machines are connected. The monitoring
13 system shall be capable of:

14 A. monitoring through periodic or random telephonic
15 contacts, retrieving and auditing the operations, financial
16 data and program information of the network;

17 B. disabling from operation or play any gaming
18 machine in the network that does not comply with the
19 provisions of the Gaming Control Act or the regulations of the
20 board;

21 C. communicating, through program modifications or
22 other means equally effective, with all gaming machines
23 licensed by the board;

24 D. interacting, reading, communicating and linking
25 with gaming machines from a broad spectrum of manufacturers

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1 and associated equipment; and

2 E. providing linkage to each gaming machine in the
3 network at a reasonable and affordable cost to the state or
4 the gaming operator licensee and allowing for program
5 modifications and system updating at a reasonable rate of
6 cost.

7 Section 53. [NEW MATERIAL] MACHINE SPECIFICATIONS. --To
8 be eligible for licensure, each gaming machine shall meet all
9 specifications established by regulations of the board and:

10 A. be unable to be manipulated in a manner that
11 affects the random probability of winning plays or in any
12 other manner determined by the board to be undesirable;

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

16 C. be capable of having play suspended through the
17 telephonic intermittent monitoring system by an administrator
18 until the administrator resets the gaming machine;

19 D. house nonresettable mechanical and electronic
20 meters within a readily accessible locked area of the gaming
21 machine that maintain a permanent record of all money inserted
22 into the machine, all cash payouts of winnings, all refunds of
23 winnings, all credits played for additional games and all
24 credits won by players;

25 E. have a printing mechanism capable of printing

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1 out, at the request of an administrator, readings on the
2 electronic meters of the machine;

3 F. be capable of printing a ticket voucher stating
4 the value of a cash prize won by the player at the completion
5 of each game, the date and time of day the game was played in
6 a twenty-four-hour format showing hours and minutes, the
7 machine serial number, the sequential number of the ticket
8 voucher and an encrypted validation number for determining the
9 validity of a winning ticket voucher;

10 G. be capable of being linked to the board's
11 telephonic intermittent monitoring system for the purpose of
12 being monitored at least once daily with random intermittent
13 contacts as required by the board;

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

17 I. offer only games authorized and examined by the
18 board; and

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

22 Section 54. [NEW MATERIAL] POSTING OF GAMING MACHINE
23 ODDS. --The odds of winning on each gaming machine shall be
24 posted on or near each gaming machine. The board shall
25 provide the manner in which the odds shall be determined and

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1 posted by regulation.

2 Section 55. [NEW MATERIAL] EXAMINATION OF GAMING
3 DEVICES-- COST ALLOCATION. --

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

6 B. The board by regulation shall require a
7 manufacturer to pay the anticipated actual costs of the
8 examination of a gaming device in advance and, after the
9 completion of the examination, shall refund overpayments or
10 charge and collect amounts sufficient to reimburse the board
11 for underpayment of actual costs.

12 C. The board may contract for the examination of
13 gaming devices to meet the requirements of this section.

14 Section 56. [NEW MATERIAL] GAMING TAX--IMPOSITION--
15 ADMINISTRATION. --

16 A. An excise tax is imposed on the privilege of
17 conducting gaming in the state. This tax shall be known as
18 the "gaming tax".

19 B. The gaming tax is measured as a percentage of
20 net take of every gaming operator licensee. The rate of the
21 tax is fifteen percent.

22 C. The gaming tax imposed on a gaming operator
23 licensee is in lieu of all state and local gross receipts
24 taxes on that net take.

25 D. The gaming tax shall be administered and

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

5 Section 57. [NEW MATERIAL] CIVIL ACTIONS TO RESTRAIN
6 VIOLATIONS OF GAMING CONTROL ACT. --

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

11 B. An action brought against a person pursuant to
12 this section shall not preclude a criminal action or
13 administrative proceeding against that person.

14 Section 58. [NEW MATERIAL] TESTIMONIAL IMMUNITY. --

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

24 B. If a person complies with an order issued
25 pursuant to Subsection A of this section, he shall be immune

1 from having a responsive answer given or responsive evidence
2 produced, or evidence derived from either, used to expose him
3 to criminal prosecution, except that the person may be
4 prosecuted for any perjury committed in the answer or
5 production of evidence and may also be prosecuted for contempt
6 for failing to act in accordance with the order of the board.
7 An answer given or evidence produced pursuant to the grant of
8 immunity authorized by this section may be used against the
9 person granted immunity in a prosecution of the person for
10 perjury or a proceeding against him for contempt.

11 Section 59. [NEW MATERIAL] CRIME--MANIPULATION OF GAMING
12 DEVICE WITH INTENT TO CHEAT.--A person who manipulates, with the
13 intent to cheat, any component of a gaming device in a manner
14 contrary to the designed and normal operational purpose of the
15 component, including varying the pull of the handle of a slot
16 machine with knowledge that the manipulation affects the outcome
17 of the game or with knowledge of any event that affects the
18 outcome of the game, is guilty of a fourth degree felony and
19 shall be sentenced pursuant to the provisions of Section 31-18-15
20 NMSA 1978.

21 Section 60. [NEW MATERIAL] CRIME--USE OF COUNTERFEIT OR
22 UNAPPROVED TOKENS, CURRENCY OR DEVICES--POSSESSION OF CERTAIN
23 DEVICES, EQUIPMENT, PRODUCTS OR MATERIALS.--

24 A. A person who, in playing any game designed to be
25 played with, to receive or to be operated by tokens approved by

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1 the board or by lawful currency of the United States, knowingly
2 uses tokens other than those approved by the board, uses currency
3 that is not lawful currency of the United States or uses currency
4 not of the same denomination as the currency intended to be used
5 in that game is guilty of a third degree felony and shall be
6 sentenced pursuant to the provision of Section 31-18-15 NMSA
7 1978.

