NEW MEXICO

CHAPTER 2. MUNICIPALITIES

ARTICLE 18. POWERS OF MUNICIPALITIES

3-18-17. Nuisances and offenses; regulation or prohibition.

A municipality may by ordinance:
A. define a nuisance, abate a nuisance and impose penalties upon a person who creates or allows a nuisance to exist;
B. regulate or prohibit any amusement or practice which tends to annoy persons on a street or public ground; and
C. prohibit and suppress:
(1) gambling and the use of fraudulent devices or practices for the purpose of obtaining money or property;
(2) the sale, possession or exhibition of obscene or immoral publications, prints, pictures or illustrations;
(3) public intoxication;
(4) disorderly conduct; and
(5) riots, noises, disturbances or disorderly assemblies in any public or private place.

History: 1953 Comp., § 14-17-14, enacted by Laws 1965, ch. 300.

CHAPTER 6. PUBLIC FINANCES

ARTICLE 4. CAPITAL PROGRAMS AND REVENUE FUNDS

6-4-8. DWI program fund created; appropriation.

A. The "DWI program fund" is created in the state treasury and shall be administered by the department of finance and administration. Money in the fund is subject to appropriation by the legislature to the agencies and for the purposes specified and in accordance with the limitations and requirements in this section. Balances in the fund at the end of any year shall not revert to the general fund.
B. Money in the DWI program fund may be appropriated to any of the following agencies for the following purposes:
(1) to the department of health to contract for community DWI programs and services and for alcoholism and alcohol abuse prevention, screening and treatment programs and services pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act [Chapter 43, Article 3 NMSA 1978];
(2) to the children, youth and families department to provide public school health education and counseling programs that emphasize alcohol abuse prevention;
(3) to the traffic safety bureau of the state highway and transportation department for DWI education, awareness and information programs;
(4) to the department of public safety to provide additional special investigators for enforcement of the Liquor Control Act [Articles 3A, 4B, 4C, 5A, 6A, 6B, 6C, 7A, 7B, and 8A of Chapter 60 NMSA 1978];
(5) to the alcohol and gaming division of the regulation and licensing department for enforcement of the provisions of the Liquor Control Act and administration of the Alcohol Server Education Act [60-6D-28 to 60-6D-35 NMSA 1978], if enacted into law by the first session of the forty-first legislature;
(6) to the public defender department for costs related to workload increases due to increases in DWI caseloads;
(7) to the district attorneys for costs related to workload increases due to increases in DWI caseloads;
(8) to the magistrate courts division of the administrative office of the courts for magistrate court costs

related to workload increases due to increases in DWI caseloads, including costs of probation services;
(9) to the Bernalillo county metropolitan court for costs related to workload increases due to increases in DWI caseloads;
(10) to the district courts for costs related to workload increases due to increases in DWI caseloads;
(11) to the taxation and revenue department for DWI costs; and
(12) to the school of medicine at the university of New Mexico for prevention, research and intervention in the field of fetal alcohol syndrome.
C. Prior to the second session of the forty-first legislature, agencies eligible for funds under this section shall determine their needs for such purposes and develop recommendations with supporting data to justify the need for increased funding to expand existing programs and services or to implement new programs and services. The agencies shall develop these recommendations as part of the budget process as specified in Sections 6-3-18 through 6-3-22 NMSA 1978.
History: Laws 1993, ch. 65, § 20.

ARTICLE 21. FINANCE AUTHORITY

6-21-23. Prohibited actions

The authority shall not:
A. lend money or make a grant other than to a qualified entity;
B. purchase securities other than from a qualified entity or other than for investment as provided in the New Mexico Finance Authority Act [6-21-1 to 6-21-29 NMSA 1978];
C. lease a public project to any entity other than a qualified entity;
D. deal in securities within the meaning of or subject to any securities law, securities exchange law or securities dealers law of the United States or of the state or of any other state or jurisdiction, domestic or foreign, except as authorized in the New Mexico Finance Authority Act;
E. issue bills of credit or accept deposits of money for time on demand deposit or administer trusts or engage in any form or manner, or in the conduct of, any private or commercial banking business, or act as a savings bank or savings and loan association or any other kind of financial institution except as authorized in the New Mexico Finance Authority Act;
F. engage in any form of private or commercial banking business except as authorized in the New Mexico Finance Authority Act; or
G. lend money, issue bonds, including public-private partnership project bonds, or make a grant for the promotion of gaming or a gaming enterprise or for development of infrastructure for a gaming facility.
History: Laws 1992, ch. 61, § 23; 1995, ch. 141, § 20; 1996, ch. 75, § 2.

ARTICLE 24. NEW MEXICO LOTTERY

6-24-1. Short title.

Sections 1 through 34 [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978] of this act may be cited as the "New Mexico Lottery Act".
History: Laws 1995, ch. 155, § 1.

6-24-2. Legislative findings.

The legislature finds that:
A. lotteries have been enacted in many states and the revenues generated from those lotteries have contributed to the benefit of the residents of those states;
B. many New Mexicans already participate in other state lotteries and support the establishment of a state lottery in New Mexico; and
C. the most desirable, efficient and effective mechanism for operation of a state lottery is an independent

lottery authority organized as a business enterprise separate from state government, without need for state revenues or resources and subject to oversight, audit and accountability by public officials and agencies.
History: Laws 1995, ch. 155, § 2.

6-24-3. Purposes.

The purposes of the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978] are to:
A. establish and provide for the conduct of a fair and honest lottery for the entertainment of the public; and
B. provide the maximum amount of revenues, without imposing additional taxes or using other state revenues, for the purposes of:
(1) funding critical capital outlay needs of the public schools; and
(2) providing tuition assistance to resident undergraduates at New Mexico post-secondary educational institutions.
History: Laws 1995, ch. 155, § 3.

6-24-4. Definitions.

As used in the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978]:
A. "authority" means the New Mexico lottery authority;
B. "board" means the board of directors of the authority;
C. "chief executive officer" means the chief executive officer of the authority appointed by the board pursuant to the New Mexico Lottery Act;
D. "lottery" means the New Mexico state lottery established and operated by the authority pursuant to the New Mexico Lottery Act;
E. "lottery contractor" means a person with whom the authority has contracted for the purpose of providing goods or services for the lottery;
F. "lottery game" means any variation of the following types of games, but does not include any video lottery game:
(1) an instant win game in which disposable tickets contain certain preprinted winners that are determined by rubbing or scraping an area or areas on the tickets to match numbers, letters, symbols or configurations, or any combination thereof, as provided by the rules of the game; provided, an instant-win game may also provide for preliminary and grand prize drawings conducted pursuant to the rules of the game; and
(2) an on-line lottery game in which a lottery game is hooked up to a central computer via a telecommunications system through which a player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols and purchases a ticket bearing the player-selected numbers or symbols for eligibility in a drawing regularly scheduled in accordance with game rules;
G. "lottery retailer" means a person with whom the authority has contracted for the purpose of selling tickets in lottery games to the public;
H. "lottery vendor" means any person who submits a bid, proposal or offer as part of a major procurement contract and any person who is awarded a major procurement contract;
I. "major procurement contract" means a contract for the procurement of any lottery game product or service costing in excess of seventy-five thousand dollars ($75,000), including, but not limited to, major advertising contracts, annuity contracts, prize payment agreements, consulting services, equipment, tickets and other products and services unique to the lottery, but not including materials, supplies, equipment and services common to the ordinary operations of a corporation;
J. "net revenues" means all lottery and nonlottery revenues received by the authority less payments for lottery prizes and operating expenses as provided in the New Mexico Lottery Act; and
K. "person" means an individual or any other legal entity.
History: Laws 1995, ch. 155, § 4.

6-24-5. New Mexico lottery authority created.

A. There is created a public body, politic and corporate, separate and apart from the state, constituting a governmental instrumentality to be known as the "New Mexico lottery authority". The authority is created and organized for the purpose of establishing and conducting the New Mexico state lottery to provide revenues for the public purposes designated by the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978].

B. The authority shall be governed by a board of directors composed of seven members who are residents of New Mexico appointed by the governor with the advice and consent of the senate. The members of the board of directors shall be prominent persons in their businesses or professions and shall be appointed so as to provide equitable geographical representation. No more than four members of the board shall be from any one political party. The governor shall consider appointing at least one member who has at least five years experience as a law enforcement officer, at least one member who is an attorney admitted to practice in New Mexico and at least one member who is a certified public accountant certified in New Mexico.

C. Board members shall be appointed for five-year terms. To provide for staggered terms, four of the initially appointed members shall be appointed for terms of five years and three members for terms of three years. Thereafter, all members shall be appointed for five-year terms. A vacancy shall be filled by appointment by the governor for the remainder of the unexpired term. A member shall serve until his replacement is confirmed by the senate. Board members shall be eligible for reappointment.

D. The board shall select one of its members as chairman annually. A chairman may be selected for successive years. Members of the board may be removed by the governor for malfeasance, misfeasance or willful neglect of duty after reasonable notice and a public hearing unless the notice and hearing are expressly waived in writing by the member.

E. The board shall hold regular meetings at the call of the chairman, but not less often than once each calendar quarter. A board meeting may also be called upon the request in writing of three or more board members. A majority of members then in office constitutes a quorum for the transaction of any business and for the exercise of any power or function of the authority.

F. Board members shall receive no compensation for their services but shall be paid expenses incurred in the conduct of authority business as allowed and approved by the authority in accordance with policies adopted by the board.

G. A board member shall be subject to a background check and investigation to determine his fitness for office. The results of that background check shall be made available to the governor and the senate.

History: Laws 1995, ch. 155, § 5.

6-24-6. Powers of the authority.

A. The authority shall have any and all powers necessary or convenient to carry out and effectuate the purposes and provisions of the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978] that are not in conflict with the constitution of New Mexico and that are generally exercised by corporations engaged in entrepreneurial pursuits, including, but without limiting the generality of the foregoing, the power to:

(1) sue and be sued;

(2) adopt and alter a seal;

(3) adopt, amend and repeal bylaws, rules, policies and procedures for the conduct of its affairs and its business;

(4) procure or provide insurance;

(5) hold copyrights, trademarks and service marks and enforce its rights with respect thereto;

(6) initiate, supervise and administer the operation of the lottery in accordance with the provisions of the New Mexico Lottery Act and rules, policies and procedures adopted pursuant to that act;

(7) enter into written agreements with one or more other states for the operation, participation in or marketing or promotion of a joint lottery or joint lottery games;

(8) acquire or lease real property and make improvements thereon and acquire by lease or by purchase personal property, including, but not limited to, computers, mechanical, electronic and on-line equipment and terminals, and intangible property, including, but not limited to, computer programs, systems and

software;
(9) enter into contracts to incur debt and borrow money in its own name and enter into financing agreements with the state, agencies or instrumentalities of the state, or with any commercial bank or credit provider;
(10) receive and expend, in accordance with the provisions of the New Mexico Lottery Act, all money received from any lottery or nonlottery source, for effectuating the purposes of the New Mexico Lottery Act;
(11) administer oaths, take depositions, issue subpoenas and compel the attendance of witnesses and the production of books, papers, documents and other evidence relative to any investigation or proceeding conducted by the authority;
(12) appoint and prescribe the duties of officers, agents and employees of the authority, including professional and administrative staff and personnel, and to fix their compensation, pay their expenses and provide a benefit program, including, but not limited to, a retirement plan and a group insurance plan;
(13) select and contract with lottery vendors and lottery retailers;
(14) enter into contracts or agreements with state, local or federal law enforcement agencies or private investigators or other persons for the performance of law enforcement, background investigations and security checks;
(15) enter into contracts of any and all types on such terms and conditions as the authority may determine;
(16) establish and maintain banking relationships, including, but not limited to, establishment of checking and savings accounts and lines of credit;
(17) advertise and promote the lottery and lottery games;
(18) act as a lottery retailer, conduct promotions that involve the dispensing of lottery tickets and establish and operate a sales facility to sell lottery tickets and any related merchandise; and
(19) adopt, repeal and amend such rules, policies and procedures as necessary to carry out and implement its powers and duties, organize and operate the authority, conduct lottery games and any other matters necessary or desirable for the efficient and effective operation of the lottery and the convenience of the public.
B. The powers enumerated in this section are cumulative of and in addition to those powers enumerated elsewhere in the New Mexico Lottery Act, and no such powers limit or restrict any other powers of the authority.
History: Laws 1995, ch. 155, § 6.

6-24-7. Board of directors; duties.

The board shall provide the authority with the private-sector perspective of a large marketing enterprise and shall make every effort to exercise sound and prudent business judgment in its management and promotion of the lottery. It is the duty of the board to:
A. adopt all rules, policies and procedures necessary for the establishment and operation of the lottery;
B. maximize the net revenue for the public purposes of the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978] and to that end assure that all rules, policies and procedures adopted further revenue maximization;
C. appoint a chief executive officer, prescribe his qualifications, duties and salary and set the salaries of the other officers and employees of the authority;
D. approve, disapprove, amend or modify the annual budget recommended by the chief executive officer for the operation of the authority;
E. approve all major procurements and approve, disapprove, amend or modify the terms of such procurements recommended by the chief executive officer;
F. supervise the chief executive officer and the other officers and employees of the authority and meet with the chief executive officer at least once every three months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the lottery and transact other necessary business;
G. conduct, with the chief executive officer, a continuing study of the lottery and other state lotteries to improve the efficiency, profitability and security of the authority and the lottery;
H. prepare quarterly and annual reports and maintain records as required under the New Mexico Lottery

Act; and
I. pursue any and all other matters necessary, desirable or convenient for the efficient and effective operation of lottery games, the continued entertainment and convenience of the public and the integrity of the lottery.
History: Laws 1995, ch. 155, § 7.

6-24-8. Lottery games; adoption of rules, policies and procedures by board.

The board may adopt rules, policies and procedures for the conduct of lottery games in general, including, but not limited to the following matters:
A. the type of games to be conducted, which may include any type of lottery game not prohibited by the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978];
B. the percentage of lottery revenues that shall be returned to the public in the form of lottery prizes;
C. the method and location of selecting or validating winning tickets;
D. the manner and time of payment of prizes, which may include lump-sum payments or installments over a period of years;
E. the manner of payments of prizes to the holders of winning tickets;
F. the frequency of games and drawings or selection of winning tickets;
G. the method to be used in selling tickets, which may include the use of electronic or mechanical devices;
H. the price of each ticket and the number and size of prizes;
I. the conduct of drawings and determination of winners of lottery games;
J. requirements governing lottery tickets, including, but not limited to, requirements that all instant-win tickets be recyclable; and
K. any and all other matters necessary, desirable or convenient toward ensuring the efficient and effective operation of lottery games.
History: Laws 1995, ch. 155, § 8.

6-24-9. Lottery oversight committee; bipartisan; duties.

A. There is created a joint interim legislative committee, which shall be known as the "lottery oversight committee".
B. The lottery oversight committee shall be composed of four members. Two members of the house of representatives shall be appointed by the speaker of the house of representatives and two members of the senate shall be appointed by the committees' committee of the senate or, if the senate appointments are made in the interim, by the president pro tempore of the senate after consultation with and agreement of a majority of the members of the committees' committee. Members shall be appointed so that there is a member from each of the major political parties from each house. No member who has a financial interest in any lottery contractor, lottery retailer or lottery vendor shall be appointed to the committee.
C. The lottery oversight committee shall oversee the operations of the authority, as well as periodically review and evaluate the success with which the authority is accomplishing its duties and operating the lottery pursuant to the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978]. The committee may conduct any independent audit or investigation of the lottery or the authority it deems necessary.
D. The lottery oversight committee shall report annually its findings and recommendations on the lottery and the operation of the authority to each regular session of the legislature.
History: Laws 1995, ch. 155, § 9.

6-24-10. Chief executive officer; compensation; appointment; duties.

A. The board shall appoint and set the compensation of a "chief executive officer", who shall serve at the pleasure of the board.
B. The chief executive officer, who shall be an employee of the authority, shall:

(1) manage and direct the operation of the lottery and all administrative and technical activities of the authority in accordance with the provisions of the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978] and pursuant to rules, policies and procedures adopted by the board pursuant to that act;
(2) employ and supervise such personnel as deemed necessary;
(3) with the approval of the board and pursuant to rules, policies and procedures adopted by the board, enter into contracts for materials, equipment and supplies to be used in the operation of the lottery, for the design and installation of lottery games, for consultant services and for promotion of the lottery;
(4) contract with lottery retailers pursuant to the New Mexico Lottery Act and board rules;
(5) promote or provide for promotion of the lottery and any functions related to the authority;
(6) hire an executive vice president for security and an internal auditor and take all necessary measures to provide for the security and integrity of the lottery;
(7) prepare an annual budget for the approval of the board;
(8) provide quarterly to the board, the governor, the lottery oversight committee and the legislative finance committee a full and complete report of lottery revenues and expenses for the preceding quarter; and
(9) perform such other duties as are necessary to implement and administer the lottery.
C. The chief executive officer may refuse to renew any lottery contract in accordance with the provisions of the New Mexico Lottery Act or the rules, policies and procedures of the board.
D. The chief executive officer or his designee may conduct hearings and administer oaths to persons for the purpose of assuring the security or integrity of lottery operations or to determine the qualifications of or compliance by lottery vendors and lottery retailers.
History: Laws 1995, ch. 155, § 10.

6-24-11. Employees; conflict of interest; investigations; bonds.

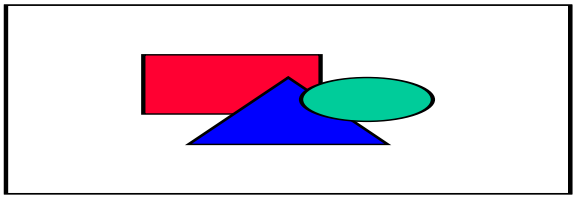
A. No employee of the authority shall participate in any decision involving a lottery retailer with whom the employee has a financial interest.
B. No employee of the authority who leaves the employment of the authority may represent any lottery vendor or lottery retailer before the authority for a period of two years following termination of employment with the authority.
C. A background investigation shall be conducted on each applicant who has reached the final selection process prior to employment by the authority. The authority is authorized to pay for the actual cost of such investigations and may contract with the department of public safety for the performance of the investigations.
D. The authority shall bond authority employees with access to authority funds or lottery revenue in an amount determined by the board and may bond other employees as deemed necessary.
History: Laws 1995, ch. 155, § 11.

6-24-12. Executive vice president for security; qualifications; duties.

A. The chief executive officer shall hire an executive vice president for security, who shall be qualified by training and experience, including at least five years of law enforcement experience, and be knowledgeable and experienced in computer security. The executive vice president for security shall take direction as needed from the chief executive officer and shall be accountable to the board.
B. The executive vice president for security shall:
(1) be the chief administrative officer of the security division of the authority, which is designated as a law enforcement agency for the purposes of administering the security provisions of the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978];
(2) be responsible for assuring the security, honesty, fairness and integrity of the operation and administration of the lottery and to that end shall institute all necessary security measures, including, but not limited to, an examination of the background of all prospective employees, lottery retailers, lottery vendors and lottery contractors;
(3) in conjunction with the chief executive officer, confer with the attorney general or his designee to

promote and ensure the security, honesty, fairness and integrity of the operation and administration of the lottery; and
(4) in conjunction with the chief executive officer, report any alleged violation of law to the attorney general or any other appropriate law enforcement authority for further investigation and action.
History: Laws 1995, ch. 155, § 12.

6-24-13. Determination of confidential information; applicability of Open Meetings Act; criminal investigations.



A. The authority is specifically authorized to determine which information relating to the operation of the lottery is confidential. Such information is limited to trade secrets and proprietary information; security measures, systems or procedures; security reports; information concerning bids or other contract data during the negotiation process, the disclosure of which would impair the efforts of the authority to contract for goods or services on favorable terms; and information obtained pursuant to investigations that would be protected from public disclosure under the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].
B. The authority is subject to the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]; provided that meetings or portions of meetings devoted to discussing information deemed to be confidential pursuant to Subsection A of this section are exempt from the provisions of that act.
C. The authority or its authorized agent shall:
(1) conduct criminal background investigations and credit investigations on all potential lottery retailers and all lottery vendors prior to the execution of any contract with a lottery retailer or a lottery vendor;
(2) supervise ticket validation and lottery drawings;
(3) inspect at times determined solely by the authority the facilities of any lottery vendor or lottery retailer in order to determine the integrity of the lottery vendor's product or the operations of the lottery retailer in order to determine whether the lottery vendor or the lottery retailer is in compliance with its contract;
(4) report any suspected violations of the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978] to the appropriate district attorney, the attorney general or to any law enforcement agency having jurisdiction over the violation; and
(5) upon request, provide assistance to any district attorney, the attorney general or a law enforcement agency investigating a violation of the New Mexico Lottery Act.
History: Laws 1995, ch. 155, § 13.

6-24-14. Lottery retailers; contracts; sales commission; bonds.