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

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

23 D. A person who knowingly and with intent to use them
24 for cheating has on his person or in his possession any
25 paraphernalia for manufacturing slugs is guilty of a third degree

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1 felony and shall be sentenced pursuant to the provisions of
2 Section 31-18-15 NMSA 1978. As used in this subsection,
3 "paraphernalia for manufacturing slugs" means the equipment,
4 products and materials that are intended for use or designed for
5 use in manufacturing, producing, fabricating, preparing, testing,
6 analyzing, packaging, storing or concealing a counterfeit
7 facsimile of tokens approved by the board or a lawful coin of the
8 United States, the use of which is unlawful pursuant to the
9 Gaming Control Act. The term includes:

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

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

21 Section 61. [NEW MATERIAL] CRIME--CHEATING. --A person who
22 knowingly cheats at any game is guilty of a fourth degree felony
23 and upon conviction shall be sentenced pursuant to the provisions
24 of Section 31-18-15 NMSA 1978.

25 Section 62. [NEW MATERIAL] CRIME--POSSESSION OF GAMING

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1 DEVICE MANUFACTURED, SOLD OR DISTRIBUTED IN VIOLATION OF LAW. -- A
2 person who knowingly possesses any gaming device that has been
3 manufactured, sold or distributed in violation of the Gaming
4 Control Act is guilty of a fourth degree felony and shall be
5 sentenced pursuant to the provisions of Section 31-18-15 NMSA
6 1978.

7 Section 63. [NEW MATERIAL] CRIME--REPORTING AND RECORD
8 VIOLATIONS--PENALTY. --A person who, in an application, in a book
9 or record required to be maintained by the Gaming Control Act or
10 by a regulation adopted under that act or in a report required to
11 be submitted by that act or a regulation adopted under that act,
12 knowingly makes a statement or entry that is false or misleading
13 or fails to maintain or make an entry the person knows is
14 required to be maintained or made is guilty of a fourth degree
15 felony and shall be sentenced in accordance with Section 31-18-15
16 NMSA 1978.

17 Section 64. [NEW MATERIAL] CRIME--UNLAWFUL MANUFACTURE,
18 SALE, DISTRIBUTION, MARKING, ALTERING OR MODIFICATION OF DEVICES
19 ASSOCIATED WITH GAMING--UNLAWFUL INSTRUCTION--PENALTY. --

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

25 B. A person who marks, alters or otherwise modifies

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1 any gaming device in a manner that affects the result of a wager
2 by determining win or loss or alters the normal criteria of
3 random selection that affects the operation of a game or that
4 determines the outcome of a game is guilty of a fourth degree
5 felony and shall be sentenced in accordance with Section 31-18-15
6 NMSA 1978.

7 Section 65. [NEW MATERIAL] UNDERAGE GAMING--PENALTY FOR
8 PERMITTING OR PARTICIPATION. --

9 A. A person who knowingly permits an individual who
10 the person knows is younger than twenty-one years of age to
11 participate in gaming is guilty of a misdemeanor and shall be
12 sentenced pursuant to the provisions of Section 31-19-1 NMSA
13 1978.

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

18 Section 66. [NEW MATERIAL] CRIME--GENERAL PENALTIES FOR
19 VIOLATION OF ACT. --A person who willfully violates, attempts to
20 violate or conspires to violate any of the provisions of the
21 Gaming Control Act specifying prohibited acts, the classification
22 of which is not specifically stated in that act, is guilty of a
23 misdemeanor and shall be sentenced pursuant to the provisions of
24 Section 31-19-1 NMSA 1978.

25 Section 67. [NEW MATERIAL] DETENTION AND QUESTIONING OF A

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

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

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

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

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

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1 form:

2 "Any gaming operator licensee or any of his officers,
3 employees or agents who have reasonable cause for
4 believing that any person has violated any provision
5 of the Gaming Control Act prohibiting cheating in
6 gaming may detain that person in the establishment."

7 Section 68. [NEW MATERIAL] ADMINISTRATIVE APPEAL OF BOARD
8 ACTION. --

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

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

- 22 (1) for the hearings to be public;
- 23 (2) for the appointment of a hearing officer to
24 conduct the hearing and make his recommendation to the board not
25 more than ten days after the completion of the hearing;

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- 1 (3) procedures for discovery;
- 2 (4) assurance that procedural due process
- 3 requirements are satisfied;
- 4 (5) for the maintenance of a record of the
- 5 hearing proceedings and assessment of costs of any transcription
- 6 of testimony that is required for judicial review purposes; and
- 7 (6) for the hearing to be held in Santa Fe for
- 8 enforcement hearings and hearings on actions of statewide
- 9 application, and to be held in the place or area affected for
- 10 enforcement hearings and hearings on actions of limited local
- 11 concern.

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

- 14 (1) written and shall state the reasons for the
- 15 action;
- 16 (2) made public when taken;
- 17 (3) communicated to all persons who have made a
- 18 written request for notification of the action taken; and
- 19 (4) taken not more than thirty days after the
- 20 submission of the hearing officer's report to the board.

21 Section 69. [NEW MATERIAL] JUDICIAL REVIEW OF
22 ADMINISTRATIVE ACTIONS. --

23 A. Any person adversely affected by an action taken by
24 the board after review pursuant to the provisions of Section 60
25 of the Gaming Control Act may appeal the action to the court of

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1 appeals. The appeal shall be on the record made at the hearing.
2 To support his appeal, the appellant shall make arrangements with
3 the board for a sufficient number of transcripts of the record of
4 the hearing on which the appeal is based. The appellant shall
5 pay for the preparation of the transcripts.

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

8 (1) arbitrary, capricious or an abuse of
9 discretion;

10 (2) not supported by substantial evidence in the
11 whole record; or

12 (3) otherwise not in accordance with law.

13 Section 70. Section 7-1-2 NMSA 1978 (being Laws 1965,
14 Chapter 248, Section 2, as amended) is amended to read:

15 "7-1-2. APPLICABILITY. -- The Tax Administration Act applies
16 to and governs:

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

19 (1) Income Tax Act;

20 (2) Withholding Tax Act;

21 (3) Gross Receipts and Compensating Tax Act and
22 any state gross receipts tax;

23 (4) Liquor Excise Tax Act;

24 (5) Local Liquor Excise Tax Act;

25 [~~(6) Banking and Financial Corporations Tax Act;~~

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

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

- 4 (1) Resources Excise Tax Act;
5 (2) Severance Tax Act;
6 (3) any severance surtax;
7 (4) Oil and Gas Severance Tax Act;
8 (5) Oil and Gas Conservation Tax Act;
9 (6) Oil and Gas Emergency School Tax Act;
10 (7) Oil and Gas Ad Valorem Production Tax Act;
11 (8) Natural Gas Processors Tax Act;
12 (9) Oil and Gas Production Equipment Ad Valorem
13 Tax Act;
14 (10) Copper Production Ad Valorem Tax Act; and
15 (11) any advance payment required to be made by
16 any act specified in this subsection, which advance payment shall
17 be considered a tax for the purposes of the Tax Administration
18 Act;

19 C. the administration and enforcement of the following
20 taxes, surcharges, fees or acts as they now exist or may
21 hereafter be amended:

- 22 (1) Weight Distance Tax Act;
23 (2) Special Fuels Tax Act;
24 (3) the workers' compensation fee authorized by
25 Section 52-5-19 NMSA 1978, which fee shall be considered a tax

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- 1 for purposes of the Tax Administration Act;
- 2 (4) Uniform Unclaimed Property Act;
- 3 (5) 911 emergency surcharge and the network and
4 database surcharge, which surcharges shall be considered taxes
5 for purposes of the Tax Administration Act;
- 6 (6) the solid waste assessment fee authorized by
7 the Solid Waste Act, which fee shall be considered a tax for
8 purposes of the Tax Administration Act; ~~and~~
- 9 (7) the water conservation fee imposed by
10 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
11 for the purposes of the Tax Administration Act; and
- 12 (8) the gaming tax imposed pursuant to the
13 Gaming Control Act; and

14 D. the administration and enforcement of all other
15 laws, with respect to which the department is charged with
16 responsibilities pursuant to the Tax Administration Act, but only
17 to the extent that the other laws do not conflict with the Tax
18 Administration Act. "

19 Section 71. Section 10-15-1 NMSA 1978 (being Laws 1974,
20 Chapter 91, Section 1, as amended) is amended to read:

21 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
22 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

23 A. In recognition of the fact that a representative
24 government is dependent upon an informed electorate, it is
25 declared to be public policy of this state that all persons are

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1 entitled to the greatest possible information regarding the
2 affairs of government and the official acts of those officers and
3 employees who represent them. The formation of public policy or
4 the conduct of business by vote shall not be conducted in closed
5 meeting. All meetings of any public body except the legislature
6 and the courts shall be public meetings, and all persons so
7 desiring shall be permitted to attend and listen to the
8 deliberations and proceedings. Reasonable efforts shall be made
9 to accommodate the use of audio and video recording devices.

10 B. All meetings of a quorum of members of any board,
11 commission, administrative adjudicatory body or other
12 policymaking body of any state agency, any agency or authority of
13 any county, municipality, district or any political subdivision,
14 held for the purpose of formulating public policy, including the
15 development of personnel policy, rules, regulations or
16 ordinances, discussing public business or for the purpose of
17 taking any action within the authority of or the delegated
18 authority of any board, commission or other policymaking body are
19 declared to be public meetings open to the public at all times,
20 except as otherwise provided in the constitution of New Mexico or
21 the Open Meetings Act. No public meeting once convened that is
22 otherwise required to be open pursuant to the Open Meetings Act
23 shall be closed or dissolved into small groups or committees for
24 the purpose of permitting the closing of the meeting.

25 C. If otherwise allowed by law or rule of the public

1 body, a member of a public body may participate in a meeting of
2 the public body by means of a conference telephone or other
3 similar communications equipment when it is otherwise difficult
4 or impossible for the member to attend the meeting in person,
5 provided that each member participating by conference telephone
6 can be identified when speaking, all participants are able to
7 hear each other at the same time and members of the public
8 attending the meeting are able to hear any member of the public
9 body who speaks during the meeting.

10 D. Any meetings at which the discussion or adoption of
11 any proposed resolution, rule, regulation or formal action occurs
12 and at which a majority or quorum of the body is in attendance,
13 and any closed meetings, shall be held only after reasonable
14 notice to the public. The affected body shall determine at least
15 annually in a public meeting what notice for a public meeting is
16 reasonable when applied to that body. That notice shall include
17 broadcast stations licensed by the federal communications
18 commission and newspapers of general circulation that have
19 provided a written request for such notice.