A. Lottery tickets shall be sold only by a lottery retailer who, pursuant to a contract with the authority, has been issued a certificate of authority signed by the chief executive officer. The lottery retailer shall display the certificate conspicuously at each authorized location. No lottery retailer shall sell a lottery ticket except from the locations listed in his contract and as evidenced by his certificate of authority unless the authority authorizes in writing any temporary location not listed in his contract.
B. Before entering into a contract with a lottery retailer applicant, the chief executive officer shall consider:
(1) the financial responsibility and security of the applicant and his business or activity;
(2) the accessibility of his place of business or activity to the public; and
(3) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.
C. No person shall be a lottery retailer who:
(l) is under eighteen years of age;
(2) is engaged exclusively in the business of selling lottery tickets;

(3) is a lottery vendor or an employee or agent of any lottery vendor doing business in New Mexico;
(4) has been found to have violated any provisions of the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978] or any rule adopted by the board pursuant to that act; or
(5) fails to certify to the chief executive officer that his premises are in compliance with the federal Americans with Disabilities Act of 1990.
D. All lottery retailer contracts may be renewable annually in the discretion of the authority unless sooner terminated.
E. The authority to act as a lottery retailer is not assignable or transferable.
F. Lottery retailer applicants shall pay an application fee established by the board to cover the cost of investigating and processing the application.
G. The board shall determine the commission to be paid lottery retailers for their sales of lottery tickets.
H. Each lottery retailer shall keep a complete and current set of records accounting for all of his sales of lottery tickets and shall provide it for inspection upon request of the board, the chief executive officer, the legislative finance committee or the attorney general.
I. Lottery retailers shall make payments to the lottery only by check, bankdraft, electronic fund transfer or other recorded, noncash financial transfer method as determined by the chief executive officer.
J. No lottery retailer shall contract with any person for lottery goods or services except with the approval of the board.
History: Laws 1995, ch. 155, § 14.

6-24-15. Lottery tickets; sales.

A. The price of each lottery ticket shall be clearly stated on the ticket. No person shall sell a ticket at a price other than at the price established by the authority unless authorized in writing by the chief executive officer. No person other than a lottery retailer shall sell lottery tickets, but this subsection shall not be construed to prevent a person who may lawfully purchase tickets from making a gift of lottery tickets. Transactions between individuals on a nonprofit basis are permissible. Nothing in the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978] shall be construed to prohibit the authority from designating certain of its agents or employees to sell or give lottery tickets directly to the public.
B. Lottery tickets may be given by merchants as a means of promoting goods or services to customers or prospective customers.
C. Tickets shall not be sold to or purchased by individuals under eighteen years of age. Persons under eighteen years of age may receive lottery tickets as gifts.
D. Tickets may be purchased only with cash or a check and shall not be purchased on credit.
E. The names of elected officials shall not appear on any lottery ticket.
History: Laws 1995, ch. 155, § 15.

6-24-16. Termination of lottery retailer contracts.

A. Any lottery retailer contract executed by the authority pursuant to the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978] shall specify the reasons for which a contract may be terminated by the authority, which reasons shall include but not be limited to:
(1) a violation of the New Mexico Lottery Act or any rule, policy or procedure of the board adopted pursuant to that act;
(2) failure to accurately or timely account for lottery tickets, lottery games, revenues or prizes as required by the authority;
(3) commission of any fraud, deceit or misrepresentation;
(4) failure to achieve sales goals established by the lottery;
(5) conduct prejudicial to public confidence in the lottery;
(6) the lottery retailer's filing for or being placed in bankruptcy or receivership;

(7) any material change as determined in the sole discretion of the authority in any matter considered by the authority in executing the contract with the lottery retailer; and
(8) failure to meet any of the objective criteria established by the authority pursuant to the New Mexico Lottery Act.
B. The chief executive officer may terminate a contract with a lottery retailer for violations or actions that according to the terms of the contract, pursuant to Subsection A of this section, require termination.
History: Laws 1995, ch. 155, § 16.

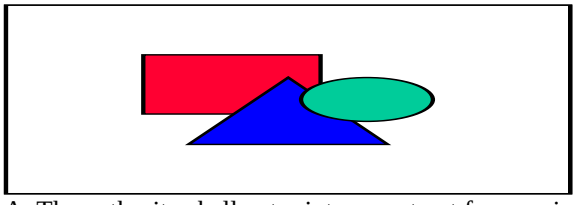
6-24-17. Disclosure of odds.

The authority shall make adequate disclosure of the odds with respect to each lottery game by stating the odds in lottery game advertisements or by posting the odds at each place in which lottery tickets are sold.
History: Laws 1995, ch. 155, § 17.

6-24-18. Felony and gambling-related convictions; ineligibility for lottery positions.

No person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may be a board member, chief executive officer, officer or employee of the authority, lottery vendor or lottery retailer. Prior to appointment as a board member, chief executive officer or other officer or employee, a person shall submit to the board a full set of fingerprints made at a law enforcement agency by an agent or officer of such agency on forms supplied by the authority. The executive vice president for security may require a lottery retailer to submit fingerprints prior to completing a contract.
History: Laws 1995, ch. 155, § 18.

6-24-19. Major procurement; competitive proposals.



A. The authority shall enter into a contract for a major procurement after evaluating competitive proposals, and shall not design requests for proposals to provide only for sole source contracts. The authority shall design requests for proposals in such a manner as to encourage competitive proposals. The board shall adopt procedures and standards designed to allow the selection of proposals that provide the greatest long-term benefit to the state, the greatest integrity for the authority and the best service and products for the public.
B. In any request for proposal process, the authority shall conduct its own procurement, but the authority shall conduct all major procurement in keeping with the general principles of the Procurement Code.
C. The authority may make procurements that integrate functions such as lottery game design and production, lottery ticket distribution to retailers, marketing support, supply of goods and services and advertising. In all procurement decisions, the authority shall take into account the particularly sensitive nature of the lottery and shall act to promote and ensure security, honesty, fairness and integrity in the operation and administration of the lottery and the objectives of raising net revenues for the public purposes of the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978].
D. Procurements shall not be artificially divided to reduce the cost of the procurement below the major procurement threshold.
History: Laws 1995, ch. 155, § 19.

6-24-20. Disclosures by lottery vendor.

A. Any lottery vendor that submits a bid or proposal for a contract to supply lottery equipment, tickets or other material or services for use in the operation of the lottery shall disclose at the time of such bid or proposal:
(1) the lottery vendor's business name and address and the names and addresses of the following:
(a) if the lottery vendor is a partnership, all of the general and limited partners;
(b) if the lottery vendor is a trust, the trustee and all persons entitled to receive income or benefit from the trust;
(c) if the lottery vendor is an association, the members, officers and directors;
(d) if the lottery vendor is a corporation, the officers, directors and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation; except that, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding five percent or more of the publicly held securities must be disclosed; and
(e) if the lottery vendor is a subsidiary company, each intermediary company, holding company or parent company involved therewith and the officers, directors and stockholders of each; except that, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company that is a publicly traded corporation, only the names and addresses of those owning or holding five percent or more of the publicly held securities must be disclosed;
(2) if the lottery vendor is a corporation, all the states in which the lottery vendor is authorized to do business and the nature of that business;
(3) other jurisdictions in which the lottery vendor has contracts to supply gaming materials, equipment or services;
(4) the details of any conviction by a federal or any state court of the lottery vendor or any person whose name and address is required under this section for a criminal offense punishable by imprisonment for more than one year and shall submit to the board a full set of fingerprints of such person made at a law enforcement agency by an agent or officer of such agency on forms supplied by the authority;
(5) the details of any disciplinary action taken by any state against the lottery vendor or any person whose name and address are required by this section regarding any matter related to gaming services or the selling, leasing, offering for sale or lease, buying or servicing of gaming materials or equipment;
(6) audited annual financial statements of the lottery vendor for the preceding five years;
(7) a statement of the lottery vendor's gross receipts realized in the preceding year from gaming services and the sale, lease or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;
(8) the name and address of any source of gaming materials or equipment for the lottery vendor;
(9) the number of years the lottery vendor has been in the business of supplying gaming services or gaming materials or equipment; and
(10) any other information, accompanied by any documents the board by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978].
B. No contract for supplying goods or services for use in the operation of the lottery is enforceable against the authority unless the requirements of this section have been fulfilled.
History: Laws 1995, ch. 155, § 20.

6-24-21. Drawings for and payment of prizes; unclaimed prizes; applicability of taxation.

A. All lottery prize drawings shall be held in public. The selection of winning entries shall not be performed by an employee of the lottery or by a member of the board. All drawings shall be witnessed by the internal auditor of the authority or his designee. All lottery drawing equipment used in public drawings to select winning numbers or entries or participants for prizes shall be examined by the chief executive officer's staff and the internal auditor of the authority or his designee prior to and after each public drawing.
B. Any lottery prize is subject to applicable state taxes. The authority shall report to the state and federal taxing authorities any lottery prize exceeding six hundred dollars ($600).

C. The authority shall adopt rules, policies and procedures to conduct fair and equitable drawings and establish a system of verifying the validity of tickets claimed to win prizes and to effect payment of such prizes, provided:
(1) no prize shall be paid upon a ticket purchased or sold in violation of the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978]. Any such prize shall constitute an unclaimed prize for purposes of this section;
(2) the authority is discharged from all liability upon payment of a prize;
(3) the board may by rule provide for the payment of prizes by lottery retailers, whether or not the lottery retailer sold the winning ticket, whenever the amount of the prize is less than an amount set by board rule. Payment shall not be made directly to a player by a machine or a mechanical or electronic device;
(4) prizes not claimed within the time period established by the authority are forfeited and shall be paid into the prize fund. No interest is due on a prize when a claim is delayed; and
(5) the right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order.
History: Laws 1995, ch. 155, § 21.

6-24-22. Lien on lottery winnings for debt collected by human services department; payment to department; procedure.

A. The human services department, acting as the state's child support enforcement agency pursuant to Title IV-D of the Social Security Act, shall periodically certify to the authority the names and social security numbers of persons owing a debt to or collected by the human services department.
B. Prior to the payment of a lottery prize in excess of six hundred dollars ($600), the lottery shall check the name of the winner against the list of names and social security numbers of persons owing a debt to or collected by the human services department.
C. If the prize winner is on the list of persons owing a debt to or collected by the agency, the lottery shall make a good-faith attempt to notify the human services department, and the department then has a lien against the lottery prize in the amount of the debt owed to or collected by the agency. The lottery has no liability to the human services department or the person on whose behalf the department is collecting the debt if the lottery fails to match a winner's name to a name on the list or is unable to notify the department of a match. The department shall provide the lottery with written notice of a support lien promptly within five working days after the lottery notifies the department of a match.
D. If the lottery prize is to be paid directly by the authority, the amount of the debt owed to or collected by the human services department shall be held by the lottery for a period of thirty days from the lottery's confirmation of the amount of the debt to allow the department to institute any necessary garnishment or wage withholding proceedings. If a garnishment or withholding proceeding is not initiated within the thirty-day period, the authority shall release the lottery prize payment to the winner.
E. The human services department, in its discretion, may release or partially release the support lien upon written notice to the authority.
F. A support lien under this section is in addition to any other lien created by law.
History: Laws 1995, ch. 155, § 22.

6-24-23. Lottery tuition fund created; purpose. (Effective until July 1, 1999.)

A. The "lottery tuition fund" is created in the state treasury. The fund shall be administered by the commission on higher education. Earnings from investment of the fund shall accrue to the credit of the fund. Any balance in the fund at the end of any fiscal year shall remain in the fund for appropriation by the legislature as provided in this section.
B. After appropriation, if any, by the legislature for scholarships pursuant to Subsection C of Section 21-1-2 NMSA 1978, the remaining money in the lottery tuition fund is appropriated to the commission on higher education for distribution to New Mexico's public post-secondary educational institutions to provide tuition assistance for New Mexico resident undergraduates as provided by law.
History: Laws 1995, ch. 155, § 23; 1997, ch. 106, § 1.

6-24-24. Disposition of revenue. (Effective until July 1, 1999.)

A. As nearly as practical, an amount equal to at least fifty percent of the gross annual revenues from the sale of lottery tickets shall be returned to the public in the form of lottery prizes.
B. The authority shall transmit all net revenues to the state treasurer who shall deposit sixty percent of the revenues in the public school capital outlay fund for expenditure pursuant to the provisions of the Public School Capital Outlay Act [22-24-1 to 22-24-6 NMSA 1978] and forty percent in the lottery tuition fund. Estimated net revenues shall be transmitted monthly to the state treasurer for deposit in the funds, provided the total amount of annual net revenues for the fiscal year shall be transmitted no later than August 1 each year.
C. In determining net revenues, operating expenses of the lottery include all costs incurred in the operation and administration of the lottery and all costs resulting from any contracts entered into for the purchase or lease of goods or services required by the lottery, including but not limited to the costs of supplies, materials, tickets, independent audit services, independent studies, data transmission, advertising, promotion, incentives, public relations, communications, commissions paid to lottery retailers, printing, distribution of tickets, purchases of annuities or investments to be used to pay future installments of winning lottery tickets, debt service and payment of any revenue bonds issued, contingency reserves, transfers to the reserve fund and any other necessary costs incurred in carrying out the provisions of the New Mexico Lottery Act [/sdCGI-BIN/om_isapi.dll?clientID=1948&infobase=nmsa1978.NFO&jump=6-24-1&softpage=Document - JUMPDEST_6-24-16-24-1 to 6-24-34 NMSA 1978].
D. An amount up to two percent of the gross annual revenues shall be set aside as a reserve fund to cover bonuses and incentive plans for lottery retailers, special promotions for retailers, purchasing special promotional giveaways, sponsoring special promotional events, compulsive gambling rehabilitation and such other purposes as the board deems necessary to maintain the integrity and meet the revenue goals of the lottery. The board shall report annually to the governor and each regular session of the legislature on the use of the money in the reserve fund. Any balance in excess of fifty thousand dollars ($50,000) at the end of any fiscal year shall be transferred to the lottery tuition fund.
History: Laws 1995, ch. 155, § 24.

6-24-25. Prohibition on use of state funds.

The authority shall be self-sustaining and self-funded. No appropriations, loans or other transfer of state funds shall be made to the authority or used or obligated to pay the expenses of the authority or lottery prizes. No claim for the payment of any lottery expense or lottery prize shall be made against any money other than money credited to the authority.
History: Laws 1995, ch. 155, § 25.

6-24-26. Authorization to issue revenue bonds.

A. In order to provide funds for the initial development and operation of the lottery, the board is authorized to issue lottery revenue bonds in an amount not to exceed three million dollars ($3,000,000) payable solely from revenues of the authority generated from operation of the lottery.
B. The board may issue bonds to refund other bonds issued pursuant to this section.
C. The bonds shall have a maturity of no more than five years from the date of issuance. The board shall determine all other terms, covenants and conditions of the bonds; provided, however, that the bonds may provide for prepayment in part or in full of the balance due at any time without penalty.
D. The bonds shall be executed with the manual or facsimile signature of the chief executive officer or the chairman of the board and attested by another member of the board. The bonds may bear the seal, if any, of the authority.
E. The proceeds of the bonds and the earnings on those proceeds are appropriated to the authority for the initial development and operation of the lottery, to pay expenses incurred in the preparation, issuance and sale of the bonds, to pay any obligations relating to the bonds and the proceeds of the bonds under the Internal Revenue Code of 1986 and for any other lawful purpose.

F. The bonds may be sold either at a public sale or at a private sale to the state investment officer or to the state treasurer. If the bonds are sold at a public sale, the notice of sale and other procedures for the sale shall be determined by the chief executive officer or the board.
G. This section is full authority for the issuance and sale of the bonds, and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bonds for value.
H. An amount of money from the sources specified in Subsection A of this section sufficient to pay the principal of and interest on the bonds as they become due in each year shall be set aside, and is hereby pledged, for the payment of the principal and interest on the bonds.
I. The bonds shall be legal investments for any person or board charged with the investment of public funds and may be accepted as security for any deposit of public money, and the bonds and interest thereon are exempt from taxation by the state and any political subdivision or agency of the state.
J. The bonds shall be payable by the authority, which shall keep a complete record relating to the payment of the bonds.
History: Laws 1995, ch. 155, § 26.

6-24-27. Revenue and budget reports; records; independent audits.

A. The board shall:
(l) submit quarterly and annual reports to the governor, legislative finance committee and lottery oversight committee disclosing the total lottery revenue, prizes, commissions, ticket costs, operating expenses and net revenues of the authority during the reporting period, and, in the annual report, describe the organizational structure of the authority and summarize the functions performed by each organizational division within the authority;
(2) maintain weekly or more frequent records of lottery transactions, including the distribution of lottery tickets to retailers, revenue received, claims for prizes, prizes paid, prizes forfeited and other financial transactions of the authority; and
(3) use the state government fiscal year.
B. The board shall provide, for informational purposes, to the department of finance and administration and the legislative finance committee, by December 1 of each year, a copy of the annual proposed operating budget for the authority for the succeeding fiscal year. This budget proposal shall also be accompanied by an estimate of the net revenues to be deposited in the public school capital outlay fund and the lottery tuition fund for the current and succeeding fiscal years.
C. The board shall contract with an independent certified public accountant or firm for an annual financial audit of the authority. The certified public accountant or firm shall have no financial interest in any lottery contractor. The certified public accountant or firm shall present an audit report no later than March 1 for the prior fiscal year. The certified public accountant or firm shall evaluate the internal auditing controls in effect during the audit period. The cost of this financial audit shall be an operating expense of the authority. The legislative finance committee may, at any time, order an audit of any phase of the operations of the authority, at the expense of the authority and shall receive a copy of the annual independent financial audit. A copy of any audit performed by the certified public accountant or ordered by the legislative finance committee shall be transmitted to the governor, the speaker of the house of representatives, the president pro tempore of the senate, the legislative finance committee and the lottery oversight committee.
History: Laws 1995, ch. 155, § 27.

6-24-28. Internal auditor; appointment; duties.

A. The board, with the recommendation and assistance of the chief executive officer, shall employ an internal auditor. The internal auditor, who shall be an employee of the authority, shall be qualified by training and experience as an auditor and management analyst and have at least five years of auditing experience. The internal auditor shall take direction as needed from the chief executive officer and be accountable to the board.
B. The internal auditor shall conduct and coordinate comprehensive audits for all aspects of the lottery, provide management analysis expertise and carry out any other duties specified by the board and by law. The internal auditor shall specifically:

(1) conduct, or provide for through a competitive bid process, an annual financial audit and observation audits of drawings;
(2) create an annual audit plan to be approved by the board;
(3) search for means of better efficiency and cost savings and waste prevention;
(4) examine the policy and procedure needs of the lottery and determine compliance;
(5) ensure that proper internal controls exist;
(6) perform audits that meet or exceed governmental audit standards; and
(7) submit audit reports on a quarterly basis to the board, the chief executive officer, the state auditor, the lottery oversight committee and the legislative finance committee.
C. The internal auditor shall conduct audits as needed in the areas of:
(1) personnel security;
(2) lottery retailer security;
(3) lottery contractor security;
(4) security of manufacturing operations of lottery contractors;
(5) security against lottery ticket counterfeiting and alteration and other means of fraudulently winning;
(6) security of drawings among entries or finalists;
(7) computer security;
(8) data communications security;
(9) database security;
(10) systems security;
(11) lottery premises and warehouse security;
(12) security in distribution;
(13) security involving validation and payment procedures;
(14) security involving unclaimed prizes;
(15) security aspects applicable to each particular lottery game;
(16) security of drawings in games whenever winners are determined by drawings;
(17) the completeness of security against locating winners in lottery games with preprinted winners by persons involved in their production, storage, distribution, administration or sales; and
(18) any other aspects of security applicable to any particular lottery game and to the lottery and its operations.
D. Specific audit findings related to security invasion techniques are confidential and may be reported only to the chief executive officer or his designee, the board, the governor and the attorney general.
History: Laws 1995, ch. 155, § 28.

6-24-29. Unlawfully influencing and fraud; penalties.

A. It is unlawful to knowingly:
(1) influence the winning of a prize through the use of coercion, fraud, deception or tampering with lottery equipment or materials; or
(2) make a material false statement in any application for selection as a lottery retailer or any lottery vendor proposal or other proposal to conduct lottery activities or to make a material false entry in any book or record that is compiled or maintained or submitted pursuant to the provisions of the New Mexico Lottery Act [6-24-1 to 6-24-34 NMSA 1978].
B. Any person who violates any provision of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.
History: Laws 1995, ch. 155, § 29.

6-24-30. Conflicts of interest; penalties.