20 E. A public body may recess and reconvene a meeting to
21 a day subsequent to that stated in the meeting notice if, prior
22 to recessing, the public body specifies the date, time and place
23 for continuation of the meeting, and, immediately following the
24 recessed meeting, posts notice of the date, time and place for
25 the reconvened meeting on or near the door of the place where the

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1 original meeting was held and in at least one other location
2 appropriate to provide public notice of the continuation of the
3 meeting. Only matters appearing on the agenda of the original
4 meeting may be discussed at the reconvened meeting.

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

17 G. The board, commission or other policymaking body
18 shall keep written minutes of all its meetings. The minutes
19 shall include at a minimum the date, time and place of the
20 meeting, the names of members in attendance and those absent, the
21 substance of the proposals considered and a record of any
22 decisions and votes taken that show how each member voted. All
23 minutes are open to public inspection. Draft minutes shall be
24 prepared within ten working days after the meeting and shall be
25 approved, amended or disapproved at the next meeting where a

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1 quorum is present. Minutes shall not become official until
2 approved by the policymaking body.

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

5 (1) meetings pertaining to issuance, suspension,
6 renewal or revocation of a license, except that a hearing at
7 which evidence is offered or rebutted shall be open. All final
8 actions on the issuance, suspension, renewal or revocation of a
9 license shall be taken at an open meeting;

10 (2) limited personnel matters; provided that for
11 purposes of the Open Meetings Act, "limited personnel matters"
12 means the discussion of hiring, promotion, demotion, dismissal,
13 assignment or resignation of or the investigation or
14 consideration of complaints or charges against any individual
15 public employee; provided further that this subsection is not to
16 be construed as to exempt final actions on personnel from being
17 taken at open public meetings, nor does it preclude an aggrieved
18 public employee from demanding a public hearing. Judicial
19 candidates interviewed by any commission shall have the right to
20 demand an open interview;

21 (3) deliberations by a public body in connection
22 with an administrative adjudicatory proceeding. For purposes of
23 this paragraph, an "administrative adjudicatory proceeding" means
24 a proceeding brought by or against a person before a public body
25 in which individual legal rights, duties or privileges are

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1 required by law to be determined by the public body after an
2 opportunity for a trial-type hearing. Except as otherwise
3 provided in this section, the actual administrative adjudicatory
4 proceeding at which evidence is offered or rebutted and any final
5 action taken as a result of the proceeding shall occur in an open
6 meeting;

7 (4) the discussion of personally identifiable
8 information about any individual student, unless the student, his
9 parent or guardian requests otherwise;

10 (5) meetings for the discussion of bargaining
11 strategy preliminary to collective bargaining negotiations
12 between the policymaking body and a bargaining unit representing
13 the employees of that policymaking body and collective bargaining
14 sessions at which the policymaking body and the representatives
15 of the collective bargaining unit are present;

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

24 (7) meetings subject to the attorney-client
25 privilege pertaining to threatened or pending litigation in which

1 the public body is or may become a participant;

2 (8) meetings for the discussion of the purchase,
3 acquisition or disposal of real property or water rights by the
4 public body; ~~and]~~

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

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

13 I. If any meeting is closed pursuant to the exclusions
14 contained in Subsection H of this section, the closure:

15 (1) if ~~made~~ in an open meeting, shall be
16 approved by a ~~majority~~ vote of a quorum of the policymaking body;
17 the authority for the closure and the subject to be discussed
18 shall be stated with reasonable specificity in the ~~motion~~ calling
19 for the vote on a closed meeting; the vote shall be taken in an
20 open meeting; and the vote of each individual ~~member~~ shall be
21 recorded in the minutes. Only those subjects announced or voted
22 upon prior to closure by the policymaking body ~~may~~ be discussed
23 in a closed meeting; and

24 (2) if called for when the policymaking body is
25 not in an open meeting, shall not be held until public notice,

1 appropriate under the circumstances, stating the specific
2 provision of the law authorizing the closed meeting and stating
3 with reasonable specificity the subject to be discussed is given
4 to the members and to the general public.

5 J. Following completion of any closed meeting, the
6 minutes of the open meeting that was closed or the minutes of the
7 next open meeting if the closed meeting was separately scheduled
8 shall state that the matters discussed in the closed meeting were
9 limited only to those specified in the motion for closure or in
10 the notice of the separate closed meeting. This statement shall
11 be approved by the public body under Subsection G of this section
12 as part of the minutes. "

13 Section 72. Section 30-19-1 NMSA 1978 (being Laws 1963,
14 Chapter 303, Section 19-1, as amended) is amended to read:

15 "30-19-1. DEFINITIONS RELATING TO GAMBLING. --As used in
16 Chapter 30, Article 19 NMSA 1978:

17 A. "antique gambling device" means a gambling device
18 twenty-five years of age or older and substantially in original
19 condition that is not used for gambling or commercial gambling or
20 located in a gambling place;

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

25 (1) bona fide business transactions that are

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1 valid under the law of contracts, including ~~[without limitation]~~:

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

4 (b) agreements to compensate for loss caused
5 by the happening of the chance, including ~~[without limitation]~~
6 contracts for indemnity or guaranty and life or health and
7 accident insurance;

8 (2) offers of purses, prizes or premiums to the
9 actual contestants in any bona fide contest for the determination
10 of skill, speed, strength or endurance or to the bona fide owners
11 of animals or vehicles entered in such contest;

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

13 (4) betting otherwise permitted by law;

14 ~~[C. "lottery" means an enterprise other than the New
15 Mexico state lottery established and operated pursuant to the New
16 Mexico Lottery Act wherein, for a consideration, the participants
17 are given an opportunity to win a prize, the award of which is
18 determined by chance, even though accompanied by some skill. As
19 used in this subsection, "consideration" means anything of
20 pecuniary value required to be paid to the promoter in order to
21 participate in such enterprise;~~

22 ~~D.]~~ C. "gambling device" means a contrivance other
23 than an antique gambling device that is not licensed for use
24 pursuant to the Gaming Control Act and that, for a consideration,
25 affords the player an opportunity to obtain anything of value,

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1 the award of which is determined by chance, even though
2 accompanied by some skill, [~~and~~] whether or not the prize is
3 automatically paid by the device; [~~and~~

4 ~~E.]~~ D. "gambling place" means [any] a building or
5 tent, [any] a vehicle, whether self-propelled or not, or [any] a
6 room within any of them that is not within the premises of a
7 person licensed as a lottery retailer or that is not licensed
8 pursuant to the Gaming Control Act, one of whose principal uses
9 is:

- 10 (1) making and settling of bets;
11 (2) receiving, holding, recording or forwarding
12 bets or offers to bet;
13 (3) conducting lotteries; or
14 (4) playing gambling devices; and

15 E. "lottery" means an enterprise wherein, for a
16 consideration, the participants are given an opportunity to win a
17 prize, the award of which is determined by chance, even though
18 accompanied by some skill. "Lottery" does not include the New
19 Mexico state lottery established and operated pursuant to the New
20 Mexico Lottery Act or gaming that is licensed and operated
21 pursuant to the Gaming Control Act. As used in this subsection,
22 "consideration" means anything of pecuniary value required to be
23 paid to the promoter in order to participate in a gambling or
24 gaming enterprise. "

25 Section 73. Section 30-19-6 NMSA 1978 (being Laws 1963,

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1 Chapter 303, Section 19-6, as amended) is amended to read:

2 "30-19-6. [~~PERMISSIVE LOTTERY~~] AUTHORIZED ACTIVITIES--
3 FAIRS-- THEATERS-- TAX-EXEMPT ORGANIZATIONS --

4 A. Nothing in [~~Article 19~~] Chapter 30, Article 19 NMSA
5 1978 [~~shall be construed to apply to any~~] prohibits a sale or
6 drawing of [~~any~~] a prize at [~~any~~] a fair held in this state for
7 the benefit of [~~any~~] a church, public library or religious
8 society [~~situate or being~~] located in this state, or for
9 charitable purposes when all the proceeds of [~~such~~] the fair
10 [~~shall be~~] are expended in this state for the benefit of [~~such~~]
11 the church, public library, religious society or charitable
12 purposes. A [~~lottery shall be operated~~] sale or drawing
13 conducted pursuant to this subsection is for the benefit of the
14 organization or charitable purpose only [~~when~~] if the entire
15 proceeds [~~of the lottery~~] from the sale or drawing go to the
16 organization or charitable purpose and no part of [~~such~~] the
17 proceeds go to [~~any~~] an individual member or employee [~~thereof~~]
18 of the organization.

19 B. Nothing in [~~Article 19~~] Chapter 30, Article 19 NMSA
20 1978 [~~shall be held to prohibit any~~] prohibits a bona fide motion
21 picture [~~theatre~~] theater from offering prizes of cash or
22 merchandise for advertising purposes, in connection with [~~such~~]
23 the business of the theater or for the purpose of stimulating
24 business, whether or not [~~any~~] consideration other than a
25 monetary consideration in excess of the regular price of

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[bracketed material] = delete

1 admission is ~~[exacte~~ charged for participation in drawings for
2 prizes.

3 C. Nothing in ~~[Article 19]~~ Chapter 30, Article 19 NMSA
4 1978 ~~[shall be held to apply to any]~~ prohibits a bona fide county
5 fair, including ~~[fairs]~~ a fair for more than one county, ~~[which~~
6 ~~shall have]~~ that has been held annually at the same location for
7 at least two years ~~[and which shall offer]~~ from offering prizes
8 of livestock or poultry in connection with ~~[such]~~ the fair ~~[when]~~
9 if the proceeds of ~~[such]~~ the drawings ~~[shall be]~~ are used for
10 the benefit of ~~[said]~~ the fair.

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

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

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

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

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1 D. Nothing in Chapter 30, Article 19 NMSA 1978
2 prohibits an organization that is exempt from state income tax
3 pursuant to Section 7-2-4 NMSA 1978 and in good standing as a
4 not-for-profit corporation as shown by the records of the state
5 corporation commission from conducting bingo games, raffles,
6 lotteries or table games, including poker, craps, blackjack,
7 roulette and the like, including any class III gaming as defined
8 in the Indian Gaming Regulatory Act, at a "casino night"
9 fundraising event if:

10 (1) the "casino night" fundraising event is
11 conducted no more than two times in a calendar year by the
12 qualifying organization;

13 (2) the only persons authorized to participate
14 in the operation or management of the "casino night" fundraising
15 event are:

16 (a) bona fide members of the qualifying
17 organization who are not paid for their services in the operation
18 or management of the event; or

19 (b) persons who provide goods or services
20 for the fundraising event for a flat fee or an hourly fee
21 pursuant to a written contract with the qualifying organization;

22 (3) no person receives any part of the proceeds
23 of the "casino night" fundraising event except:

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

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

3 (4) the net proceeds of the "casino night"
4 fundraising event are expended in the state for the benefit of
5 the qualifying organization or purposes for which it was formed;

6 (5) gross revenue, expenses, prizes paid and the
7 date, time and location of the "casino night" fundraising event
8 are reported to the alcohol and gaming division of the regulation
9 and licensing department within thirty days after the event;

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

19 (7) no more than five electronic gambling devices
20 are operated during the "casino night" fundraising event;

21 (8) no person younger than the age of twenty-one
22 is allowed to participate in the operation or management of the
23 "casino night" fundraising event or to play any game at the
24 event; and

25 (9) the "casino night" fundraising event is

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1 conducted pursuant to regulations and a permit issued by the
2 alcohol and gaming division of the regulation and licensing
3 department.