A. It is unlawful for the chief executive officer, a board member or any employee of the authority or any person residing in the household thereof to:
(1) have, directly or indirectly, an interest in a business, knowing that such business contracts with the lottery for a major procurement, whether such interest is as a natural person, partner, member of an association, stockholder or director or officer of a corporation; or
(2) accept or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor, service

or hospitality, other than food and beverages, having an aggregate value of twenty dollars ($20.00) or less in any calendar year from a person, knowing that such person:
(a) contracts or seeks to contract with the state to supply gaming equipment, materials, lottery tickets or consulting services for use in the lottery; or
(b) is a lottery retailer.
B. It is unlawful for a lottery retailer or a lottery vendor to offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, service or hospitality, other than food and beverages, having an aggregate value of more than twenty dollars ($20.00) in any calendar year to a person, knowing such person is the chief executive officer, a board member or an employee of the authority, or a person residing in the household thereof.
C. Any person who violates any provision of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.
D. If a board member, the chief executive officer or an employee of the authority, or any person residing in the household thereof, is convicted of a violation of this section, that board member, chief executive officer or employee shall be removed from office or employment with the authority.
History: Laws 1995, ch. 155, § 30.

6-24-31. Forgery of lottery ticket; penalty.

A. It is unlawful to falsely make, alter, forge, pass, present or counterfeit, with intent to defraud, a lottery ticket, or receipt for the purchase thereof, issued or purported to have been issued by the lottery under the New Mexico Lottery Act [6-24-1 to 6-24-34 NMSA 1978].
B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.
History: Laws 1995, ch. 155, § 31.

6-24-32. Unlawful sale of lottery ticket; penalty.

A. It is unlawful for:
(1) any person to sell a lottery ticket at a price other than that fixed by the authority pursuant to the New Mexico Lottery Act [6-24-1 to 6-24-34 NMSA 1978];
(2) any person other than the authority or a lottery retailer to sell or resell any lottery ticket; and
(3) any person to sell a lottery ticket to any person under eighteen years of age.
B. Notwithstanding the provisions of Subsection A of this section, any person may make a gift of lottery tickets, and the authority or a lottery retailer may make a gift of lottery tickets for promotional purposes.
C. Any person who violates any provision of this section for the first time is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.
D. Any person who violates any provision of this section for a second or subsequent time is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.
History: Laws 1995, ch. 155, § 32.

6-24-33. Unlawful purchase of lottery ticket; penalty.

A. It is unlawful for the following persons to purchase a lottery ticket or to share knowingly in the lottery winnings of another person:
(1) the chief executive officer, a board member, a member of the lottery oversight committee or an employee of the authority; or
(2) an owner, officer or employee of a lottery vendor or, in the case of a corporation, an owner of five percent or more of the corporate stock of a lottery vendor.
B. Notwithstanding the provisions of Subsection A of this section, the chief executive officer may authorize in writing any employee of the authority and any employee of a lottery contractor to purchase a lottery ticket for the purposes of verifying the proper operation of the lottery with respect to security, systems operation and lottery retailer contract compliance. Any prize awarded as a result of such ticket purchase shall become the property of the authority and shall be added to the prize pools of subsequent lottery games.

C. Nothing in this section shall prohibit lottery retailers or their employees from purchasing lottery tickets or from being paid a prize for a winning ticket.
D. Certain classes of persons who, because of the unique nature of the supplies or services they provide for use directly in the operation of the lottery, may be prohibited, in accordance with rules adopted by the board, from participating in any lottery in which such supplies or services are used.
E. Any person who violates any provision of this section for the first time is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.
F. Any person who violates any provision of this section for a second or subsequent time is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.
History: Laws 1995, ch. 155, § 33.

6-24-34. Criminal provisions of act in addition to any existing Criminal Code provisions.

The criminal provisions of the New Mexico Lottery Act [6-24-1 to 6-24-34 NMSA 1978] are not intended to and do not replace or preempt prosecution for Criminal Code violations based on identical or similar conduct.
History: Laws 1995, ch. 155, § 34.

CHAPTER 7. TAXATION

ARTICLE 1. ADMINISTRATION

7-1-2. Applicability.

The Tax Administration Act [this article] applies to and governs:
A. the administration and enforcement of the following taxes or tax acts as they now exist or may hereafter be amended:
(1) Income Tax Act [Chapter 7, Article 2 NMSA 1978];
(2) Withholding Tax Act [Chapter 7, Article 3 NMSA 1978];
(3) Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] and any state gross receipts tax;
(4) Liquor Excise Tax Act [Chapter 7, Article 17 NMSA 1978];
(5) Local Liquor Excise Tax Act [7-24-8 to 7-24-16 NMSA 1978];
(6) any municipal local option gross receipts tax;
(7) any county local option gross receipts tax;
(8) Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978];
(9) Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978];
(10) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act;
(11) Alternative Fuel Tax Act [Chapter 7, Article 16B NMSA 1978];
(12) Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978];
(13) Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978];
(14) Railroad Car Company Tax Act [Chapter 7, Article 11 NMSA 1978];
(15) Investment Credit Act [Chapter 7, Article 9A NMSA 1978];
(16) Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978];
(17) Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978];
(18) Multistate Tax Compact [7-5-1 NMSA 1978];
(19) Tobacco Products Tax Act [Chapter 7, Article 12A NMSA 1978];
(20) Filmmaker's Credit Act; and
(21) the telecommunications relay service surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge shall be considered a tax for the purposes of the Tax Administration Act;
B. the administration and enforcement of the following taxes, surtaxes, advanced payments or tax acts as they now exist or may hereafter be amended:
(1) Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978];

(2) Severance Tax Act [7-26-1 to 7-26-8 NMSA 1978];
(3) any severance surtax;
(4) Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978];
(5) Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978];
(6) Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978];
(7) Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978];
(8) Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978];
(9) Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978];
(10) Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978]; and
(11) any advance payment required to be made by any act specified in this subsection, which advance payment shall be considered a tax for the purposes of the Tax Administration Act;
C. the administration and enforcement of the following taxes, surcharges, fees or acts as they now exist or may hereafter be amended:
(1) Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978];
(2) Special Fuels Tax Act;
(3) the workers' compensation fee authorized by Section 52-5-19 NMSA 1978, which fee shall be considered a tax for purposes of the Tax Administration Act;
(4) Uniform Unclaimed Property Act [Chapter 7, Article 8A NMSA 1978];
(5) 911 emergency surcharge and the network and database surcharge, which surcharges shall be considered taxes for purposes of the Tax Administration Act;
(6) the solid waste assessment fee authorized by the Solid Waste Act, which fee shall be considered a tax for purposes of the Tax Administration Act;
(7) the water conservation fee imposed by Section 74-1-13 NMSA 1978, which fee shall be considered a tax for the purposes of the Tax Administration Act; and
(8) the gaming tax imposed pursuant to the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978]; and
D. the administration and enforcement of all other laws, with respect to which the department is charged with responsibilities pursuant to the Tax Administration Act, but only to the extent that the other laws do not conflict with the Tax Administration Act.
History: 1953 Comp., § 72-13-14, enacted by Laws 1965, ch. 248, § 2; 1966, ch. 54, § 1; 1969, ch. 156, § 1; 1971, ch. 276, § 3; 1973, ch. 346, § 1; 1974, ch. 13, § 1; 1975, ch. 301, § 1; 1978, ch. 182, § 22; 1979, ch. 144, § 2; 1982, ch. 18, § 1; 1983, ch. 211, § 3; 1985, ch. 65, § 1; 1986, ch. 20, § 2; 1987, ch. 45, § 20; 1987, ch. 268, § 1; 1988, ch. 71, § 1; 1988, ch. 73, § 1; 1989, ch. 263, § 1; 1989, ch. 325, § 1; 1989, ch. 326, § 10; 1989, ch. 327, § 1; 1990, ch. 86, § 1; 1990, ch. 88, § 1; 1990, ch. 99, § 45; 1990, ch. 124, § 12; 1990, ch. 125, § 1; 1992, ch. 55, § 1; 1993, ch. 5, § 1; 1994, ch. 51, § 1; 1996, ch. 15, § 1; 1997, ch. 190, § 64.

7-1-82. Transfer, assignment, sale, lease or renewal of liquor license.

A. The director of the alcohol and gaming division of the regulation and licensing department shall not allow the transfer, assignment, lease or sale of any liquor license pursuant to the provisions of the Liquor Control Act until the director receives written notification from the secretary or secretary's delegate that:
(1) the licensee or any person authorized to use the license is not a delinquent taxpayer as defined in Section 7-1-16 NMSA 1978; or
(2) the transferee, assignee, buyer or lessee has entered into a written agreement with the secretary or secretary's delegate in which the transferee, assignee, buyer or lessee has assumed full liability for payment of all taxes due or which may become due from engaging in business authorized by the liquor license.
B. The director of the alcohol and gaming division of the regulation and licensing department shall not allow the renewal of any liquor license pursuant to the provisions of the Liquor Control Act until the director receives notification from the secretary or secretary's delegate that on a certain date:
(1) there is no assessed tax liability from engaging in business authorized by the liquor license or, if there is assessed tax liability, the licensee is not a delinquent taxpayer; and
(2) there are no unfiled tax returns due from engaging in business authorized by the liquor license.
History: 1953 Comp., § 72-13-94, enacted by Laws 1973, ch. 179, § 1; 1975, ch. 116, § 5; 1979, ch. 144, § 66; 1995, ch. 70, § 4.

ARTICLE 2. INCOME TAX GENERAL PROVISIONS

7-2-11. Tax credit; income allocation and apportionment.

A. Net income of any individual having income that is taxable both within and without this state shall be apportioned and allocated as follows:
(1) during the first taxable year in which an individual incurs tax liability as a resident, only income earned on or after the date the individual became a resident and, in addition, income earned in New Mexico while a nonresident of New Mexico shall be allocated to New Mexico;
(2) except as provided otherwise in Paragraph (1) of this subsection, income other than compensation or gambling winnings shall be allocated and apportioned as provided in the Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978], but if the income is not allocated or apportioned by that act, then it may be allocated or apportioned in accordance with instructions, rulings or regulations of the secretary;
(3) except as provided otherwise in Paragraph (1) of this subsection, compensation and gambling winnings of a resident taxpayer shall be allocated to this state;
(4) compensation of a nonresident taxpayer shall be allocated to this state to the extent that such compensation is for activities, labor or personal services within this state; provided, if the activities, labor or services are performed in this state for fifteen or fewer days during the taxpayer's taxable year, the compensation may be allocated to the taxpayer's state of residence;
(5) gambling winnings of a nonresident shall be allocated to this state if the gambling winnings arose from a source within this state; and
(6) other deductions and exemptions allowable in computing net income and not specifically allocated in the Uniform Division of Income for Tax Purposes Act shall be equitably allocated or apportioned in accordance with instructions, rulings or regulations of the secretary.
B. For the purposes of this section, "non-New Mexico percentage" means the percentage determined by dividing the difference between the taxpayer's net income and the sum of the amounts allocated or apportioned to New Mexico by that net income.
C. A taxpayer may claim a credit in an amount equal to the amount of tax determined to be due under Section 7-2-7 or 7-2-7.1 NMSA 1978 multiplied by the non-New Mexico percentage.
History: 1953 Comp., § 72-15A-9, enacted by Laws 1965, ch. 202, § 9; 1969, ch. 152, § 5; 1974, ch. 56, § 1; 1981, ch. 37, § 21; 1986, ch. 20, § 28; 1990, ch. 49, § 5; 1995, ch. 11, § 3; 1996, ch. 16, § 1.

ARTICLE 2A. CORPORATE INCOME AND FRANCHISE TAX

7-2A-8. Credit; income allocation and apportionment.

A. Net income of any taxpayer having income that is taxable both within and without this state shall be apportioned and allocated as follows:
(1) except as otherwise provided in Paragraphs (2) through (4) of this subsection, income shall be allocated and apportioned as provided in the Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978];
(2) except for gambling winnings, nonbusiness income as defined in the Uniform Division of Income for Tax Purposes Act not otherwise allocated or apportioned under the Uniform Division of Income for Tax Purposes Act shall be equitably allocated or apportioned in accordance with instructions, rulings or regulations of the secretary;
(3) other deductions and exemptions allowable in computing federal taxable income and not specifically allocated in the Uniform Division of Income for Tax Purposes Act shall be equitably allocated or apportioned in accordance with instructions, rulings or regulations of the secretary; and
(4) gambling winnings that are nonbusiness income and arise from sources within this state shall be allocated to this state.
B. For the purposes of this section, "non-New Mexico percentage" means the percentage determined by dividing the difference between the taxpayer's net income and the sum of the amounts allocated or apportioned to New Mexico by that net income.
C. A taxpayer may claim a credit in an amount equal to the amount of tax determined to be due under

Section 7-2A-5 NMSA 1978 multiplied by the non-New Mexico percentage.
History: 1978 Comp., § 7-2A-8, enacted by Laws 1981, ch. 37, § 41; 1983, ch. 213, § 9; 1986, ch. 20, § 40; 1990, ch. 49, § 12; 1995, ch. 11, § 6; 1996, ch. 16, § 2.

CHAPTER 10. PUBLIC OFFICERS AND EMPLOYEES

ARTICLE 15. OPEN MEETINGS

10-15-1. Formation of public policy; procedures for open meetings; exceptions and procedures for closed meetings.

A. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.
B. All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency, any agency or authority of any county, municipality, district or any political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act [this article]. No public meeting once convened that is otherwise required to be open pursuant to the Open Meetings Act shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting.
C. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.
D. Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. That notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.
E. A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the public body specifies the date, time and place for continuation of the meeting and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held and in at least one other location appropriate to provide public notice of the continuation of the meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.
F. Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. Except in the case of an emergency, the agenda shall be available to the public at least twenty-four hours prior to the meeting. Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this subsection, an "emergency" refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body.
G. The board, commission or other policymaking body shall keep written minutes of all its meetings. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in

attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. All minutes are open to public inspection. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Minutes shall not become official until approved by the policymaking body.

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

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

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

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

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

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

(6) that portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars ($2,500) that can be made only from one source and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code [13-1-28 to 13-1-117 and 13-1-118 to 13-1-199 NMSA 1978] are discussed during the contract negotiation process. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting;

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

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

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

(10) that portion of a meeting of the gaming control board dealing with information made confidential pursuant to the provisions of the Gaming Control Act [60-2E-1 to 60-2E-60 NMSA 1978].

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

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

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

J. Following completion of any closed meeting, the minutes of the open meeting that was closed or the minutes of the next open meeting if the closed meeting was separately scheduled shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the

notice of the separate closed meeting. This statement shall be approved by the public body under Subsection G of this section as part of the minutes.
History: 1953 Comp., § 5-6-23, enacted by Laws 1974, ch. 91, § 1; 1979, ch. 366, § 1; 1989, ch. 299, § 1; 1993, ch. 262, § 1; 1997, ch. 190, § 65.

CHAPTER 11. INTERGOVERNMENTAL AGREEMENTS AND AUTHORITIES

ARTICLE 13. INDIAN GAMING COMPACT

11-13-1. Indian gaming compact entered into.

The Indian Gaming Compact is enacted into law and entered into with all Indian nations, tribes and pueblos in the state legally joining in it by enactment of a resolution pursuant to the requirements of applicable tribal and federal law. The compact is enacted and entered into in the form substantially as follows:

"INDIAN GAMING COMPACT

INTRODUCTION
The State is a sovereign State of the United States of America, having been admitted to the Union pursuant to the Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and is authorized by its constitution to enter into contracts and agreements, including this Compact, with the Tribe;
The Tribe is a sovereign federally recognized Indian tribe and its governing body has authorized the officials of the Tribe to enter into contracts and agreements of every description, including this Compact, with the State;
The Congress of the United States has enacted the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § § 2701-2721 (hereinafter "IGRA"), which permits Indian tribes to conduct Class III Gaming on Indian Lands pursuant to a tribal-state compact entered into for that purpose;
The Tribe owns or controls Indian Lands and by Ordinance has adopted rules and regulations governing Class III games played and related activities at any Gaming Facility;
The State and the Tribe, in recognition of the sovereign rights of each party and in a spirit of cooperation to promote the best interests of the citizens of the State and the members of the Tribe, have engaged in good faith negotiations recognizing and respecting the interests of each party and have agreed to this Compact.
NOW, THEREFORE, the State and the Tribe agree as follows:

TERMS AND CONDITIONS SECTION
SECTION 1. Purpose and Objectives.
The purpose and objectives of the State and the Tribe in making this Compact are as follows:
A. To evidence the good will and cooperative spirit between the State and the Tribe;
B. To continue the development of an effective government-to-government relationship between the State and the Tribe;
C. To provide for the regulation of Class III Gaming on Indian Lands as required by the IGRA;
D. To fulfill the purpose and intent of the IGRA by providing for tribal gaming as a means of generating tribal revenues, thereby promoting tribal economic development, tribal self-sufficiency, and strong tribal government;
E. To provide revenues to fund tribal government operations or programs, to provide for the general welfare of the tribal members and for other purposes allowed under the IGRA;
F. To provide for the effective regulation of Class III Gaming in which the Tribe shall have the sole proprietary interest and be the primary beneficiary; and
G. To address the State's interest in the establishment, by the Tribe, of rules and procedures for ensuring that Class III Gaming is conducted fairly and honestly by the owners, operators, employees and patrons of any Class III Gaming enterprise on Indian Lands.
SECTION 2. Definitions.
For purposes of this Compact, the following definitions pertain:
A. "Class III Gaming" means all forms of gaming as defined in 25 U.S.C. § 2703(8), and 25 C.F.R. §

502.4.

B. "Compact" means this compact between the State and the Tribe.

C. "Gaming Enterprise" means the tribal entity created and designated by the Tribe as having authority to conduct Class III Gaming pursuant to this Compact.

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

E. "Gaming Machine" means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate a game, whether the payoff is made automatically from the Gaming Machine or in any other manner.

F. "Indian Lands" means:

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

2. any other lands title to which is either held in trust by the United States for the exclusive benefit of the Tribe or a member thereof or is held by the Tribe or a member thereof subject to restrictions against alienation imposed by the United States, and over which the Tribe exercises jurisdiction and governmental authority, but not including any land within the boundaries of a municipality that is outside of the boundaries of the Tribe's reservation or confirmed Spanish grant, as those boundaries existed on October 17, 1988.

G. "Key Employee" means that term as defined in 25 CFR Section 502.14.

H. "Management Contract" means a contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

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

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

K. "Primary Management Official" means that term as defined in 25 CFR Section 502.19.

L. "State" means the State of New Mexico.

M. "State Gaming Representative" means that person designated by the gaming control board pursuant to the Gaming Control Act [60-2E-1 to 60-2E-60 NMSA 1978] who will be responsible for actions of the State set out in the Compact. The representative will be the single contact with the Tribe and may be relied upon as such by the Tribe. If the State Legislature enacts legislation to establish an agency of the State, such agency may assume the duties of the State Gaming Representative.

N. "Tribal Gaming Agency" means the tribal governmental agency which will be identified to the State Gaming Representative as the agency responsible for actions of the Tribe set out in the Compact. It will be the single contact with the State and may be relied upon as such by the State.

O. "Tribe" means any Indian Tribe or Pueblo located within the State of New Mexico entering into this Compact as provided for herein.

SECTION 3. Authorized Class III Gaming.

The Tribe may conduct, only on Indian Lands, subject to all of the terms and conditions of this Compact, any or all forms of casino-style gaming, including but not limited to slot machines and other forms of electronic gaming devices; all forms of poker, blackjack and other casino-style card games, both banked and unbanked; roulette; craps; keno; wheel of fortune; pai gow; and other games played in casino settings; and any form of a lottery.

Subject to the foregoing, the Tribe shall establish, in its discretion, by tribal law, such limitations as it deems appropriate on the number and type of Class III Gaming conducted, the location of Class III Gaming on Indian Lands, the hours and days of operation, and betting and pot limits, applicable to such gaming.

SECTION 4. Regulation of Class III Gaming.