4 E. Electronic gambling conducted pursuant to the
5 provisions of this section shall be conducted in accordance with
6 regulations adopted by the regulation and licensing department.
7 Those regulations may provide for minimum standards for security,
8 restrictions of amounts wagered, limits on amounts paid by
9 electronic gambling devices, recordkeeping by the operator and
10 sponsor of the gaming event and monitoring, electronic or
11 otherwise, of the electronic gambling conducted.

12 F. As used in Subsections D and E of this section:

13 (1) "electronic gambling device" means a gambling
14 device consisting of an electronic device that simulates the play
15 of any game of chance, uses microprocessors and that, by chance
16 or through some combination of chance and skill, the device
17 dispenses or the player may otherwise receive cash, coins, tokens
18 for free games or credits that can be redeemed for cash, coins or
19 tokens; and

20 (2) "electronic gambling" means the play of an
21 electronic gambling device.

22 G. The provisions of the Bingo and Raffle Act and the
23 New Mexico Lottery Act do not apply to the activities described
24 in Subsection D of this section "

25 Section 74. Section 60-7A-19 NMSA 1978 (being Laws 1981,

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1 Chapter 39, Section 96) is amended to read:

2 "60-7A-19. COMMERCIAL GAMBLING ON LICENSED PREMISES. --

3 A. It is a violation of the Liquor Control Act for a
4 licensee to knowingly allow commercial gambling on the licensed
5 premises.

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

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

11 (1) "commercial gambling" means:

12 [~~(1)~~] (a) participating in the earnings of or
13 operating a gambling place;

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

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

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

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

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

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(2) "commercial gambling" does not mean:

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

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

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

Section 75. SEVERABILITY.--If any part or application of the Gaming Control Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 76. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

SB 872/a

3
4
5
6 March 5, 1997

7
8 Mr. President:

9
10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
11 referred

12
13 SENATE BILL 872

14
15 has had it under consideration and reports same WITHOUT
16 RECOMMENDATION, amended as follows:

17
18
19 1. On page 87, line 23, after "to" insert "a gaming operator
20 licensee,".

21
22 2. On page 108, strike lines 9 through 17 in their entirety.

23
24 3. On page 117, line 13, after "suitable" insert "following a
25 review of information provided".

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SPAC/SB 872

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4. On page 124, line 6, strike "manufacturers" and insert in lieu thereof "manufacturer licensees".

5. On page 124, line 7, strike "gaming operators" and insert in lieu thereof "distributor licensees".

6. On page 124, line 8, strike "it supplies" and insert in lieu thereof "they supply".

7. On page 124, line 9, strike "distributors" and insert in lieu thereof "distributor licensees".

8. On page 124, line 10, strike "operators" and insert in lieu thereof "operator licensees".

9. On page 125, line 7, strike "and" and insert in lieu thereof "or".

10. On page 125, line 11, strike "and" and insert in lieu thereof "or".

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SPAC/SB 872

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11. On page 127, line 21, after "or" insert "upon payment of any consideration".

12. On page 130, lines 13 and 14, strike "have at least one mechanism that accepts coins or currency, but does not" and insert in lieu thereof "be unable to".

13. On page 131, line 14, after "value" strike the remainder of the line, strike all of lines 15 and 16 and insert in lieu thereof "of not less than Nevada standards as defined by the board; ". ,

and thence referred to the CORPORATIONS & TRANSPORTATION COMMITTEE.

Respectfully submitted,

Shannon Robinson, Chairman

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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SPAC/SB 872

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Garcia, Ingle, Vernon

Absent: None

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FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997

SB 872/a

March 9, 1997

Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
whom has been referred

SENATE BILL 872, as amended

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

1. On page 11, line 15, after "person" strike the
remainder of the line and insert in lieu thereof "less than twenty-
one years of age;"

2. On page 11, strike lines 16 through 19 in their entirety.

3. On page 11, line 20, strike "a key" and insert in lieu
thereof "any".

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SCORC/SB 872

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4. On page 11, line 21, strike "to be" and insert in lieu thereof "from being".

5. On page 11, line 22, strike "eighteen (18)" and insert in lieu thereof "twenty-one (21)".

6. On page 12, line 5, after the comma strike the remainder of the line and insert in lieu thereof "pension and other similar checks, for any patron;".

7. On page 12, between lines 11 and 12, insert the following:

"6. prohibiting a Gaming Facility from providing, allowing, contracting to provide or arranging to provide alcoholic beverages or food for no charge or at reduced prices as an incentive or enticement for patrons to game;

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SCORC/SB 872

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7. requiring that all passenger conveyances authorized by or under contract with a Gaming Facility to convey patrons to or from the Gaming Facility shall be licensed and insured pursuant to the laws of the state regarding similar public conveyances;

8. requiring that each electronic or electromechanical gaming device in use at the Gaming Facility must pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than eighty percent (80%) or greater than one hundred percent (100%);

9. requiring that a Gaming Facility shall not extend credit to any patron in an amount greater than five thousand dollars (\$5,000);

10. requiring that all food service facilities are regulated by standards equal to or more stringent than the standards with which commercial kitchens and other food service providers in the state are required to comply;

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FIRST SESSION, 1997**

SCORC/SB 872

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11. making available to all persons employed for thirty hours or more per week by a Gaming Operation employment benefits, including, at a minimum, sick leave and medical and dental insurance, as well as providing unemployment insurance and workers' compensation insurance through participation in programs offering those benefits;