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

1. operate all Class III Gaming pursuant to this Compact, tribal law, the IGRA and other applicable Federal law;

2. provide for the physical safety of patrons in any Gaming Facility;

3. provide for the physical safety of personnel employed by the gaming enterprise;

4. provide for the physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department;

5. provide for the protection of the property of the patrons and the gaming enterprise from illegal activity;

6. participate in licensing of primary management officials and key employees of a Class III Gaming

enterprise;
7. detain persons who may be involved in illegal acts for the purpose of notifying law enforcement authorities; and
8. record and investigate any and all unusual occurrences related to Class III Gaming within the Gaming Facility.
B. Regulations. Without affecting the generality of the foregoing, the Tribe shall adopt laws:
1. prohibiting participation in any Class III Gaming by any person under the age of twenty-one (21);
2. prohibiting the employment of any person in Class III Gaming activities who is under the age of twenty-one (21) or who has not been licensed in accordance with Section 5, herein;
3. requiring the Tribe to take all necessary action to impose on its gaming operation standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and any other federal laws relating to wages, hours of work and conditions of work, and the regulations issued thereunder;
4. requiring that on any construction project involving any Gaming Facility or related structure that is funded in whole or in part by federal funds, all workers will be paid wages meeting or exceeding the standards established for New Mexico under the federal Davis-Bacon Act;
5. prohibiting the Tribe, the Gaming Enterprise and a Management Contractor from discriminating in the employment of persons to work for the gaming Enterprise or in the Gaming Facility on the grounds of race, color, national origin, gender, sexual orientation, age or handicap;
6. providing to all employees of a gaming establishment employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave and medical and dental insurance as well as providing unemployment insurance and workers' compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable state programs;
7. 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;
8. permitting State Department of Environment inspectors to inspect Gaming Facilities' food service operations during normal Gaming Facility business hours to assure that standards and requirements equivalent to the State's Food Service Sanitation Act [Chapter 25, Article 1 NMSA 1978] are maintained;
9. prohibiting a gaming enterprise from cashing any paycheck or any type of government assistance check, including Social Security, AFDC, pension and other similar checks, for any patron;
10. prohibiting a gaming enterprise from extending credit by accepting IOUs or markers from its patrons;
11. requiring that odds be posted on each electronic and electromechanical gaming device;
12. requiring that automatic teller machines on Gaming Facility premises be programmed so that the machines will not accept cards issued by the State to AFDC recipients for access to AFDC benefits;
13. providing 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%);
14. providing that no later than ninety days after this Compact takes effect, all gaming machines on the premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual basis the activity of each gaming machine in use at the Gaming Facility, and that such data shall be electronically accessible to the State Gaming Representative upon entry of appropriate security codes;
15. 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
(c) 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 incident and two million dollars ($2,000,000) aggregate per policy year;
16. prohibiting alcoholic beverages from being sold, served, delivered or consumed in that part of a Gaming Facility where gaming is allowed;
17. requiring the gaming enterprise to spend an amount that is no less than one-quarter of one percent

(.25%) of its net win as that term is defined herein annually to fund or support programs for the treatment and assistance of compulsive gamblers and for the prevention of compulsive gambling;
18. governing any Management Contract regarding its Class III Gaming activity such that it conforms to the requirements of tribal law and the IGRA and the regulations issued thereunder;
19. prohibiting the operation of any Class III Gaming for at least four (4) consecutive hours daily, Mondays through Thursdays (except federal holidays);
20. prohibiting a Tribal Gaming Enterprise and the Tribe from providing, allowing, contracting to provide or arranging to provide alcoholic beverages, food or lodging for no charge or at reduced prices at a Gaming Facility or lodging facility as an incentive or enticement for patrons to game; and
21. prohibiting the Tribe, the Tribal Gaming Agency or a Management Contractor from contributing directly, or through an agent, representative or employee, revenue from a Gaming Enterprise owned by the Tribe, or anything of value acquired with that revenue, to a candidate, political committee or person holding an office elected or to be elected at an election covered by the State's Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978].
The Tribal Gaming Agency will provide 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).
C. Audit and Financial Statements. The Tribal Gaming Agency shall require all books and records relating to Class III Gaming to be maintained in accordance with generally accepted accounting principles. All such books and records shall be retained for a period of at least six (6) years from the date of creation. Not less than annually, the Tribal Gaming Agency shall require an audit and a certified financial statement covering all financial activities of the gaming enterprise by an independent certified public accountant licensed by the State. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall be submitted to the Tribal Gaming Agency within one hundred twenty (120) days of the close of the Tribe's fiscal year. Copies of the financial statement and the audit shall be furnished to the State Gaming Representative and the state treasurer by the Tribal Gaming Agency within one hundred twenty days of the agency's receipt of the documents. The Tribe will maintain the following records for not less than six (6) years:
1. revenues, expenses, assets, liabilities and equity for each Gaming Facility;
2. daily cash transactions for each Class III Gaming activity at each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game dropbox and gaming room bank;
3. all markers, IOUs, 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 for the purpose of ensuring compliance with the provisions of this Compact and the Ordinance. The agents shall report immediately to the Tribal Gaming Agency any suspected violation of this Compact, the Ordinance, or regulations of the Tribal Gaming Agency by the gaming enterprise, Management Contractor, or any person, whether or not associated with Class III Gaming.
E. State Gaming Representative.
1. Upon written request by the State to the Tribe, the Tribe will provide information on primary management officials, key employees and suppliers, sufficient to allow the State to conduct its own background investigations, as it may deem necessary, so that it may make an independent determination as to the suitability of such individuals, consistent with the standards set forth in Section 5, hereinafter. The Tribe shall consider any information or recommendations provided to it by the State as to any such person or entity, but the Tribe shall have the final say with respect to the hiring or licensing of any such person or

entity.
2. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements, the State Gaming Representative authorized in writing by the Governor of the State or by legislation duly enacted by the State Legislature shall have the right to inspect a Gaming Facility, 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 Gaming Facility business hours;
(b) with respect to private areas of a Gaming Facility not accessible to the public, at any time during normal Gaming Facility business hours, immediately after notifying the Tribal Gaming Agency and Gaming Facility of his or her presence on the premises and presenting proper identification, and requesting access to the non- public areas of the Gaming Facility. The Tribe, in its sole discretion, may require an employee of the Gaming Facility or 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, but if the Tribe imposes such a requirement, the Tribe shall require such an employee of the Gaming Facility or the Tribal Gaming Agency to be available at all times for such purposes;
(c) with respect to inspection and copying of all management records relating to Class III Gaming, at any time without prior notice between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding official holidays. 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 or supervisory personnel of the Gaming Facility.
3. Gaming Enterprise and gaming operations information that is provided to the State Gaming Representative shall be considered public information and subject to the Inspection of Public Records Act. Trade secrets, information relating to security and surveillance systems, cash handling and accounting procedures, building layout, gaming machine payouts, investigations into alleged violations of laws or regulations, personnel records and proprietary information regarding the gaming enterprise of the Tribe, Class III Gaming conducted by the Tribe, or the operation thereof, shall not be deemed public records as a matter of state law, and shall not be disclosed to any member of the public, 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 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 State records concerning all Class III Gaming conducted by the Tribe; the Tribe shall have the right to copy such State records, with the Tribe bearing the reasonable cost of copying.
5. For every year or part thereof in which the Tribe is actually engaged in Class III Gaming hereunder, the Tribe shall reimburse the State for the costs the State incurs in carrying out any functions authorized by the terms of this Compact. All calculations of amounts due shall be based upon the operations of the Gaming Enterprise on the final day of operation of each quarter of the calendar year. Payments due the State shall be made no later than the twenty-fifth day of the month following the end of a quarter to the State Treasurer for deposit into the General Fund of the State ("State General Fund"). The amount of the regulatory fee each quarter shall be the sum of six thousand two hundred fifty dollars ($6,250) per Gaming Facility plus three hundred dollars ($300) per gaming machine plus seven hundred fifty dollars ($750) per gaming table or device other than a Gaming Machine. These amounts shall increase by five percent (5%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve months.
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. 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 requirements of the Internal Revenue Service.

SECTION 5. Licensing Requirements.

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

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

1. The following Notice ("Privacy Act 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:

"In compliance with the Privacy Act of 1974, the following information is provided: Solicitation 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, 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 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 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. 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 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 (1) 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 a Tribe, including ownership

interests in those businesses, and a description of any potential or actual conflict of interests between such businesses and a Tribe;
(f) a description of any existing and previous business relationships in the gaming industry, including, but not limited to, ownership interests in those businesses;
(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 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 or by another law enforcement agency and forwarded directly to 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 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 will 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 shall include:
(1) contacting persons or entities identified in the application and verifying by written or oral 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 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.
(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 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, whichever occurs first.
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 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 work, 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 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 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 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-day (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-day (30-day) period under Paragraph E.1. of this section for a total period of more than sixty (60) days from the date the State Gaming Representative received the Investigative

Report.
3. If, within the thirty-day (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 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 Management Contractor be licensed.
2. The Tribe may enter into a Management Contract only if the Management Contract:
(a) provides that all Class III Gaming covered by the Management Contract will be conducted in accordance with the 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 an advertising budget 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 of 1986, as amended;
(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 of 1969;
(c) provides for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:
(1) include an adequate system of internal controls;
(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 a shared Gaming Facility 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 officials of the Tribe, who shall have:
(1) the right to verify the daily 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 determines that such percentage is reasonable considering the circumstances; or

(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;
(l) 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
(n) states that the Management Contract shall not be effective unless and until it is approved by the Chairman of the Commission, date of signature of the parties notwithstanding.
3. The Tribe shall not enter into any Management Contract if the Tribal Gaming Agency determines that the Management Contractor or any principal, primary management official or key employee of the Management Contractor is not licensed or is ineligible to be licensed.
G. Confidentiality of Records. Any and all background Investigative Reports on employees or contractors, supporting documents acquired or generated in connection therewith, and any other Investigative Reports or documents acquired or generated in the course of investigations performed by the Tribe or the Tribal Gaming Agency, that are provided to the State Gaming Representative or any other agency or official of the State by the Tribal Gaming Agency or the Tribe pursuant to the provisions of this Compact, shall not be deemed public records of the State and shall not be disclosed to any member of the public without the prior express written authorization of an authorized representative of the Tribe; provided, that nothing herein shall preclude any State agency or official from providing information to a federal agency or official having responsibility relative to Indian Gaming or from compliance with any valid order of a court having jurisdiction.
SECTION 6. Providers of Class III Gaming Equipment or Devices or Supplies.
A. Within thirty (30) days after the effective date of this Compact, if it has not already done so, the Tribal Gaming Agency will adopt standards for any and all Class III Gaming equipment, devices or supplies to be purchased, leased or otherwise acquired by the Tribe after the effective date of this Compact for use in any Gaming Facility, which standards shall be at least as strict as the comparable standards applicable to Class III Gaming equipment, devices or supplies within the State of Nevada. Any and all Class III Gaming equipment, devices or supplies acquired by the Tribe after the date of this Compact shall meet or exceed the standards thereby adopted, and any and all Class III Gaming equipment, devices or supplies used by the Tribe in its Gaming Facilities as of the effective date of this Compact shall be upgraded or replaced, if necessary, so as to comply with such standards, by no later than one (1) year after the effective date of this Compact.
B. Prior to entering into any future lease or purchase agreement for Class III Gaming equipment, devices or supplies, the Tribe shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in the lessor or the lease/purchase agreement to permit the Tribe to license those persons in accordance with Section 5, hereof.
C. The seller, lessor, manufacturer or distributor shall provide, assemble and install all Class III Gaming equipment, devices or supplies in a manner approved and licensed by the Tribe.
SECTION 7. Dispute Resolution.
A. In the event either party believes that the other party has failed to comply with or has otherwise breached any provision of this Compact, such party may invoke the following procedure:
1. The party asserting noncompliance shall serve written notice on the other party. The notice shall identify the specific Compact provision believed to have been violated and shall specify the factual and legal basis for the alleged noncompliance. The notice shall specifically identify the date, time and nature of the alleged noncompliance. Representatives of the State and Tribe shall thereafter meet within thirty (30) days in an effort 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 in good standing of the State Bar of New Mexico or of the bar of another state. 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 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.
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 7A. shall be construed to waive, limit or restrict any remedy that 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 immunity.
SECTION 8. Protection of Visitors.
A. Liability to Visitors. The safety and protection of visitors to a Gaming Facility and uniformity and application of laws and jurisdiction of claims is directly related to and necessary for the regulation of Tribal gaming activities in this state. To that end, the general civil laws of New Mexico and concurrent civil jurisdiction in the State courts and the Tribal courts shall apply to a visitor's claim of liability for bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise and:
1. occurring at a Gaming Facility, other premises, structures, on grounds or involving vehicles and mobile equipment used by a Gaming Enterprise;
2. arising out of a condition at the Gaming Facility or on premises or roads and passageways immediately adjoining it;
3. occurring outside of the Gaming Facility but arising from the activities of the Gaming Enterprise;
4. as a result of a written contract that directly relates to the ownership, maintenance or use of a Gaming Facility or when the liability of others is assumed by the Gaming Enterprise; or
5. on a road or other passageway on Indian lands while the visitor is traveling to or from the Gaming Facility.
B. Insurance Coverage for Claims Required. The Gaming Enterprise shall maintain in effect policies of liability insurance insuring the Tribe, its agents and employees against claims, demands or liability for bodily injury and property damages by a visitor arising from an occurrence described in Subsection A of this section. The policies shall provide bodily injury and property damage coverage in an amount of a least one million dollars ($1,000,000) per person and ten million dollars ($10,000,000) per occurrence. The Tribe shall provide the State Gaming Representative annually a certificate of insurance showing that the Tribe, its agents and employees are insured to the required extent and in the circumstances described in this section.
C. Limitation on Time to Bring Claim. Claims brought pursuant to the provisions of this section must be commenced by filing an action in court or a demand for arbitration within three years of the date the claim accrues.
D. Specific Waiver of Immunity. The Tribe, by entering into this Compact and agreeing to the provisions of this section, waives its defense of sovereign immunity in connection with any claims for compensatory damages up to the amount of one million dollars ($1,000,000) per injured person and ten million dollars ($10,000,000) per occurrence asserted as provided in this section. This is a limited waiver and does not waive the tribe's immunity from suit for any other purpose. The Tribe shall ensure that a policy of insurance that it acquires to fulfill the requirements of this section shall include a provision under which the insurer agrees not to assert the defense of sovereign immunity on behalf of the insured.
E. Election by Visitor. A visitor having a claim described in this section may pursue that claim in the State court of general jurisdiction for such claims or the Tribal court or, at the option of the visitor, may proceed to enforce the claim in binding arbitration. The visitor shall make a written election that is final and binding upon the visitor.

F. Arbitration. Arbitration shall be conducted pursuant to an election by a visitor as provided in Subsection E of this section as follows:
1. the visitor shall submit a written demand for arbitration to the Gaming Enterprise, by certified mail, return receipt requested;
2. the visitor and the Gaming Enterprise shall each designate an arbitrator within thirty (30) days of the date of receipt of the demand, and the two arbitrators shall select a third arbitrator;
3. the arbitration panel shall permit the parties to engage in reasonable discovery, and shall establish other procedures to ensure a full, fair and expeditious hearing on the claim; and
4. the award of the arbitration panel shall be final and binding.
G. Public Health and Safety. The Tribe shall establish for its Gaming Facility health, safety and construction standards that are at least as stringent as the current editions of the National Electrical Code, the Uniform Building Code, the Uniform Mechanical Code, the Uniform Fire Code and the Uniform Plumbing Code, and any and all Gaming Facilities or additions thereto constructed by the Tribe hereafter shall be constructed and all facilities shall be maintained so as to comply with such standards. Inspections will be conducted with respect to these standards at least annually. If the State Gaming Representative requests sufficiently in advance of an annual inspection, the State Gaming Representative may be present during such inspection. The Tribe agrees to correct any deficiencies noted in such inspections within a time agreed upon between the State and Tribe. The Tribal Gaming Agency will provide copies of such inspection reports to the State Gaming Representative, if requested to do so in writing.
SECTION 9. Effective Date. This Compact shall be effective immediately upon the occurrence of the last of the following:
A. execution by the Tribe's Governor after approval of the Tribal Council;
B. execution by the Governor of the State;
C. approval by the Secretary of the Interior; and
D. publication in the Federal Register.
The Governor is authorized to execute compacts with an individual Tribe that has also entered into revenue-sharing agreements and has passed resolutions described herein, in substantially the same form as set forth herein. Upon signature by the Governor and the Tribe, the Compact shall be transmitted to the Secretary of the Interior for approval.
SECTION 10. Criminal Jurisdiction.
A. The Tribe and the State acknowledge that under the provisions of § 23 of the IGRA, especially that portion codified at 18 U.S.C. § 1166(d), jurisdiction to prosecute violations of State gambling laws made applicable by that section to Indian country is vested exclusively within the United States, unless the Tribe and the State agree in a compact entered into pursuant to the IGRA to transfer such jurisdiction to the State.
B. The Tribe and the State hereby agree that, in the event of any violation of any State gambling law on Indian Lands or any other crime against the Gaming Enterprise or any employee thereof or that occurs on the premises of the Tribal Gaming Facility, that is committed by any person who is not a member of the Tribe, the State shall have and may exercise jurisdiction, concurrent with that of the United States, to prosecute such person, under its laws and in its courts.
C. Immediately upon becoming aware of any such suspected crime by a nonmember of the Tribe, the Gaming Enterprise or the Tribal Gaming Agency shall notify the state attorney general and the district attorney for the district in which the Gaming Facility is located, supplying all particulars available to the tribal entity at the time. The Tribe agrees that its law enforcement and gaming agencies shall perform such additional investigation or take such other steps in furtherance of the investigation and prosecution of the violation as the district attorney may reasonably request, and otherwise cooperate fully with the district attorney and any state law enforcement agencies with respect to the matter, but once notice of a suspected violation has been given to the district attorney, the matter shall be deemed to be under the jurisdiction of the State (except that in the event of emergency circumstances involving a possible violation, the Tribe and its constituent agencies shall have the discretion to act as they see fit, and to call upon such other agencies or entities as they deem reasonable or necessary, in order to protect against any immediate threat to lives or property). The State may, in its discretion, refer the matter to federal authorities, but it shall notify the Tribal Gaming Agency upon doing so.
D. The State agrees that no less frequently than annually it will provide the Tribal Gaming Agency with a written report of the status and disposition of each matter referred to it under the provisions of this section that is still pending. In the event the district attorney to whom a matter is referred under the provisions of this section decides not to prosecute such matter, the district attorney shall promptly notify the Tribal

Gaming Agency of such decision in writing. The Tribal Gaming Agency may in that event ask the attorney general of the state to pursue the matter.
E. The district attorney for the district in which the Gaming Facility is situated may decline to accept referrals of cases under the provisions of this section unless and until the Tribe has entered into a Memorandum of Understanding with the office of the district attorney to which Memorandum of Understanding the United States Attorney for the District of New Mexico may also be a party addressing such matters as the specific procedures by which cases are to be referred, participation of the Tribal Gaming Agency and tribal law enforcement personnel in the investigation and prosecution of any such case, payments by the Tribe to the office of the district attorney to defray the costs of handling cases referred under the provisions of this section, and related matters.
SECTION 11. Binding Effect and Duration.
A. This Compact shall be binding upon the State and Tribe for a term of nine (9) years from the date it becomes effective and may renew for an additional period.
B. Before the date that is one (1) year prior to the expiration of the ten-year (10-year) initial term, and/or before the date that is one (1) year prior to the expiration of the renewal period, either party may serve written notice on the other of its desire to renegotiate this Compact.
C. In the event that either party gives written notice to the other of its desire to renegotiate this Compact pursuant to Subsection B. of this section, the Tribe may, pursuant to the procedures of the IGRA, request the State to enter into negotiations for a new compact governing the conduct of Class III Gaming. If the parties are unable to conclude a successor compact, this Compact shall terminate.
D. Notwithstanding the foregoing, at any time while this Compact remains in effect, either party may, by written notice to the other party, request reopening of negotiations with respect to any provision of this Compact, or with respect to any issue not addressed in the Compact, specifying such provision or issue in such notice. No such request shall be unreasonably refused, but neither party shall be required to agree to any change in the Compact, and no agreement to supplement or amend this Compact in any respect shall have any validity until the same shall have been approved in writing by the Tribe, the State and the Secretary of the Interior and notice of such approval published in the Federal Register.
E. The Tribe may operate Class III Gaming only while this Compact or any renegotiated compact is in effect.
SECTION 12. Notice to Parties.
Unless otherwise indicated, all notices, payments, requests, reports, information or demand that any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered or sent by first-class mail sent to the other party at the address provided in writing by the other party. Every notice, payment, request, report, information or demand so given shall be deemed effective upon receipt or, if mailed, upon receipt or the expiration of the third day following the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.
SECTION 13. Entire Agreement.
This Compact is the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter hereof. Neither this Compact nor any provision herein may be changed, waived, discharged or terminated orally, but only by an instrument, in writing, signed by the Tribe and the State and approved by the Secretary of the Interior. This Compact shall not be amended without the express approval of the Tribe, the Governor of the State and the State Legislature.
SECTION 14. Filing of Compact with State Records Center.
Upon the effective date of this Compact, a copy shall be filed by the Governor with the New Mexico Records Center. Any subsequent amendment or modification of this Compact shall be filed with the New Mexico Records Center.
SECTION 15. Counterparts.
This Compact may be executed by the parties in any number of separate counterparts with the same effect as if the signatures were upon the same instrument. All such counterparts shall together constitute one and the same document."
History: Laws 1997, ch. 190, § 1.

11-13-2. Revenue sharing of tribal gaming revenue.

The governor is authorized to execute a revenue-sharing agreement in the form substantially set forth in this section with any New Mexico Indian nation, tribe or pueblo that has also entered into an Indian gaming compact as provided by law. Execution of an Indian gaming compact is conditioned upon execution of a revenue-sharing agreement. The consideration for the Indian entity entering into the revenue-sharing agreement is the condition of the agreement providing limited exclusivity of gaming activities to the tribal entity. The revenue-sharing agreement shall be in substantially the following form and is effective when executed by the governor on behalf of the state and the appropriate official of the Indian entity:

"REVENUE-SHARING AGREEMENT

1. Summary and consideration. The Tribe shall agree to contribute a portion of its Class III Gaming revenues identified in and under procedures of this Revenue-Sharing Agreement, in return for which the State agrees that the Tribe:

A. has the exclusive right within the State to provide all types of Class III Gaming described in the Indian Gaming Compact, with the sole exception of the use of Gaming Machines, which the State may permit on a limited basis for racetracks and veterans' and fraternal organizations; and

B. will only share that part of its revenue arising from the use of Gaming Machines and all other gaming revenue is exclusively the Tribe's.

2. Revenue to State. The parties agree that, after the effective date hereof, the Tribe shall make the quarterly payments provided for in Paragraph 3 of the Revenue Sharing Agreement to the state treasurer for deposit into the General Fund of the State ("State General Fund").

3. Calculation of Revenue to State.

A. As used in this Revenue-Sharing Agreement, "net win" means the annual total amount wagered at a Gaming Facility on Gaming Machines less the following amounts:

(1) the annual amount paid out in prizes from gaming on Gaming Machines;

(2) the actual amount of regulatory fees paid to the state; and

(3) the sum of two hundred fifty thousand dollars ($250,000) per year as an amount representing tribal regulatory fees, with these amounts increasing by five percent (5%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve months.

B. The Tribe shall pay the state sixteen percent (16%) of the net win.

C. For purposes of these payments, all calculations of amounts due shall be based upon the quarterly activity of the gaming facility. Quarterly payments due to the State pursuant to these terms shall be paid no later than twenty-five (25) days after the last day of each calendar quarter. Any payments due and owing from the Tribe in the quarter the Compact is approved, or the final quarter the Compact is in force, shall reflect the net win, but only for the portion of the quarter the Compact is in effect.

4. Limitations. The Tribe's obligation to make the payments provided for in Paragraphs 2 and 3 of this section shall apply and continue only so long as there is a binding Indian Gaming Compact in effect between the Tribe and the State, which Compact provides for the play of Class III Gaming, but shall terminate in the event of any of the following conditions:

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

B. If the State permits any expansion of nontribal Class III Gaming in the State. Notwithstanding this general prohibition against permitted expansion of gaming activities, the State may permit: (1) the enactment of a State lottery, (2) any fraternal, veterans or other nonprofit membership organization to operate such electronic gaming devices lawfully, but only for the benefit of such organization's members, (3) limited fundraising activities conducted by nonprofit tax exempt organizations pursuant to Section 30-19-6 NMSA 1978, and (4) any horse racetracks to operate electronic gaming devices on days on which live or simulcast horse racing occurs.

5. Effect of Variance. In the event the acts or omissions of the State cause the Tribe's obligation to make payments under Paragraph 3 of this section to terminate under the provisions of Paragraph 4 of this section, such cessation of obligation to pay will not adversely affect the validity of the Compact, but the amount that the Tribe agrees to reimburse the State for regulatory fees under the Compact shall automatically increase by twenty percent (20%).

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

History: Laws 1997, ch. 190, § 2.

CHAPTER 16. PARTKS, RECREATION AND FAIRS

ARTICLE 6. STATE AND COUNTY FAIRS

16-6-4. Powers and duties of commission; annual fair; exhibits; premiums.

A. The state fair commission shall have power and authority to hold annually on suitable grounds a state fair at which shall be exhibited livestock, poultry, vegetables, fruits, grains, grasses and other farm products, minerals, ores and other mining exhibits, mining machinery and farm implements and all other things which the commissioners or a majority thereof deem consonant with the purposes of a state fair for the purposes of advancing the agricultural, horticultural and stock raising, mining, mechanical and industrial pursuits of the state and shall have the care of its property and be entrusted with the entire direction of its business and its financial affairs consistent with the provisions of Sections 16-6-15 and 16-6-16 NMSA 1978.

B. The commission, among other duties, shall prepare, adopt, publish and enforce all necessary rules for the management of the New Mexico state fair, its meetings and exhibitions and for the guidance of its officers, employees and exhibitors. The commission shall determine the duties, compensation and tenure of office of all of its officers and employees and may remove from office or discharge any person appointed or employed by it at will and shall have the power to appoint all necessary fairgrounds police to keep order on the grounds and in the buildings of the state fair. The fairgrounds police so appointed shall be vested with the same authority for such purposes as peace officers. The commission shall have the power to charge entrance fees and admissions and lease stalls, stand and restaurant sites, give prizes and premiums, arrange entertainments and do all things which by the commission may be considered proper for the conduct of the state fair not otherwise prohibited by law. The commission shall prohibit the sale or consumption of alcoholic beverages on the grounds of the state fair except in controlled access areas within the licensed premises. The commission or its designees shall meet with the director of the alcohol and gaming division of the department of regulation and licensing and other parties in interest to designate the controlled access areas on which the sale and consumption of alcoholic beverages may be permitted. As used in this subsection, "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters.

History: Laws 1913, ch. 46, § 4; Code 1915, § 5008; C.S. 1929, § 127-104; 1941 Comp., § 48-2104; 1953 Comp., § 45-20-4; Laws 1961, ch. 34, § 1; 1975, ch. 108, § 1; 1993, ch. 68, § 2.

CHAPTER 22. PUBLIC SCHOOLS

ARTICLE 28. SCHOOL BUS ADVERTISEMENTS

22-28-1. Bus advertisements authorized; limitations and restrictions.

A. The state transportation division of the department of education shall authorize local school boards to sell advertising space on the interior and exterior of school buses. The local school board shall develop guidelines for the type of advertisements that will be permitted. There shall be no advertisements that involve:

(1) obscenity, sexual material, gambling, tobacco, alcohol, political campaigns or causes, religion or promoting the use of drugs; or

(2) general content that is harmful or inappropriate for school buses as determined by the state board.

B. All school bus advertisements shall be painted or affixed by decal on the bus in a manner that does not interfere with national and state requirements for school bus markings, lights and signs. The commercial advertiser that contracts with the school district for the use of the space for advertisements shall be required to pay the cost of placing the advertisements on the bus and shall pay for its removal after the term of the contract has expired.

C. The right to sell advertising space on school buses shall be within the sole discretion of the local school

board, except as required by Section 3 [/sdCGI-BIN/om_isapi.dll?clientID=2011&infobase=nmsa1978.NFO&jump=22-28-1&softpage=Document - JUMPDEST_22-28-122-28-1 NMSA 1978] of this act.
D. An officer or employee of a school district or of the department of education who fails to comply with the obligations or restrictions created by this act shall be subject to discipline, including the possibility of being terminated from employment. A school bus private owner that fails to comply with the obligations or restrictions created by this act is in breach of contract and the contract is subject to cancellation after notice and hearing before the director of the state transportation division.
History: Laws 1997, ch. 233, § 3.

CHAPTER 29. LAW ENFORCEMENT

ARTICLE 9. ORGANIZED CRIME ACT

29-9-2. Definitions.

As used in the Organized Crime Act [29-9-1 to 29-9-17 NMSA 1978];
A. "organized crime" means the supplying for profit of illegal goods and services, including, but not limited to, gambling, loan sharking, narcotics and other forms of vice and corruption, by members of a structured and disciplined organization;
B. "public officer" means any elected or appointed officer of the state or any of its political subdivisions, serving with or without remuneration for his services; and
C. "commission" means the governor's organized crime prevention commission.
History: 1953 Comp., § 39-9-2, enacted by Laws 1973, ch. 225, § 2.

CHAPTER 30. CRIMINAL OFFENSES

ARTICLE 12. ABUSE OF PRIVACY

30-12-2. Grounds for order of interception.

An ex parte order for wiretapping, eavesdropping or the interception of any wire or oral communication may be issued by any judge of a district court upon application of the attorney general or a district attorney, stating that there is probable cause to believe that:
A. evidence may be obtained of the commission of:
(1) the crime of murder, kidnapping, extortion, robbery, trafficking or distribution of controlled substances or bribery of a witness;
(2) the crime of burglary, aggravated burglary, criminal sexual penetration, arson, mayhem, receiving stolen property or commercial gambling, if punishable by imprisonment for more than one year; or
(3) an organized criminal conspiracy to commit any of the aforementioned crimes; or
B. the communication, conversation or discussion is itself an element of any of the above specified crimes.
History: 1953 Comp., § 40A-12-1.1, enacted by Laws 1973, ch. 369, § 2; 1979, ch. 191, § 2.

ARTICLE 19. GAMBLING

30-19-1. Definitions relating to gambling.

As used in Chapter 30, Article 19 NMSA 1978:
A. "antique gambling device" means a gambling device twenty-five years of age or older and substantially in original condition that is not used for gambling or commercial gambling or located in a gambling place;
B. "bet" means a bargain in which the parties agree that, dependent upon chance, even though accompanied by some skill, one stands to win or lose anything of value specified in the agreement. A bet does not

include:
(1) bona fide business transactions that are valid under the law of contracts, including:
(a) contracts for the purchase or sale, at a future date, of securities or other commodities; and
(b) agreements to compensate for loss caused by the happening of the chance, including contracts for indemnity or guaranty and life or health and accident insurance;
(2) offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the bona fide owners of animals or vehicles entered in such contest;
(3) a lottery as defined in this section; or
(4) betting otherwise permitted by law;
C. "gambling device" means a contrivance other than an antique gambling device that is not licensed for use pursuant to the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978] and that, for a consideration, affords the player an opportunity to obtain anything of value, the award of which is determined by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the device;
D. "gambling place" means a building or tent, a vehicle, whether self-propelled or not, or a room within any of them that is not within the premises of a person licensed as a lottery retailer or that is not licensed pursuant to the Gaming Control Act, one of whose principal uses is:
(1) making and settling of bets;
(2) receiving, holding, recording or forwarding bets or offers to bet;
(3) conducting lotteries; or
(4) playing gambling devices; and
E. "lottery" means an enterprise wherein, for a consideration, the participants are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill. "Lottery" does not include the New Mexico state lottery established and operated pursuant to the New Mexico Lottery Act [6-24-1 to 6-24-34 NMSA 1978] or gaming that is licensed and operated pursuant to the Gaming Control Act. As used in this subsection, "consideration" means anything of pecuniary value required to be paid to the promoter in order to participate in a gambling or gaming enterprise.
History: 1953 Comp., § 40A-19-1, enacted by Laws 1963, ch. 303, § 19-1; 1965, ch. 37, § 1; 1985, ch. 108, § 1; 1995, ch. 155, § 37; 1997, ch. 190, § 66.

30-19-2. Gambling.

Gambling consists of:
A. making a bet;
B. entering or remaining in a gambling place with intent to make a bet, to participate in a lottery or to play a gambling device;
C. conducting a lottery; or
D. possessing facilities with intent to conduct a lottery.
Whoever commits gambling is guilty of a petty misdemeanor.
History: 1953 Comp., § 40A-19-2, enacted by Laws 1963, ch. 303, § 19-2.

30-19-3. Commercial gambling.

Commercial gambling consists of either:
A. participating in the earnings of or operating a gambling place;
B. receiving, recording or forwarding bets or offers to bet;
C. possessing facilities with the intent to receive, record or forward bets or offers to bet;
D. for gain, becoming a custodian of anything of value, bet or offered to be bet;
E. conducting a lottery where both the consideration and the prize are money, or whoever with intent to conduct a lottery, possesses facilities to do so; or
F. setting up for use, for the purpose of gambling, or collecting the proceeds of, any gambling device.
Whoever commits commercial gambling is guilty of a fourth degree felony.
History: 1953 Comp., § 40A-19-3, enacted by Laws 1963, ch. 303, § 19-3.

30-19-4. Permitting premises to be used for gambling.

Permitting premises to be used for gambling consists of:
A. knowingly permitting any property owned or occupied by such person or under his control to be used as a gambling place; or
B. knowingly permitting a gambling device to be set up for use for the purpose of gambling in a place under his control.
Whoever commits permitting premises to be used for gambling is guilty of a petty misdemeanor.
History: 1953 Comp., § 40A-19-4, enacted by Laws 1963, ch. 303, § 19-4.

30-19-5. Dealing in gambling devices.

A. Dealing in gambling devices consists of manufacturing, transferring commercially or possessing, with intent to transfer commercially, any of the following:
(1) anything which he knows evidences, purports to evidence or is designed to evidence participation in gambling; or
(2) any device which he knows is designed exclusively for gambling purposes or anything which he knows is designed exclusively as a subassembly or essential part of such device. This includes, without limitation, gambling devices, numbers jars, punchboards and roulette wheels.
Proof of possession of any device designed exclusively for gambling purposes which is not in a gambling place and is not set up for use is prima facie evidence of possession with intent to transfer.
B. The provisions of this section shall not apply to any manufacturer of gambling devices who exports his product exclusively in foreign commerce, and who is under ten thousand dollar ($10,000) bond payable to the state of New Mexico to assure export.
Provided, however, the provisions of this section shall apply to manufacturers of gambling devices used, adapted, devised or designed to be used in bookmaking, in wagering pools with respect to a sporting event, or in a numbers, policy, bolita or similar game.
C. Nothing in this section shall be construed to prohibit the ownership, possession, display, sale, purchase, exchange or transfer of antique gambling devices.
D. Whoever deals in gambling devices, other than those herein specified and excluded, is guilty of a misdemeanor.
History: 1953 Comp., § 40A-19-5, enacted by Laws 1963, ch. 303, § 19-5; 1965, ch. 230, § 1; 1985, ch. 108, § 2.

30-19-6. Permissive lottery.

A. Nothing in Article 19, Chapter 30 NMSA 1978 shall be construed to apply to any sale or drawing of any prize at any fair held in this state for the benefit of any church, public library or religious society situate or being in this state, or for charitable purposes when all the proceeds of such fair shall be expended in this state for the benefit of such church, public library, religious society or charitable purposes.
A lottery shall be operated for the benefit of the organization or charitable purpose only when the entire proceeds of the lottery go to the organization or charitable purpose and no part of such proceeds go to any individual member or employee thereof.
B. Nothing in Article 19, Chapter 30 NMSA 1978 shall be held to prohibit any bona fide motion picture theatre from offering prizes of cash or merchandise for advertising purposes, in connection with such business, or for the purpose of stimulating business, whether or not any consideration other than a monetary consideration in excess of the regular price of admission is exacted for participation in drawings for prizes.
C. Nothing in Article 19, Chapter 30 NMSA 1978 shall be held to apply to any bona fide county fair, including fairs for more than one county, which shall have been held annually at the same location for at least two years and which shall offer prizes of livestock or poultry in connection with such fair when the proceeds of such drawings shall be used for the benefit of said fair.
D. Nothing in Article 19, Chapter 30 NMSA 1978 shall be construed to apply to any lottery operated by an organization exempt from the state income tax pursuant to Subsection C [B] of Section 7-2-4 NMSA 1978 and not subject to the provisions of Subsection A of this section; provided that:
(1) no more than two lotteries shall be operated in any year by such an organization;
(2) all the gross proceeds less the reasonable cost of prizes of any lottery operated by such an organization

shall be expended in the state for the benefit of the organization or public purposes; and
(3) no part of the proceeds of any lottery shall go to any individual member or employee of any organization except as payment for the purchase of prizes at no more than the reasonable retail price.
History: 1953 Comp., § 40A-19-6, enacted by Laws 1963, ch. 303, § 19-6; 1981, ch. 231, § 1.

30-19-7. Fraudulently operating a lottery.

Fraudulently operating a lottery consists of operating or managing any lottery which does not provide a fair and equal chance to all participants, or which lottery is conducted in a manner tending to defraud or mislead the public.
Whoever commits fraudulently operating a lottery is guilty of a misdemeanor.
History: 1953 Comp., § 40A-19-7, enacted by Laws 1963, ch. 303, § 19-7.

30-19-7.2. Recreational bingo exception.

Nothing in this chapter or in the New Mexico Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978] prohibits a senior citizen group from organizing and conducting bingo at a senior citizen center, provided that no person other than players participating in the bingo game receive or become entitled to receive any part of the proceeds, either directly or indirectly, from the bingo game, and no minor is allowed to participate in the organization or conduct of games or play bingo. As used in this section, "senior citizen group" means an organization in which the majority of the membership consists of persons who are at least fifty-five years of age and the primary activities and purposes of which are to provide recreational or social activities for those persons.
History: 1978 Comp., § 30-19-7.2, enacted by Laws 1997, ch. 101, § 1.

30-19-8. Gambling and gambling houses as public nuisance.

Except as otherwise permitted or excepted under this article [30-19-1 to 30-19-15 NMSA 1978], any gambling device or gambling place is a public nuisance per se.
The attorney general, any district attorney or any citizen of this state may institute an injunction proceeding to have such public nuisance abated. In the event such injunction is issued on behalf of any citizen of this state it shall not be necessary in such proceeding to show that he is personally injured by the act complained of.
History: 1953 Comp., § 40A-19-8, enacted by Laws 1963, ch. 303, § 19-8.

30-19-9. Evidence of unlawful use of premises.

Evidence that a place has a general reputation as a gambling site or that at or about the time in question it was frequently visited by persons known to be professional gamblers or known as frequenters of gambling places is admissible on the issue of whether such site is a gambling place.
History: 1953 Comp., § 40A-19-9, enacted by Laws 1963, ch. 303, § 19-9.

30-19-10. Forfeiture of prizes and equipment.

Any gambling device or other equipment of any type used in gambling shall be seized by the law enforcement officers discovering such device or equipment, and it shall be the duty of such officers to retain custody of the property seized until such property is disposed of by order of the district court. Upon proper application by the district attorney to the judge of the district court, the judge of the district court may by proper order direct the destruction of any gambling device, paraphernalia or equipment of any kind or character seized by law enforcement officers.
History: 1953 Comp., § 40A-19-10, enacted by Laws 1963, ch. 303, § 19-10.

30-19-11. Remedy of lessor.

If the lessee of property has been convicted of using it as a gambling place or if the property has been adjudged to constitute a public nuisance, such lease shall be voidable at the option of the lessor. The lessor shall have the same remedies for regaining possession as in the case of a tenant holding over his term.
History: 1953 Comp., § 40A-19-11, enacted by Laws 1963, ch. 303, § 19-11.

30-19-12. Duties of enforcement officials.

Upon the filing with any district judge or justice of the peace [magistrate court] of an affidavit in writing made by any citizen that gambling as prohibited by this article [30-19-1 to 30-19-15 NMSA 1978] is being conducted in any building, room, premises or place describing the same for sufficient identification, it shall be the duty of the district judge or justice of the peace [magistrate] with whom such affidavit is filed to immediately issue a warrant commanding the peace officer to whom the same is addressed to forthwith enter and search the building, room, premises or place. In the event the location is being used for purposes prohibited by this article, the peace officer shall arrest without a warrant the parties therein or making their escape therefrom, and who would be subject to arrest with a warrant. The officers shall also take possession of any gambling paraphernalia, device or equipment found therein, and shall hold the same until deprived of the possession thereof by law. It shall be the duty of the peace officers to take any persons so arrested before some magistrate having jurisdiction and to forthwith file a proper complaint against each person so arrested.
History: 1953 Comp., § 40A-19-12, enacted by Laws 1963, ch. 303, § 19-12.

30-19-13. Bribery of participant in a contest.

Bribery of participant in a contest consists of:
A. the transferring or promise to transfer anything of value to any person with intent to influence thereby any participant in a contest to refrain from exerting his full skill, speed, strength or endurance in such contest; or
B. the agreeing or offering by a participant in a contest, to refrain from exerting his full skill, speed, strength or endurance, in return for anything of value transferred or promised to himself or another.
The term "participant" as used in this section includes any person who is selected to or expects to take part in any such contest.
Whoever commits bribery of participant in a contest is guilty of a fourth degree felony.
History: 1953 Comp., § 40A-19-13, enacted by Laws 1963, ch. 303, § 19-13.

30-19-14. Testimony of witnesses to gambling.

Any district judge or justice of the peace [magistrate court] having jurisdiction over any of the crimes enumerated in this article [30-19-1 to 30-19-15 NMSA 1978], or any district attorney inquiring into the alleged violation of any of the provisions of this article, may subpoena persons and compel their attendance as witnesses and may compel such witnesses to testify concerning any violation of this article.
Any person who is so subpoenaed and examined shall be immune to prosecution or conviction for any violation of this article about which he testifies.
A conviction may be had for any violation of this article upon the unsupported testimony of any accomplice or participant.
History: 1953 Comp., § 40A-19-14, enacted by Laws 1963, ch. 303, § 19-14.

30-19-15. Unlawful to accept for profit anything of value to be transmitted or delivered for gambling; penalty.