12. providing a grievance process for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee;

13. requiring that, if feasible, automatic teller machines on Gaming Facility premises be programmed to prevent the machine from accepting cards issued by the State to Aid to Families of Dependent Children recipients for access to Aid to Families of Dependent

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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Children benefits;

14. enacting provisions that:

(a) prohibit an employee of the Gaming Facility from selling, serving, giving or delivering an alcoholic beverage to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the Gaming Facility;

(b) require Gaming Facility employees that dispense, sell, serve or deliver alcoholic beverages to attend Alcohol Server Education Classes similar to those classes provided for in the New Mexico Liquor Control Act; and

© purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million dollars (\$1,000,000) per injured person and ten million dollars (\$10,000,000) aggregate per policy year;".

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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8. Renumber succeeding paragraphs accordingly.

9. On page 45, lines 18 through 25, and on page 46, lines 1 through 16, indent as for previous paragraphs.

10. On page 46, line 14, strike "judicial".

11. On page 46, between lines 16 and 17, insert the following:

"2. Any person wishing to prosecute a claim for personal injury against the Gaming Operation as provided in this subsection or prosecute a claim pursuant to the liquor liability provisions of Section 4 of this Compact, and who is unable to arrive at a satisfactory settlement of such claim, may proceed, by no later than three (3) years after the date of the incident giving rise to the claim,

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either by filing suit in the tribal court of the Tribe, or by demanding binding arbitration as provided herein. The Tribe agrees that it will provide a tribal court that is competent to hear such claims, and that it will permit its Gaming Operation, and the employees thereof, to be sued in such courts on such claims, subject to the conditions set forth in this subsection. A claimant who wishes to proceed by binding arbitration shall submit a written demand therefor to the Gaming Operation. The arbitration shall take place according to the commercial arbitration rules established by the American Arbitration Association. The arbitrator shall permit the parties to engage in reasonable discovery, and shall establish other procedures so as to assure a full, fair and expeditious hearing on the claim. The award of the arbitration panel shall be final and binding (except that any such award of damages to the claimant shall in no event exceed the limits of liability set forth in this subsection). The Tribe's insurer shall be subject to suit in any court of competent jurisdiction for enforcement of the arbitration award. "

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12. Renumber and indent the succeeding paragraph accordingly.

13. On page 64, between lines 16 and 17, insert the following new subsection:

"CC. "liquor establishment" means a person licensed pursuant to Section 60-6A-3 NMSA 1978 to dispense alcoholic beverages;".

14. Reletter succeeding subsections accordingly.

15. On page 68, line 5, after the period insert "At least three of the members of the board shall have had at least five years in a supervisory or administrative position in either a gaming establishment or a governmental gaming regulatory agency.".

16. On page 69, line 8, after "governor" insert "of no less than sixty thousand dollars (\$60,000) annually".

17. On page 91, between lines 7 and 8, insert a new

.116010.2

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SCORC/SB 872

Page 174

paragraph:

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

18. Renumber the succeeding paragraphs accordingly.

19. On page 110, after line 25, insert:

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

20. On page 111, line 2, after "ORGANIZATIONS" insert "AND LIQUOR ESTABLISHMENTS".

21. On page 111, strike lines 4 through 17 and insert:

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

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[bracketed material] = delete

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SCORC/SB 872

Page 175

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

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

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

22. On page 132, line 21, strike "fifteen" and insert "twenty-five".

23. On page 133, between lines 4 and 5, insert:
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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SCORC/SB 872

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"E. In addition to the gaming tax, a gaming operator licensee that is a racetrack shall pay twenty percent of the net take to purses to be distributed in accordance with regulations adopted by the state racing commission. A racetrack gaming operator licensee shall spend no less than one-fourth of one percent of the net take of its gaming machines to fund or support programs for the treatment and assistance of compulsive gamblers. ". ,

and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

Roman M. Maes, III, Chairman

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FIRST SESSION, 1997**

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SCORC/SB 872

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 2 Against

Yes: 7

No: Wilson, Maes

Excused: McKibben

Absent: None

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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SCORC/SB 872

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FORTY-THIRD LEGISLATURE

FIRST SESSION

March 13, 1997

SENATE FLOOR AMENDMENT number 1 to SENATE BILL 872, as amended

Amendment sponsored by Senator Manny M. Aragon

1. Strike Senate Finance Committee Amendment 27.

2. On page 132, strike line 21 and insert the following:

"tax is:

(1) for a nonprofit organization gaming operator
licensee, a resort gaming operator licensee or a liquor
establishment gaming operator licensee, twenty-five percent;

(2) for a racetrack gaming operator licensee that is
a class A licensee pursuant to the provisions of the Horse Racing

118837.2

FORTY-THIRD LEGISLATURE
FIRST SESSION

SF1/SB 872, aa

Page 180

Act, fifteen percent;

(3) for a racetrack gaming operator licensee that is a class B licensee pursuant to the provisions of the Horse Racing Act, ten percent for the first five years of operation and fifteen percent beginning on January 1 of the sixth year following the date on which the class B licensee is issued a license as a racetrack gaming operator licensee pursuant to the Gaming Control Act; and

(4) for a racetrack gaming operator licensee that is a class B licensee pursuant to the provisions of the Horse Racing Act, but becomes classified as a class A licensee within the first five years following licensure as a racetrack gaming operator licensee,

ten percent for each year the racetrack is a class B licensee and

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SFI/SB 872, aa

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fifteen percent during any year that the track is classified as a
class A licensee. "

Manny M. Aragon

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

118837.2

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FORTY-THIRD LEGISLATURE

FIRST SESSION

March 14, 1997

SENATE FLOOR AMENDMENT number 2 to SENATE BILL 872, as amended

Amendment sponsored by Senator Ben D. Altamirano

1. On page 58, lines 16 and 17, strike "director of the alcohol and gaming division of the regulation and licensing department" and insert in lieu thereof "gaming control board".