A. It is unlawful for any person to, directly or indirectly, knowingly accept for a fee, property, salary or reward anything of value from another to be transmitted or delivered for gambling or pari-mutuel wagering on the results of a race, sporting event, contest or other game of skill or chance or any other unknown or contingent future event or occurrence whatsoever.

B. None of the provisions of this act shall be construed to prohibit the operation or continued operation of bingo programs presently conducted for charitable purposes.
C. Any person violating any of the provisions of this section is guilty of a fourth degree felony.
History: Laws 1979, ch. 4, § 1.

ARTICLE 42. RACKETEERING

30-42-3. Definitions.

As used in the Racketeering Act [30-42-1 to 30-42-6 NMSA 1978]:
A. "racketeering" means any act that is chargeable or indictable under the laws of New Mexico and punishable by imprisonment for more than one year, involving any of the following cited offenses:
(1) murder, as provided in Section 30-2-1 NMSA 1978;
(2) robbery, as provided in Section 30-16-2 NMSA 1978;
(3) kidnapping, as provided in Section 30-4-1 NMSA 1978;
(4) forgery, as provided in Section 30-16-10 NMSA 1978;
(5) larceny, as provided in Section 30-16-1 NMSA 1978;
(6) fraud, as provided in Section 30-16-6 NMSA 1978;
(7) embezzlement, as provided in Section 30-16-8 NMSA 1978;
(8) receiving stolen property, as provided in Section 30-16-11 NMSA 1978;
(9) bribery, as provided in Sections 30-24-1 through 30-24-3 NMSA 1978;
(10) gambling, as provided in Sections 30-19-3, 30-19-13 and 30-19-15 NMSA 1978;
(11) illegal kickbacks, as provided in Sections 30-41-1 and 30-41-2 NMSA 1978;
(12) extortion, as provided in Section 30-16-9 NMSA 1978;
(13) trafficking in controlled substances, as provided in Section 30-31-20 NMSA 1978;
(14) arson and aggravated arson, as provided in Subsection A of Section 30-17-5 and Section 30-17-6 NMSA 1978;
(15) promoting prostitution, as provided in Section 30-9-4 NMSA 1978;
(16) criminal solicitation, as provided in Section 30-28-3 NMSA 1978;
(17) fraudulent securities practices, as provided in the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-56 [and 58-13B-57] NMSA 1978];
(18) loan sharking, as provided in Sections 30-43-1 through 30-43-5 NMSA 1978;
(19) distribution of controlled substances or controlled substance analogues, as provided in Sections 30-31-21 and 30-31-22 NMSA 1978; and
(20) a violation of the provisions of Section 4 of the Money Laundering Act [30-51-4 NMSA 1978];
B. "person" means an individual or entity capable of holding a legal or beneficial interest in property;
C. "enterprise" means a sole proprietorship, partnership, corporation, business, labor union, association or other legal entity or a group of individuals associated in fact although not a legal entity and includes illicit as well as licit entities; and
D. "pattern of racketeering activity" means engaging in at least two incidents of racketeering with the intent of accomplishing any of the prohibited activities set forth in Subsections A through D of Section 30-42-4 NMSA 1978; provided at least one of the incidents occurred after the effective date of the Racketeering Act and the last incident occurred within five years after the commission of a prior incident of racketeering.
History: 1978 Comp., § 30-42-3, enacted by Laws 1980, ch. 40, § 3; 1988, ch. 14, § 4; 1998, ch. 113, § 6.

ARTICLE 49

30-49-10. Monitored compliance; inspections.

The alcohol and gaming division of the regulation and licensing department and the appropriate law enforcement authorities in each county and municipality shall conduct random, unannounced inspections of facilities where tobacco products are sold to ensure compliance with the provisions of the Tobacco Products Act [30-49-1 to 30-49-12 NMSA 1978].

History: Laws 1993, ch. 244, § 10.

CHAPTER 40. DOMESTIC AFFAIRS

ARTICLE 3. PROPERTY RIGHTS

40-3-9.1. Gambling debts are separate debts of spouse incurring debt.

A gambling debt incurred by a married person as a result of legal gambling is a separate debt of the spouse incurring the debt.
History: Laws 1997, ch. 190, § 67.

ARTICLE 5A. PARENTAL RESPONSIBILITY

40-5A-3. Definitions.

As used in the Parental Responsibility Act [40-5A-1 to 40-5A-13 NMSA 1978]:
A. "applicant" means an obligor who is applying for issuance of a license;
B. "board" means:
(1) the construction industries commission, the construction industries division and the electrical bureau, mechanical bureau and general construction bureau of the construction industries division of the regulation and licensing department;
(2) the manufactured housing committee and manufactured housing division of the regulation and licensing department;
(3) a board, commission or agency that administers a profession or occupation licensed pursuant to Chapter 61 NMSA 1978;
(4) any other state agency to which the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978] is applied by law;
(5) a licensing board or other authority that issues a license, certificate, registration or permit to engage in a profession or occupation regulated in New Mexico;
(6) the department of game and fish;
(7) the motor vehicle division of the taxation and revenue department; or
(8) the alcohol and gaming division of the regulation and licensing department;
C. "certified list" means a verified list that includes the names, social security numbers and last known addresses of obligors not in compliance;
D. "compliance" means that:
(1) an obligor is no more than thirty days in arrears in payment of amounts required to be paid pursuant to an outstanding judgment and order for support; and
(2) an obligor has, after receiving appropriate notice, complied with subpoenas or warrants relating to paternity or child support proceedings;
E. "department" means the human services department;
F. "judgment and order for support" means the judgment entered against an obligor by the district court or a tribal court in a case brought by the department pursuant to Title IV-D of the Social Security Act;
G. "license" means a liquor license or other license, certificate, registration or permit issued by a board that a person is required to have to engage in a profession or occupation in New Mexico; "license" includes a commercial driver's license, driver's license and recreational licenses, including hunting, fishing or trapping licenses;
H. "licensee" means an obligor to whom a license has been issued; and
I. "obligor" means the person who has been ordered to pay child or spousal support pursuant to a judgment and order for support.
History: Laws 1995, ch. 25, § 3; 1997, ch. 237, § 26; 1998, ch. 53, § 2.

CHAPTER 44. MISCELLANEOUS CIVIL LAW MATTERS

ARTICLE 5. GAMBLING DEBTS AND LOSSES

44-5-1. [Money and property losses; loser's right of action for recovery; nature of remedy.]

Any person who shall lose any money or property at any game at cards, or at any gambling device, may recover the same by action of debt, if money; if property, by action of trover, replevin or detinue.
History: Laws 1856-1857, p. 34; C.L. 1865, ch. 36, § 1; C.L. 1884, § 2290; C.L. 1897, § 3199; Code 1915, § 2507; C.S. 1929, § 58-101; 1941 Comp., § 25-1001; 1953 Comp., § 22-10-1.

44-5-2. [Contents of complaint.]

In such action it shall be sufficient for the plaintiff to declare generally as in actions for debt for money had and received for the plaintiff's use, or as in actions of trover or detinue for a supposed finding and the detaining or converting the property of the plaintiff to the use of the defendant whereby an action hath accrued to the plaintiff.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 2; C.L. 1884, § 2291; C.L. 1897, § 3200; Code 1915, § 2508; C.S. 1929, § 58-102; 1941 Comp., § 25-1002; 1953 Comp., § 22-10-2.

44-5-3. Action maintainable by spouse, children, heirs, executors, administrators and creditors or [of] loser.

The spouse, children, heirs, executors, administrators and creditors of the person losing may have the same remedy against the winner as provided in Sections 44-5-1 and 44-5-2 NMSA 1978.
History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 3; C.L. 1884, § 2292; C.L. 1897, § 3201; Code 1915, § 2509; C.S. 1929, § 58-103; 1941 Comp., § 25-1003; 1953 Comp., § 22-10-3; Laws 1973, ch. 59, § 1.

44-5-4. Judgments, conveyances and contracts founded on gambling loss void; suit to declare void; parties.

All judgments, securities, bonds, bills, notes or conveyances, when the consideration is money or property won at gambling, or at any game or gambling device, shall be void, and may be set aside or vacated by any court of equity upon a bill filed for that purpose, by the person so granting, giving, entering into or executing the same or by any creditor or by his executors, administrators, or by any heir, purchaser or other persons interested therein; provided however, that the holder in due course of any such security, bond, bill or note which is otherwise negotiable holds such instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of such instrument for the full amount thereof against all parties liable thereon.
History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 4; C.L. 1884, § 2293; C.L. 1897, § 3202; Code 1915, § 2510; C.S. 1929, § 58-104; 1941 Comp., § 25-1004; 1953 Comp., § 22-10-4; Laws 1955, ch. 77, § 1.

44-5-5. [Defense in action by assignee.]

The assignment of any bond, bill, note, judgment, conveyance or other security, shall not affect the defense of the person executing the same.
History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 5; C.L. 1884, § 2294; C.L. 1897, § 3203; Code 1915, § 2511; C.S. 1929, § 58-105; 1941 Comp., § 25-1005; 1953 Comp., § 22-10-5.

44-5-6. [Loss by minor, servant or apprentice in grocery, store or dramshop; proprietor liable; who may sue.]

If any minor, servant or apprentice shall lose any money or property in any grocery, store or dramshop by betting at cards, or any other gambling device, or by any other bet, wager or hazard whatever, the father, mother, relations or guardian of such minor, or the master of such apprentice or servant may sue for and recover from the keeper of such grocery, store or dramshop, such money or property or the value thereof, so lost by such minor, apprentice or servant.

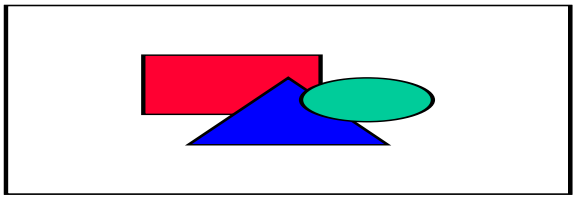
History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 6; C.L. 1884, § 2295; C.L. 1897, § 3204; Code 1915, § 2512; C.S. 1929, § 58-106; 1941 Comp., § 25-1006; 1953 Comp., § 22-10-6.

44-5-7. [How defenses under this article may be asserted.]

Any matter of defense, under this chapter [/sdCGI-BIN/om_isapi.dll?clientID=2070&infobase=nmsa1978.NFO&jump=44-5-1&softpage=Document - JUMPDEST_44-5-144-5-1 to 44-5-14 NMSA 1978], may be specially pleaded, or given in evidence, under the general issue.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 7; C.L. 1884, § 2296; C.L. 1897, § 3205; Code 1915, § 2513; C.S. 1929, § 58-107; 1941 Comp., § 25-1007; 1953 Comp., § 22-10-7.

44-5-8. [Suit before magistrate; interrogatories to defendant.]



In all suits, under this chapter [/sdCGI-BIN/om_isapi.dll?clientID=2070&infobase=nmsa1978.NFO&jump=44-5-1&softpage=Document - JUMPDEST_44-5-144-5-1 to 44-5-14 NMSA 1978], before a justice of the peace [magistrate], the plaintiff may call in the defendant to answer, on oath, any interrogatory touching the case, and if the defendant refuse to answer, the same shall be taken as confessed.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 8; C.L. 1884, § 2297; C.L. 1897, § 3206; Code 1915, § 2514; C.S. 1929, § 58-108; 1941 Comp., § 25-1008; 1953 Comp., § 22-10-8.

44-5-9. [Answer to interrogatories not evidence in criminal prosecution.]

Such answer shall not be admitted against such person as evidence in any criminal proceeding.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 9; C.L. 1884, § 2298; C.L. 1897, § 3207; Code 1915, § 2515; C.S. 1929, § 58-109; 1941 Comp., § 25-1009; 1953 Comp., § 22-10-9.

44-5-10. [Election bets included.]

Bets and wagers on an election authorized by the constitution and laws of the United States, or by the laws of this state, are gaming within the meaning of this chapter [/sdCGI-BIN/om_isapi.dll?clientID=2070&infobase=nmsa1978.NFO&jump=44-5-1&softpage=Document - JUMPDEST_44-5-144-5-1 to 44-5-14 NMSA 1978].

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 10; C.L. 1884, § 2299; C.L. 1897, § 3208; Code 1915, § 2516; C.S. 1929, § 58-110; 1941 Comp., § 25-1010; 1953 Comp., § 22-10-10.

44-5-11. [Stakeholder's liability; demand required.]

Every stakeholder who shall knowingly receive any money or property, staked upon any betting, declared gaming by the provisions of this chapter [/sdCGI-BIN/om_isapi.dll?clientID=2070&infobase=nmsa1978.NFO&jump=44-5-1&softpage=Document - JUMPDEST_44-5-144-5-1 to 44-5-14 NMSA 1978], shall be liable to the party who placed such money or property in his hands, both before and after the determination of such bet, and the delivery of the money or property to the winner shall be no defense to an action brought by the loser for the recovery thereof: provided, that no stakeholder shall be liable afterwards, unless a demand has been made upon such stakeholder for the money or property in his possession previous to the expiration of the time agreed upon by the parties for the determination of such bet or wager.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 11; C.L. 1884, § 2300; C.L. 1897, § 3209; Code 1915, § 2517; C.S. 1929, § 58-111; 1941 Comp., § 25-1011; 1953 Comp., § 22-10-11.

44-5-12. [Garnishment against winner in action by creditor against loser.]

Any creditor to any person losing by any game at cards or any other gambling device, in addition to the remedy provided by the above sections of this chapter [/sdCGI-BIN/om_isapi.dll?clientID=2070&infobase=nmsa1978.NFO&jump=44-5-1&softpage=Document - JUMPDEST_44-5-144-5-1 to 44-5-14 NMSA 1978], shall have the right to garnishee the winner in any proceeding by attachment or execution, and the same proceeding shall be had thereon as if such winner were a debtor of the party losing to the amount of money, property, rights or credits, that may appear to have been so won by said winner from the party losing.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 12; C.L. 1884, § 2301; C.L. 1897, § 3210; Code 1915, § 2518; C.S. 1929, § 58-112; 1941 Comp., § 25-1012; 1953 Comp., § 22-10-12.

44-5-13. [Time for commencing action.]

Any action for money or property brought under this chapter [/sdCGI-BIN/om_isapi.dll?clientID=2070&infobase=nmsa1978.NFO&jump=44-5-1&softpage=Document - JUMPDEST_44-5-144-5-1 to 44-5-14 NMSA 1978], shall be commenced within one year from the time such action accrued, and not afterwards.

History: Laws 1856-1857, p. 38; C.L. 1865, ch. 36, § 13; C.L. 1884, § 2302; C.L. 1897, § 3211; Code 1915, § 2519; C.S. 1929, § 58-113; 1941 Comp., § 25-1013; 1953 Comp., § 22-10-13.

44-5-14. Action for recovery; immunity.

All persons who shall claim money or property lost at gaming, or when said money or property may be claimed by his spouse, child, relation or friend, said person, although he may have gambled, is hereby exempted from the punishment imposed by the laws prohibiting and restraining gaming.

History: Laws 1856-1857, p. 38; C.L. 1865, ch. 36, § 14; C.L. 1884, § 2303; C.L. 1897, § 3212; Code 1915, § 2520; C.S. 1929, § 58-114; 1941 Comp., § 25-1014; 1953 Comp., § 22-10-14; Laws 1973, ch. 59, § 2.

CHAPTER 60. BUSINESS LICENSES

ARTICLE 1. HORSE RACING

60-1-1. Conducting a race without license prohibited. (Effective until July 1, 2000.)

It is unlawful for any person, firm, association or corporation to hold public horse races or race meetings for profit or gain in any manner unless a license therefor has first been obtained from the racing commission as provided in the Horse Racing Act [this article].

History: Laws 1933, ch. 55, § 1; 1937, ch. 203, § 1; 1941 Comp., § 62-601; 1953 Comp., § 60-6-1; Laws

1973, ch. 323, § 1.

60-1-2. State racing commission administratively attached to tourism department. (Effective until July 1, 2000.)

The state racing commission is administratively attached, as defined in the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978], to the tourism department.

History: 1953 Comp., § 60-6-1.1, enacted by Laws 1977, ch. 245, § 123; 1991, ch. 21, § 38.

60-1-3. Application for licenses; state racing commission created; members; terms of office; vacancies; powers and duties. (Effective until July 1, 2000.)

A. Any person, firm, association or corporation desiring to hold a horse race or to engage in horse race meetings shall apply to the state racing commission for a license.

B. There is created the "state racing commission". The state racing commission shall consist of five members, no more than three of whom shall be members of the same political party. They shall be appointed by the governor, and no less than three of them shall be practical breeders of racehorses within the state. Each member shall be an actual resident of New Mexico and of such character and reputation as to promote public confidence in the administration of racing affairs.

C. The term of office of each member of the state racing commission shall be six years from his appointment, and he shall serve until his successor is appointed and qualified. In case of any vacancy in the membership of the commission, the governor shall fill the vacancy by appointment for the unexpired term.

D. No person shall be eligible for appointment as a member of the state racing commission who is an officer, official or director in any association or corporation conducting racing within the state.

E. Members of the state racing commission shall receive no salary but each member of the commission shall receive per diem and mileage in accordance with the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978]. The commission may appoint a secretary and fix his duties and compensation.

F. The state racing commission has the power to:

(1) grant, refuse and revoke licenses;

(2) make rules and regulations for the holding, conducting and operating of all race meets and races held in the state and to fix and set racing dates;

(3) make an annual report to the governor of its administration of the racing laws;

(4) require of each applicant for a license the full name of the person, association or corporation applying and, if the applicant is a corporation or an association, the name of the state in which incorporated, the nationality and residence of the members of the association and the names of the stockholders and directors of the corporation;

(5) require of an applicant for a license the exact location where it is desired to conduct or hold a race or race meeting, whether or not the racetrack or plant is owned or leased and, if leased, the name and residence of the fee owner or, if the owner is a corporation, the names of the directors and stockholders, a statement of the assets and liabilities of the person, association or corporation making the application, the kind of racing to be conducted and the period desired and such other information as the commission may require;

(6) require on each application a statement under oath that the information contained in the application is true;

(7) personally or by agents and representatives supervise and check the making of pari-mutuel pools and the distribution from those pools;

(8) cause the various places where race meets are held to be visited and inspected at reasonable intervals;

(9) make rules governing, restricting or regulating bids on leases;

(10) regulate rates charged by the licensee for admission to races or for the performance of any service or the sale of any article on the premises of the licensee;

(11) approve all proposed extensions, additions or improvements to the buildings, stables or tracks upon property owned or leased by a licensee and require the removal of any employee or official employed by the licensee;

(12) completely supervise and control the pari-mutuel machines and equipment at all races held or operated by the state or any state agency or commission;

(13) approve all contracts and agreements for the payment of money and all salaries, fees and compensations by any licensee;
(14) regulate the size of the purse, stake or reward to be offered for the conducting of any race;
(15) exclude or compel the exclusion of, from all racecourses, any person whom the commission deems detrimental to the best interests of racing or any person who willfully violates the racing laws or any rule, regulation or order of the commission or any law of the United States or of this state;
(16) compel the production of all documents showing the receipts and disbursements of any licensee and determine the manner in which such financial records shall be kept;
(17) investigate the operations of any licensee, and the commission has authority to place attendants and such other persons as may be deemed necessary in the offices, on the tracks or in places of business of any licensee for the purpose of satisfying itself that the rules and regulations are strictly complied with; and
(18) employ staff as peace officers for the purpose of conducting investigations and for enforcing rules and regulations of the racing commission and the laws of the state and to obtain documents and information from other agencies in order to assist the racing commission. Staff employed as peace officers shall be required to satisfactorily complete a basic law enforcement training program but such peace officers shall not carry firearms or other deadly weapons while on duty.
G. The state racing commission shall publicly state its reasons for refusing an application for a license. The reasons shall be included in the minute book of the commission, and the minute book shall be subject to public inspection at all reasonable times.
H. The state racing commission has the power to summon witnesses, books, papers, documents or tangible things and to administer oaths for the effectual discharge of the commission's duties. The commission may appoint a hearing officer to conduct any hearing required by the Horse Racing Act [this article] or any rule or regulation promulgated pursuant to that act.
History: Laws 1933, ch. 55, § 2; 1937, ch. 203, § 2; 1941 Comp., § 62-602; Laws 1947, ch. 192, § 1; 1953 Comp., § 60-6-2; Laws 1955, ch. 87, § 1; 1973, ch. 323, § 2; 1975, ch. 95, § 1; 1989, ch. 99, § 1; 1989, ch. 377, § 1.

60-1-4. [Manner of appointment of commission.] (Effective until July 1, 2000.)

The five racing commissioners shall be appointed at large from the state by the governor and with the advice and consent of the senate.
History: 1953 Comp., § 60-6-2.1, enacted by Laws 1955, ch. 87, § 2.

60-1-5. Licenses; qualifications. (Effective until July 1, 2000.)

A. All persons engaged in racing, or employed on a licensee's premises by those engaged in racing, or operating a horse racing meeting, and persons operating concessions for or under authority of any licensee or employed by the concessionaire shall be licensed by the state racing commission and shall be fingerprinted.
B. Racetracks shall be licensed each calendar year.
C. The state racing commission may provide by regulation for the issuance of licenses for terms not to exceed five years for horse owners, trainers, jockeys and their employees; veterinarians; and employees of a racetrack. Fees for licenses under this subsection, not to exceed one hundred dollars ($100), shall be set by regulation of the commission.
D. The state racing commission shall not issue or renew a license and shall revoke or suspend any license issued pursuant to this section if, after due consideration for the proper protection of public health, safety, morals, good order and the general welfare of the inhabitants of this state, it finds that the issuance of the license or the holding of the license is inconsistent with the public interest. The burden of proving his qualifications to receive and hold a license under this section shall be at all times on the applicant or licensee. The state racing commission shall establish by regulation such qualifications for licenses to be issued pursuant to this section as it deems in the public interest.
E. Any person who is addicted to or uses narcotic drugs or who has been convicted of a violation of any federal or state narcotics law shall not be licensed on any New Mexico racetrack.
F. If the state racing commission finds that any person has done any of the following acts, the person shall not be licensed by the commission for a period of five years from the date of the finding that the person, for

the purpose of stimulating or depressing a horse or affecting its speed or stamina in a race or workout:
(1) administered, attempted to administer or conspired with others to administer to any horse, in or prior to a race, any dope, drug, chemical agent, stimulant or depressant, either internally, externally or hypodermically;
(2) attempted to use, used or conspired with others to use in any race any electrical or mechanical buzzer, goad, device, implement or instrument, excepting only the ordinary whip and spur, or acted to sponge the nostrils or windpipe of a racehorse; or
(3) used any method, injurious or otherwise, for the purpose of stimulating or depressing a horse or affecting its speed or stamina in a race or workout.
G. The validity of any license issued by the state racing commission shall be conditioned upon the licensee not engaging in racing, operating a horse race meeting or participating as an employee or concessionaire at any racetrack in New Mexico operating or permitting to be operated an organized wagering system not licensed by the commission. Any licensee not complying with that condition shall, after reasonable notice and hearing, have his license revoked, and the license shall not be reissued until the expiration of one year from the date of revocation.
History: 1953 Comp., § 60-6-2.2, enacted by Laws 1973, ch. 323, § 3; 1977, ch. 96, § 1; 1985, ch. 215, § 1.

60-1-6. Qualifications for license to conduct a horse race meet. (Effective until July 1, 2000.)

A. A license to conduct a horse racing meet in this state may be issued by the racing commission to any person whom the commission determines to be a qualified applicant. Such qualification shall be decided by the commission after due consideration for the proper protection of the public health, safety, morals, good order and the general welfare of the inhabitants of the state. The burden of proving his qualifications to receive and hold a license to conduct a horse racing meet shall be at all times on the applicant or licensee. The racing commission may establish by regulation such qualifications for licenses to conduct horse race meets as it deems to be in the public interest.
B. Without limiting the power of the racing commission to adopt by regulation additional qualifications pursuant to Subsection A of this section, no person shall be qualified to be licensed under this section if he:
(1) has been convicted of a felony under the laws of New Mexico, the laws of any other state or the laws of the United States, unless sufficient evidence of rehabilitation has been presented to the racing commission; however, the provisions of this paragraph shall not apply to any person who has been convicted of a felony prior to June 1, 1977, with respect to such prior conviction, if, with knowledge of the conviction, the state racing commission has as of June 1, 1977, granted him a license to conduct a horse race meet;
(2) has been guilty of or attempted any fraud or misrepresentation in connection with racing, breeding or otherwise, unless sufficient proof of rehabilitation has been presented to the racing commission;
(3) has violated or attempted to violate any law or regulation with respect to racing in any jurisdiction, unless sufficient proof of rehabilitation has been presented to the racing commission;
(4) has consorted or associated with bookmakers, touts or persons of similar pursuits, unless sufficient proof of rehabilitation has been presented to the racing commission;
(5) is consorting or associating with bookmakers, touts or persons of similar pursuits;
(6) is financially irresponsible; or
(7) is a past or present member of or participant in organized crime as such membership or participation may be found or determined by the racing commission.
C. No person shall be eligible to receive or hold any license to conduct a horse race meet unless each person having any direct or indirect interest therein of any nature whatsoever, whether financial, administrative, policymaking or supervisory, is individually licensed under this section. If the applicant for a license is a corporation, all officers, directors, lenders or holders of evidence of indebtedness of the corporation and all persons who participate in any manner in a financial, administrative, policymaking or supervisory capacity must, individually, be licensed under this section. This subsection shall not apply to any person owning or holding, directly, indirectly or beneficially less than ten percent of the total authorized, issued and outstanding shares of a corporation which is licensed to conduct a race meet in this state, unless such person has some other direct or indirect financial interests therein of any nature whatsoever, whether financial, administrative, policymaking or supervisory.
D. The racing commission may prescribe a limit to the number of persons directly or indirectly financially

interested in the licensee to conduct a horse race meet and shall also determine whether the financial interests of any applicant or group of applicants are compatible with the general welfare of the inhabitants of this state.

E. Without limiting the power of the racing commission, pursuant to Subsection D of this section, to limit the number of persons directly or indirectly interested in racetracks licensed in this state, no person or group of persons shall have a direct or indirect interest of any nature whatsoever, whether financial, administrative, policymaking or supervisory, in more than two racetracks in this state. For purposes of this subsection, a person or group of persons shall not be considered to have a direct or indirect interest in any racetrack if they own or hold, directly, indirectly or beneficially, less than ten percent of the total authorized, issued and outstanding shares of a corporation which is licensed to conduct a horse race meet in this state, unless such person or group of persons has some other direct or indirect interest of any nature whatsoever, whether financial, administrative, policymaking or supervisory in more than two licensed tracks. Any person or group of persons having a direct or indirect interest in more than two racetracks shall be immediately ordered by the commission to divest themselves of such interest. Beginning with the time the commission gives notice to divest such interest, the provisions of Subsection H of this section shall apply to such person or persons.

F. Any corporation, holding a license to conduct a race meet in this state, shall not issue to any person shares of its stock amounting to ten percent or more of its total authorized, issued and outstanding shares; nor issue shares, which would, when added to a person's existing owned or held shares, amount to that person owning or holding, directly, indirectly or beneficially, ten percent or more of the total authorized, issued and outstanding shares of the corporation, unless:

(1) it has given written notice to the racing commission, at least sixty days prior to the contemplated date of such transfer; and

(2) it receives written notice from the commission of its approval of such transfer.

G. It shall be the duty of every corporation holding a license to conduct a race meet in this state to notify, immediately, the racing commission when it appears from the stock records of the corporation that a person not licensed by the commission holds ten percent or more of the total authorized, issued and outstanding shares of the corporation.

H. Any person owning or holding, directly, indirectly or beneficially, ten percent or more of the total authorized, issued and outstanding shares of a corporation which is licensed to conduct a horse race meet in this state, but who has not been licensed by the commission to hold such shares or whose license has been revoked, shall not directly or indirectly in any manner:

(1) exercise any financial, administrative, policymaking or supervisory power with respect to such corporation;

(2) be an officer or director of such corporation;

(3) receive dividends, either in stock or in cash;

(4) hold or receive interest on any certificate of indebtedness of such corporation;

(5) exercise, individually or through any trustee, nominee or agent, any voting right or other power or privilege conferred by such securities; or

(6) otherwise receive any remuneration of whatsoever kind or nature from the corporation.

I. A person who owns or holds, directly, indirectly or beneficially, ten percent or more of the total authorized, issued and outstanding shares of the corporation licensed to conduct a race meet in this state shall be licensed pursuant to Subsection A of this section. If the commission finds such person is not qualified to be licensed to own or hold, or to continue to own or hold, said ten percent interest in such corporation, it shall give notice of such finding to the corporation and to the person owning or holding such interest and that person shall immediately offer such securities to such corporation for purchase. If the corporation does not elect to purchase said shares, then that person may offer the shares to other purchasers, subject to prior approval of such purchasers by the commission pursuant to this section. Beginning from the time the commission gives the corporation and the shareholder written notice of disapproval and divestiture, the provisions of Subsection H of this section shall apply until final commission approval of the owner or holder of such shares is given.

J. The commission may at any time issue a written request to any nominee or trustee holding an equity interest in a corporation which is licensed to conduct a race meet in this state, for the name, address and internal revenue service identification number of the real party in interest owning said shares. If the nominee or trustee fails within thirty days from said request to furnish the information requested to the commission, the commission may invoke the divestiture procedures in Subsection I above.

K. Every security hereafter issued by a corporation which holds a license shall bear a statement, on both sides of the certificate evidencing such security, of the restrictions and penalties imposed by this section.
L. Any person violating any provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one thousand dollars ($1,000) and not more than ten thousand dollars ($10,000) or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment.
M. The racing commission shall deny or revoke a license of a corporation which is not in compliance with the provisions of this section.
N. For purposes of determining interest in a racetrack, insofar as such determination is based on stock ownership:
(1) stock owned, directly or indirectly, by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries;
(2) an individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors and lineal descendants; and
(3) stock constructively owned by a person by reason of the application of Paragraph (1) shall, for the purposes of applying Paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of Paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.
History: 1953 Comp., § 60-6-2.3, enacted by Laws 1973, ch. 323, § 4; 1977, 1h. 92, § 1.

60-1-6.1. Classification of licenses. (Effective until July 1, 2000.)

A. A license to conduct a horse racing meet in this state shall be classified as either a class A or class B license, determined by the state racing commission as follows:
(1) a class A license means a license of any licensee who received from all race meetings in the preceding calendar year a gross amount wagered through the pari-mutuel system of ten million dollars ($10,000,000) or more; and
(2) a class B license means the license of any licensee who received from all race meetings in the preceding calendar year a gross amount wagered through the pari-mutuel system of less than ten million dollars ($10,000,000).
B. Any new license to conduct a horse racing meet in this state shall be given a classification by the state racing commission based on the best estimate of the anticipated gross amounts to be received by the licensee from all pari-mutuel wagering in the licensee's first full calendar year. After the licensee's first full calendar year of racing, the state racing commission shall review the classification and change it if necessary.
C. Each class of license is subject to all provisions of the Horse Racing Act [this article], except as otherwise provided in that act. The state racing commission shall adopt and promulgate such rules and regulations as are necessary to provide for license classification.
History: Laws 1991, ch. 7, § 1.

60-1-7. [Execution and contents of application.] (Effective until July 1, 2000.)

The application for a license shall be in writing and signed by the applicant or applicants and the facts therein recited shall be sworn to.
The application shall specify the days on which such races or meetings are to be held, the name or names of the applicant desiring the license together with the location and the enclosure where the same are to be held, and if the application desires the use of the pari-mutuel system in connection with such races the application shall so specify and state the terms upon which tickets and certificates are to be sold, and such other facts as the state racing commission may require.
History: Laws 1933, ch. 55, § 3; 1937, ch. 203; § 3; 1941 Comp., § 62-603; 1953 Comp., § 60-6-3.

60-1-8. Time for filing application; amount of daily tax. (Effective until July 1, 2000.)

A. Application shall be filed not less than sixty days prior to the first day the proposed races or meetings are to be held, and at the time pari-mutuel wagering is conducted the applicant shall pay to the state racing commission the daily tax provided by this section.
B. The daily tax to be paid whenever the licensee offers pari-mutuel wagering on live on-track races shall be:
(1) for a class A license, six hundred fifty dollars ($650) for each racing day authorized by the state racing commission; and
(2) for a class B license, one-eighth of one percent of a class B licensee's gross daily handle, up to a maximum of three hundred dollars ($300), for each racing day authorized by the state racing commission for class B licenses.
C. The daily tax provided in Subsection B of this section shall go to the credit of the general fund; provided, however, that for a class A license located in an incorporated municipality with a population, according to the 1990 federal census, that is either:
(1) less than six thousand persons if located in a county with a population of more than ten thousand but less than fifteen thousand persons; or
(2) more than eight thousand but less than ten thousand persons if located in a county with a population of more than one hundred thousand but less than one hundred fifty thousand persons; then one hundred fifty dollars ($150) of the daily tax paid by those class A licensees that qualify under Paragraphs (1) and (2) of this subsection shall be paid to the municipality in which each licensee is located.
D. The daily tax to be paid whenever the licensee offers no pari-mutuel wagering on live on-track races and offers solely pari-mutuel wagering on simulcast races pursuant to Section 60-1-25 NMSA 1978 shall be one-eighth of one percent of the licensee's gross daily handle, up to a maximum of three hundred dollars ($300), for each racing day authorized by the state racing commission.
E. The daily tax for any state fair association designated by law, which in good faith conducts a public fair and exhibition of stock and farming products, shall be six hundred fifty dollars ($650) per day for each racing day authorized; provided, however, that where a licensed state fair association offers no pari-mutuel wagering on live on-track races and offers solely pari-mutuel wagering on simulcast races pursuant to Section 60-1-25 NMSA 1978, the daily tax shall be one-eighth of one percent of the licensee's gross daily handle, up to a maximum of three hundred dollars ($300).
History: Laws 1933, ch. 55, § 4; 1937, ch. 203, § 4; 1941 Comp., § 62-604; 1953 Comp., § 60-6-4; Laws 1961, ch. 78, § 1; 1978, ch. 160, § 1; 1989, ch. 260, § 2; 1990, ch. 130, § 1; 1991, ch. 7, § 2; 1991, ch. 195, § 1.

60-1-9. Hearing on application; notice; conflicting dates; bond; determination by commission is final. (Effective until July 1, 2000.)

A. The racing commission may, within ten days from the date of filing of any application to conduct a horse race meeting, set a date for a hearing on the application, to be held within twenty days of the filing thereof, for the purpose of inquiring into or hearing proof about the responsibility and eligibility of the applicant and his right to receive a license as provided in the Horse Racing Act [this article]. The applicant shall be notified of the hearing at least five days prior to it and shall have the right to be heard and to present testimony in support of his application. Notice shall be mailed to the address of the applicant or applicants appearing upon the application for the license and the deposit of the notice in the United States mail constitutes notice.
B. If, after a hearing on an application, the commission finds that the applicant is not eligible under the provisions of the Horse Racing Act or any regulations promulgated under it to receive a license or does not tender upon request a good and sufficient bond as required in this section, then the license shall be refused.
C. If there is more than one application pending at the same time, and if there are conflicting dates for the holding of any races or meetings applied for, the racing commission may determine the racing days that will be allotted to each applicant.
D. The racing commission may require as a condition precedent to the issuance of a license under this section a bond not to exceed the sum of twenty-five thousand dollars ($25,000) with a corporate surety, qualified to do business in the state of New Mexico. The bond shall be approved by the commission and conditioned for the payment by the applicant of all fees, awards, civil penalties and taxes levied and to be paid pursuant to the provisions of the Horse Racing Act.

E. A determination by the racing commission of any matters under this section shall be final and conclusive and not subject to any appeal. In the event any application for a license is refused or rejected, the license fees tendered with the application shall be returned to the applicant.
History: Laws 1933, ch. 55, § 5; 1937, ch. 203, § 5; 1941 Comp., § 62-605; 1953 Comp., § 60-6-5; Laws 1973, ch. 323, § 5.

60-1-10. Pari-mutuel method legalized; maximum commissions; horsemen's commission; gambling statutes not repealed; commission distribution. (Effective until July 1, 2000.)

A. Within the enclosure where any horse races are conducted, either as live on-track horse races or as horse races simulcast pursuant to Section 60-1-25 NMSA 1978, and where the licensee has been licensed to use the pari-mutuel method or system of wagering on races, the pari-mutuel system is lawful, but only within the enclosure where races are conducted.
B. The sale to patrons present on the grounds of pari-mutuel tickets or certificates on the races or the use of the pari-mutuel system shall not be construed to be betting, gambling or pool selling and is authorized under the conditions provided by law.
C. There shall be for each class A licensee a commission of nineteen percent of the gross amount wagered on win, place and show through the pari-mutuel system, of which eighteen and three-fourths percent shall be retained by a class A licensee and one-fourth of one percent shall be allocated to the general fund. A commission in an amount determined by the licensee of not less than eighteen and six-eighths percent and not greater than twenty-five percent of the gross amount wagered on win, place and show through the pari-mutuel system shall be retained by a class B licensee. Each class B licensee shall advise the state racing commission not less than thirty days in advance of each horse racing meeting of the percentage the licensee shall retain as commission. From that commission, each class A and class B licensee shall allocate five-eighths of one percent to the New Mexico horse breeders' association weekly for distribution pursuant to the provisions of Subsection C of Section 60-1-17 NMSA 1978.
D. Except as otherwise provided in this subsection, a commission shall be retained by the licensee at the election of each class A licensee of not less than twenty-one percent and not greater than twenty-five percent of the gross amount wagered on exotic wagering and at the election of each class B licensee, and with the approval of the state racing commission, of not less than twenty-one percent and not greater than thirty percent of the gross amount wagered on exotic wagering. For the purpose of this subsection, "exotic wagering" means all wagering other than win, place and show, through the pari-mutuel system. Each licensee shall advise the state racing commission not less than thirty days in advance of each horse racing meeting of the amount of the commission of the gross amount wagered on exotic wagering to be retained by the licensee. From that commission, the licensee shall allocate one and three-eighths percent to the New Mexico horse breeders' association weekly for distribution pursuant to the provisions of Subsection C of Section 60-1-17 NMSA 1978.
E. The odd cents of all redistributions to the wagerer over the next lowest multiple of ten from the gross amount wagered through the pari-mutuel system shall be retained by the licensee, with fifty percent of the total being allocated to enhance the race purses of established stake races that include only horses registered as New Mexico bred with the New Mexico horse breeders' association, to be distributed by the New Mexico horse breeders' association pursuant to Paragraph (3) of Subsection C of Section 60-1-17 NMSA 1978 subject to the approval of the state racing commission.
F. All money resulting from the failure of patrons who purchased winning pari-mutuel tickets during the meeting to redeem their winning tickets before the end of the sixty-day period immediately succeeding the closing day of the meeting and all money resulting from the failure of patrons who purchased pari-mutuel tickets that were entitled to refund but were not refunded during the same sixty-day period shall be apportioned as follows:
(1) thirty-three and thirty-three hundredths percent shall be retained by the licensee;
(2) thirty-three and thirty-four hundredths percent shall be distributed to the New Mexico horse breeders' association to enhance each track's established overnight purses for races that include only horses registered as New Mexico bred with the New Mexico horse breeders' association pursuant to Paragraph (3) of Subsection C of Section 60-1-17 NMSA 1978, subject to the approval of the state racing commission; and
(3) thirty-three and thirty-three hundredths percent shall be allocated to horseman's race purses.
G. To promote and improve the quality of horse racing and simulcasting and the participation of interested

persons in horse racing in New Mexico, one-half of one percent of the gross amount wagered on simulcast horse races at each licensed racetrack in New Mexico that receives simulcast horse races shall be allocated by each licensee for distribution to the New Mexico horsemen's association, provided that at least one-quarter of one percent of the gross amount wagered on simulcast races that is so allocated is used solely for medical benefits for the members of the New Mexico horsemen's association, and provided further that the remaining one-quarter of one percent of the gross amount wagered on simulcast races that is so allocated shall be used to enhance purses at each such licensed racetrack. The state racing commission shall by regulation provide for the timing and manner of the distribution required by this subsection and shall audit, or arrange for an independent audit of, the disbursement required by this subsection.

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

(1) the taxes delineated in Sections 60-1-8 and 60-1-15 NMSA 1978;

(2) money allocated to the New Mexico horse breeders' association by this section and Section 60-1-17 NMSA 1978;

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

(4) a deduction for expenses incurred to engage in intrastate simulcasting pursuant to Section 60-1-25 NMSA 1978, provided that:

(a) the deduction for each licensee shall be a portion of five percent of the gross amount wagered at all the sites receiving the same simulcast horse races;

(b) the deduction portion for each licensee shall be an amount allocated to the licensee by agreement voluntarily reached among all the licensees sending or receiving the same simulcast horse races; and

(c) the deduction portion for each licensee shall be an amount allocated to the licensee by the state racing commission if all the licensees sending or receiving the same simulcast horse races fail to reach a voluntary agreement under Subparagraph (b) of this paragraph; and

(5) a deduction for fees and commissions incurred to receive interstate simulcasts pursuant to Section 60-1-25 NMSA 1978.

I. Existing statutes of this state against horse racing on Sundays or on bookmaking, pool selling or other methods of wagering on the racing of horses are not repealed but are hereby expressly continued in effect, with the exception that the operation of the pari-mutuel method or system in connection with the racing of horses, when used as provided by law, is lawful.