2. On page 79, line 23, after "Section", strike "17" and insert in lieu thereof "19".

118891.2

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Ben D. Altamirano

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

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FORTY-THIRD LEGISLATURE

FIRST SESSION

March 17, 1997

SENATE FLOOR AMENDMENT number 3 to SENATE BILL 872, as amended

Amendment sponsored by Senator Patrick H. Lyons

1. On page 17, strike lines 9 through 14 in their entirety and on line 15, strike "information," and insert in lieu thereof the following:

"3. Gaming enterprise and gaming operations information shall be considered public information and subject to the Inspection of Public Records Act. Trade secrets,".

2. On page 17, line 19, after "thereof", strike the remainder of the line and insert in lieu thereof "shall be considered confidential and shall not be disclosed to a third party.".

119045.1

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3. On page 17, strike lines 20 and 21 in their entirety and
on line 22 strike "Tribe."

Patrick H. Lyons

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

119045.1

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FORTY-THIRD LEGISLATURE
FIRST SESSION

March 14, 1997

SENATE FLOOR AMENDMENT number 4 to SENATE BILL 872, as amended

Amendment sponsored by Senator William F. Davis

1. Strike Senate Finance Committee Amendment 21.

2. On page 110, after line 25, insert the following:

"G. Only liquor establishments, racetracks licensed by the state racing commission, resorts in qualified counties or nonprofit organizations may apply for or be issued a gaming operator's license. No other persons are qualified to apply for or be issued a gaming operator's license pursuant to the Gaming Control Act.

Section 37. [NEW MATERIAL] GAMING OPERATOR LICENSEES- -

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SPECIAL CONDITIONS FOR RACETRACKS--NUMBER OF GAMING MACHINES--DAYS
AND HOURS OF OPERATIONS.--

A. A racetrack licensed by the state racing commission pursuant to the Horse Racing Act to conduct live horse races or simulcast races, including a racetrack that did not conduct live horse races during the years 1994 through 1996, may be issued a gaming operator's license to operate gaming machines on its premises.

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

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

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

C. A gaming operator licensee that is a racetrack may have not more than five hundred licensed gaming machines, but the number of gaming machines to be located on the licensee's premises shall be specified in the gaming operator's license.

D. Gaming machines on a racetrack gaming operator licensee's premises may be played only on days when the racetrack conducts live horse races or simulcast races and during times established by regulation of the board, but the regulations shall provide for a minimum of twelve hours a day.

E. Gaming machines may be operated on the premises of a racetrack on the grounds of the New Mexico state fair provided that:

(1) the property on which the state fair is located is not annexed by a city, the population of which is greater than two hundred thousand persons as determined by the 1990 federal

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decennial census;

(2) no person on the state fair commission is an
official representative of a city, the population of which is
greater than two hundred thousand persons as determined by the 1990
federal decennial census; and

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(3) the racetrack gaming operator licensee that offers the gaming machines for play by the public shall pay a fee of one million five hundred thousand dollars (\$1,500,000) annually to the New Mexico state fair commission from the net take of the gaming machines on the gaming operator licensee's premises."

William F. Davis

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

118927.1

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FORTY-THIRD LEGISLATURE

FIRST SESSION

March 14, 1997

SENATE FLOOR AMENDMENT number 5 to SENATE BILL 872, as amended

Amendment sponsored by Senator Sue F. Wilson

1. Strike Senate Corporations and Transportation Committee
Amendment 7.

2. On page 12, between lines 11 and 12, insert:

"6. prohibiting a Tribal Gaming Enterprise and the
Tribe from providing, allowing, selling, permitting the consumption
of or giving away alcoholic beverages at a Gaming Facility or other
tribal facility contiguous to a Gaming Facility;".

3. Renumber the succeeding paragraphs accordingly.

118919.1

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Sue F. Wilson

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

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March 19, 1997

SENATE FLOOR AMENDMENT number 6 to SENATE BILL 872, as amended,
with emergency clause

AMENDMENT sponsored by SENATOR RAWSON

1. On page 65, line 4, strike "cash received in payment for"
and insert thereof "uncollected".

118919.1

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Senator Leonard Lee Rawson

Adopted _____ Not Adopted _____

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(Chief Clerk)

Date _____

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March 13, 1997

SENATE FLOOR AMENDMENT number 7 to SENATE BILL 872, as amended

Amendment sponsored by Senator Roman M. Maes, III

1. On page 54, line 10, strike "Five Percent (5%)" and insert
in lieu thereof "Ten Percent (10%)".

Roman M. Maes, III

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FIRST SESSION, 1997

March 19, 1997

SENATE FLOOR AMENDMENT number 8 to SENATE BILL 872, as amended
with emergency clause

AMENDMENT sponsored by SENATOR GORHAM

1. On page 16, line 23, strike the words "inspection and".
2. On page 17, line 2, strike the word "and".
3. On page 17, line 8, strike the period, and insert "; and".

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4. On page 17, between lines 8 and 9 insert:

"(e) nothing in this paragraph shall be interpreted
to limit the authority of the state gaming
representative from making unannounced
audits of gaming enterprise financial and management
records. "

Senator Ramsay L. Gorham

Adopted _____ Not Adopted _____

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Date _____

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