J. In the event any money paid or allocated to the New Mexico horse breeders' association or the New Mexico Appaloosa racing association pursuant to the Horse Racing Act [this article] cannot be paid to or allocated or administered by such associations, then the state racing commission, or such other organization as may be designated, retained or absolutely controlled by the state racing commission, shall receive all such money and shall pay, allocate and administer all such money pursuant to the provisions of Section 60-1-17 NMSA 1978. If the state racing commission or its controlled designee is required to pay, allocate or administer money on behalf of the New Mexico horse breeders' association or the New Mexico Appaloosa racing association pursuant to this subsection, then the maximum percentage of funds set forth in Paragraph (3) of Subsection C of Section 60-1-17 NMSA 1978 shall be paid by the state racing commission to the New Mexico horse breeders' association or the New Mexico Appaloosa racing association as a fee to obtain the certification of the registry of the dam and stud of the New Mexico bred horse.

K. In the event any money paid or allocated to the New Mexico horsemen's association pursuant to the Horse Racing Act cannot be paid to or allocated or administered by the association, then the state racing commission, or such other organization as may be designated, retained or absolutely controlled by the state racing commission, shall receive all such money and shall pay, allocate and administer all such money to achieve the purposes of the provisions of this section.

History: Laws 1933, ch. 55, § 6; 1941 Comp., § 62-606; 1953 Comp., § 60-6-6; Laws 1961, ch. 78, § 2; 1966, ch. 23, § 1; 1979, ch. 4, § 2; 1979, ch. 348, § 1; 1981, ch. 227, § 1; 1983, ch. 8, § 1; 1989, ch. 251, § 1; 1990, ch. 130, § 2; 1991, ch. 7, § 3; 1991, ch. 195, § 2; 1992, ch. 15, § 1; 1993, ch. 288, § 1.

60-1-11. Rules and regulations; licensure; representatives of commission; special policemen; revocation or cancellation of licenses; penalties. (Effective until July 1, 2000.)

A. The racing commission shall adopt reasonable rules and regulations in writing to achieve the objectives that all horse races be conducted with fairness and that the participants and the patrons be protected against all wrongful, unlawful or unfair conduct and practices of every kind on the grounds where the races are held. The commission shall give reasonable public notice of the promulgation of its regulations.
B. Every license issued by the commission shall require the applicant to abide by the rules and regulations promulgated by the commission, and the holder of each license shall post printed copies of the rules and regulations in conspicuous places upon the grounds where the races are being conducted and shall maintain them during the period when races are held.
C. The racing commission shall appoint a representative or representatives to be personally present at races to oversee them, to require strict observance of rules and regulations, to avoid violations thereof and to protect against the want of integrity on the part of the licensee or his representatives in conducting the races.
D. For the purpose of preserving order and preventing violations of the Horse Racing Act [this article] and rules and regulations promulgated pursuant thereto, a track licensed to conduct a horse race meet, with the prior approval of the commission, shall appoint special policemen, who shall have the same powers and immunities within and around the grounds of the track as are vested in county sheriffs to protect the property within such grounds, to eject or arrest all persons within the grounds who are guilty of disorderly conduct or who shall neglect to pay fees or observe the rules of the commission. The appointment of any such person shall not be deemed to supersede the authority of peace officers within the grounds of the racetrack.
E. In the event of any violation by a license holder of the provisions of the Horse Racing Act or of any of the rules and regulations promulgated by the racing commission, the license of the offending license holder may be cancelled or revoked at any time by the commission, provided, however, that the licensee shall have reasonable notice and opportunity to be heard before cancellation or revocation, and provided, further, that the cancellation or revocation of any license shall not relieve the licensee from prosecution for any of the violations or from payment of fines and penalties.
F. The commission is authorized to impose civil penalties upon any licensee for a violation of the Horse Racing Act or any rules or regulations promulgated pursuant thereto, not exceeding five thousand dollars ($5,000) for each violation; which penalties shall be paid into the current school fund.
G. The commission shall not approve the hiring of any personnel or any special policemen, pursuant to this section, unless it finds that the system of security services to be provided will be at least equal to the services which would be provided by the thoroughbred racing protective bureau of the thoroughbred racing association of the United States under similar conditions.
History: Laws 1933, ch. 55, § 7; 1937, ch. 203, § 6; 1941 Comp., § 62-607; 1953 Comp., § 60-6-7; Laws 1973, ch. 323, § 6.

60-1-12. Stewards; powers and duties; review. (Effective until July 1, 2000.)

There shall be three stewards, licensed and employed by the state racing commission, to supervise each horse race meeting. One of the stewards shall be designated the presiding official steward of the race meet. Stewards, other than the presiding official steward, shall be employed subject to the approval of the licensee. All stewards shall be licensed or certified by a nationally recognized horse racing organization. Stewards shall exercise those powers and duties prescribed by the rules and regulations of the commission. Any decision or action of the stewards may be reviewed or reconsidered by the commission.
History: 1953 Comp., § 60-6-7.1, enacted by Laws 1973, ch. 323, § 7; 1993, ch. 300, § 2.

60-1-13. Official state racing chemist; qualifications; duties. (Effective until July 1, 2000.)

The racing commission shall designate one or more "official state racing chemist." An official state racing chemist shall hold a doctorate degree in chemistry or a related field and shall be knowledgeable and experienced in the techniques used for testing the blood, urine and saliva of horses for drugs, dope, chemical agents, stimulants and depressants. He may be either an employee of a private laboratory located in New Mexico or an employee of an agency of the state of New Mexico. He shall exercise those duties as prescribed by the rules and regulations of the commission.

History: 1953 Comp., § 60-6-7.2, enacted by Laws 1975, ch. 189, § 1.

60-1-14. [Illegal use of pari-mutuel method.] (Effective until July 1, 2000.)

If any person, firm, association or corporation shall either directly or indirectly use the pari-mutuel method or system except when licensed, and used as authorized under this act and in accordance with the rules and regulations promulgated by the state racing commission such person, firm, association or corporation shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in an amount not to exceed the sum of five thousand dollars [$5,000] or imprisonment [imprisoned] for not more than ninety days or both such fine and imprisonment. The officers of any corporation violating any of the provisions hereof shall be deemed personally responsible and subject to the penalties imposed under this section.
History: Laws 1933, ch. 55, § 8; 1937, ch. 203, § 7; 1941 Comp., § 62-608; 1953 Comp., § 60-6-8.

60-1-15. Tax levied; certain license fees and taxes prohibited. (Effective until July 1, 2000.)

A. In addition to the daily tax provided in Section 60-1-8 NMSA 1978, a tax of two and three-sixteenths percent is levied on the gross amount wagered each day at each place where horse racing is conducted by any state fair association designated by law that in good faith conducts a public fair and exhibition of stock and farming products or where horse racing for profit is held. The tax shall be paid from the commissions of the licensee.
B. To encourage the improvement of horse racing facilities for the benefit of the public, breeders and horse owners and to increase the revenue to the state from the increase in pari-mutuel wagering and tourism resulting from these improvements, not more than two percent of the tax levied under Subsection A of this section:
(1) for the first two hundred fifty thousand dollars ($250,000) of daily handle only, shall be offset for class A licensees by the amount that each licensee expends for capital improvements or in financing term investment in capital improvements at existing racetrack facilities and for class B licensees by the amount that the licensee expends for capital improvements, not to exceed fifty percent of the tax levied under this section, and by the amount the licensee expends for advertising, marketing and promoting horse racing in the state, not to exceed fifty percent of the tax levied under this section. The offset provided in this paragraph shall also apply to the daily handle generated at its facility by a licensee engaged solely in simulcasting pursuant to Section 60-1-25 NMSA 1978. The term "capital improvement" means any capital investment in items that are subject to depreciation under the United States Internal Revenue Code of 1986 and are approved by the state racing commission; and
(2) for class A licensees for the period through June 30, 1995 for the total amount wagered each day on amounts in excess of two hundred fifty thousand dollars ($250,000) but not in excess of three hundred fifty thousand dollars ($350,000), shall be offset by the amount that each licensee expends for advertising, marketing and promoting horse racing in the state. The offset provided in this paragraph shall also apply to the daily handle generated at its facility by a licensee engaged solely in simulcasting pursuant to Section 60-1-25 NMSA 1978. The licensee is required to keep accurate records of any expenditures made pursuant to this paragraph, and the state auditor is required to audit the expenditures and submit his report to the state racing commission.
C. To compensate for the additional municipal services required by the location of a racetrack within a municipality, an amount of revenue derived from the tax levied on such a racetrack under Subsection A of this section, above the amount offset by capital expenditures and advertising as provided in Subsection B of this section, shall be transferred to the municipal treasurer of the municipality in which the track generating the revenue is located for expenditure by the municipality in providing those additional municipal services. The amount to be transferred shall be determined in accordance with the provisions of Section 60-1-15.2 NMSA 1978.
D. Accurate records shall be kept by the licensee to show all commissions, total gross amounts wagered and breakage, as well as other information the state racing commission may require. Records shall be open to inspection and shall be audited by the commission or any of its authorized representatives. Should any licensee fail to keep records accurately and intelligibly, the commission may prescribe the method in which the licensee shall keep records.
E. All remaining revenues collected as a result of the tax on the gross amount wagered shall be deposited in

the state general fund.
F. Notwithstanding any other provision of law, no political subdivision of this state may impose any occupational tax against a racetrack operating under authority of a license granted by the state racing commission. No political subdivision may levy an excise tax against any racetrack operating under authority of a license granted by the state racing commission, except that taxes imposed pursuant to the County Gross Receipts Tax Act, the County Fire Protection Excise Tax Act, the County Sales Tax Act, the Municipal Gross Receipts Tax Act, the Supplemental Municipal Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978] and the Special Municipal Gross Receipts Tax Act [7-19A-1 to 7-19A-7 NMSA 1978] may be imposed to the extent permitted by law.
History: Laws 1933, ch. 55, § 9; 1937, ch. 203, § 8; 1941 Comp., § 62-609; 1953 Comp., § 60-6-9; Laws 1961, ch. 78, § 3; 1966, ch. 23, § 2; 1972, ch. 4, § 1; 1973, ch. 280, § 1; 1981, ch. 227, § 2; 1983, ch. 327, § 1; 1985, ch. 137, § 2; 1989, ch. 260, § 3; 1990, ch. 130, § 3; 1991, ch. 7, § 4; 1991, ch. 195, § 3; 1992, ch. 110, § 1; 1994, ch. 72, § 1.

60-1-15.1. Repealed.

60-1-15.2. Determination of amount of compensation for municipal services. (Effective until July 1, 2000.)

In August of each year, the taxation and revenue department shall determine for each municipality eligible to receive compensation pursuant to Subsection C of Section 60-1-15 NMSA 1978 the amount of money distributed or transferred during the preceding fiscal year pursuant to Sections 7-1-6.4 and 7-1-6.12 NMSA 1978 to that municipality with respect to the gross receipts taxes and municipal gross receipts taxes paid, after deducting all refunds, by each racetrack located within the boundaries of that municipality. If the amount determined is less than fifty thousand dollars ($50,000), the amount to be transferred pursuant to Subsection C of Section 60-1-15 NMSA 1978 shall be the difference between fifty thousand dollars ($50,000) and the amount determined by the department. In all other cases, no amount shall be transferred to the municipality pursuant to Subsection C of Section 60-1-15 NMSA 1978. The department shall inform the state racing commission of the amount to be transferred pursuant to Subsection C of Section 60-1-15 NMSA 1978 to each appropriate municipality by August 31 of each year. The commission shall ensure that the amount is transferred expeditiously to the appropriate municipality.
History: 1978 Comp., § 60-1-15.1, enacted by Laws 1992, ch. 110, § 2.

60-1-15.3. Additional daily license fee. (Effective until July 1, 2000.)

An additional daily license fee of five hundred dollars ($500) shall be paid by the applicant for each day of racing. Daily license fees shall be paid pursuant to the provisions of Section 60-1-19 NMSA 1978.
History: Laws 1993, ch. 300, § 1.

60-1-16. Suspense fund to pay claims. (Effective until July 1, 2000.)

From the funds derived from license fees and taxes, the racing commission is authorized to create a special suspense fund with the treasurer of the state in an amount not to exceed three thousand dollars ($3,000) to pay all legal claims for refunds. Any surplus over and above the maximum suspense fund amount shall be deposited into the general fund of the state.
History: Laws 1933, ch. 55, § 10; 1937, ch. 203, § 9; 1941 Comp., § 62-610; 1953 Comp., § 60-6-10; Laws 1957, ch. 17, § 1; 1965, ch. 270, § 2; 1973, ch. 323, § 8; 1977, ch. 161, § 1; 1979, ch. 348, § 2.

60-1-17. Breeders' awards. (Effective until July 1, 2000.)

A. To promote and improve the quality of racehorse breeding in New Mexico, the track shall pay a sum of money equal to ten percent of the first money of each purse won in New Mexico by a horse registered with

the New Mexico horse breeders' association or the New Mexico Appaloosa racing association as New Mexico bred, except stake-race purses, in which case an amount equal to ten percent of the added money shall be paid.
B. The sum of money provided for in Subsection A of this section shall be paid weekly to the owner of the dam of the animal at the time the animal was foaled upon certification of the state racing commission and either the New Mexico horse breeders' association or the New Mexico Appaloosa racing association, depending on the registry of the horse.
C. In addition to the money distributed pursuant to Subsection A of this section, the New Mexico horse breeders' association shall distribute the money collected by the association pursuant to Subsections C and D of Section 60-1-10 NMSA 1978 in the following manner and in accordance with the rules and regulations promulgated by the state racing commission:
(1) forty-five percent of the money to the owners of the dams of the first place winners at the time the winners were foaled;
(2) seven percent of the money to the owners of the studs that sired the first place winners at the time the winners were foaled;
(3) no more than eight percent of the money to be retained by the New Mexico horse breeders' association for the purpose of administering the commission distribution program; and
(4) the remaining money to be divided among the first, second and third place finishers during each New Mexico commercial meet, which finishers are registered as New Mexico bred with the New Mexico horse breeders' association.
D. The New Mexico horse breeders' association shall file a fiduciary bond with the state racing commission in a face amount equal to the total money distributed during the previous calendar year pursuant to Subsection C of this section, which bond shall be executed by a surety company authorized to do business in New Mexico; provided that the fiduciary bond shall be in an amount not less than two million dollars ($2,000,000).
History: 1953 Comp., § 60-6-10.1, enacted by Laws 1977, ch. 161, § 2; 1979, ch. 348, § 3; 1980, ch. 95, § 1; 1983, ch. 8, § 2; 1992, ch. 15, § 2.

60-1-18. Purpose of act. (Effective until July 1, 2000.)

The purpose of this act [60-1-16, 60-1-18 NMSA 1978] is to promote and improve the quality of horse breeding in New Mexico by establishing a breeders' fund, without imposition upon New Mexico revenues, from which to pay merit and incentive awards to breeders of horses of achievement in New Mexico.
History: 1953 Comp., § 60-6-10.2, enacted by Laws 1965, ch. 270, § 1.

60-1-19. Time for payment of license fees and taxes. (Effective until July 1, 2000.)

All license fees and taxes imposed pursuant to the Horse Racing Act [this article] shall be paid to the state racing commission at the close of the business day on Thursday of every week during and immediately after any race meeting or season. Failure to make weekly remittances by the licensee shall result in an assessment by the commission against the licensee of a fine of one percent of the amount due weekly.
History: Laws 1933, ch. 55, § 11; 1937, ch. 203, § 10; 1941 Comp., § 62-611; 1953 Comp., § 60-6-11; Laws 1963, ch. 191, § 1; 1993, ch. 300, § 3.

60-1-20. [Influencing or attempting to influence persons to predetermine horse races; penalty.] (Effective until July 1, 2000.)

Any person influencing or attempting to influence in any manner by offer of money, thing of value, future benefit, favor, preferment or by any form of pressure or threat, or seeking or having an agreement, or understanding or conniving, with any owner, jockey, groom or the person associated with or interested in any stable of horses, horse or race in which any such horse participates, to predetermine the result of any such race shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the state penitentiary for not less than one (1) year or more than two (2) years or fines not less than one thousand ($1,000.00) dollars or more than five thousand ($5,000.00) dollars or penalized by both such imprisonment and fine, in the discretion of the court.

History: 1941 Comp., § 62-612, enacted by Laws 1947, ch. 94, § 1; 1953 Comp., § 60-6-12.

60-1-21. [Affecting speed or stamina of horse by drugs, dope, chemical agents, stimulants, electrical or mechanical devices; penalty.] (Effective until July 1, 2000.)

Any person administering or attempting to administer or conspiring with others to administer to any horse, in a race or prior thereto, any dope, drug, chemical agent, stimulant or depressant, either internally, externally or hypodermically, or attempting to use, using or conspiring with others to use in any race any electrical or mechanical buzzer, goad, device, implement or instrument, excepting only the ordinary whip and spur, or the act of sponging the nostrils or windpipe of a racehorse, or using any method injurious or otherwise for the purpose of stimulating or depressing such horse or affecting its speed or stamina in a race, or workout, and any person within the confines of the track, stands, stables, sheds or other places where horses are kept which are eligible to race over the racetrack of any racing association or licensee, having within his possession with intent to use, sell, give away, exchange or deliver to another, and possession shall be prima facie evidence of intent, any such dope, drug, chemical agent, stimulant, depressant, electrical or mechanical buzzer, goad, device, implement, instrument or applicator, excepting only the ordinary whip and spur, which could be used for the purpose of affecting the speed or stamina of a horse, shall be deemed guilty of a misdemeanor and each offense shall be punished by a fine of not less than five hundred ($500.00) dollars and not more than one thousand ($1,000.00) dollars, or by imprisonment in the county jail for not more than six (6) months or by both such fine and imprisonment.
History: 1941 Comp., § 62-613, enacted by Laws 1947, ch. 94, § 2; 1953 Comp., § 60-6-13.

60-1-22. Testing specimens; forwarding to the health and social services department [department of health]. (Effective until July 1, 2000.)

60-1-22. Testing specimens; forwarding to the health and social services department [department of health]. (Effective until July 1, 2000.)

The commission shall adopt rules and regulations for the testing of urine and other specimens taken from such racehorses as are designated by the commission. Provided that a sufficient amount of specimen is available, each specimen taken from a racehorse shall be divided into two or more portions. One portion shall be tested by the commission or its designated agent in order to detect the presence of any drug, dope, chemical agent, stimulant or depressant. A second portion shall be forwarded by the commission to the scientific laboratory system of the health and social services department [department of health]. After a questionable, cloudy or positive test result on the portion tested by the commission or its designated agent and upon the written request of the president or manager of the New Mexico horsemen's association on forms prepared and approved by the commission, the scientific laboratory system shall transmit the corresponding second portion to the New Mexico horsemen's association. The scientific laboratory system shall keep all other specimens in a safe place for a period of at least three months and shall, after the expiration of at least ten days from the date of receipt, perform random tests on the specimens in order to detect the presence of any drug, dope, chemical agent, stimulant or depressant. The results of all such tests performed by the laboratory under this section shall be transmitted immediately by the laboratory to the commission, but they shall have no evidentiary value in any hearing before the commission.
History: 1953 Comp., § 60-6-13.1, enacted by Laws 1975, ch. 190, § 1.

60-1-23. Short title. (Effective until July 1, 2000.)

Chapter 60, Article 1 NMSA 1978 may be cited as the "Horse Racing Act".
History: 1953 Comp., § 60-6-14, enacted by Laws 1973, ch. 323, § 10; 1990, ch. 130, § 5.

60-1-24. Definitions. (Effective until July 1, 2000.)

Unless a contrary meaning is used in the Horse Racing Act [this article]:
A. "person" means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustee, receiver, syndicate or any other legal entity;
B. "organized crime" means the supplying for profit of illegal goods and services, including but not limited to gambling, loan sharking, narcotics and other forms of vice and corruption, by members of a structured and disciplined organization; and
C. "horse" includes mule.
History: 1953 Comp., § 60-6-14.1, enacted by Laws 1973, ch. 323, § 11; 1988, ch. 29, § 1.

60-1-25. Simulcasting. (Effective until July 1, 2000.)

A. As used in this section, "simulcasting" means a live audio-visual broadcast of an actual horse race at the time it is run.
B. The state racing commission may permit simulcasting of races being run at licensed New Mexico racetracks to racetracks outside the state, as well as to other licensed New Mexico racetracks, and of races being run at racetracks outside New Mexico to licensed racetracks in this state. Pari-mutuel wagering on simulcasted races shall be prohibited except at licensed New Mexico racetracks on days that such racetracks have race meets in progress or on days that such racetracks do not have race meets in progress but are simulcasting races from another licensed New Mexico racetrack; provided, however, that pari-mutuel wagering on simulcasted races shall only be allowed at any licensed New Mexico racetrack within a radius of eighty miles of any other licensed New Mexico racetrack with race meets in progress if there is mutual agreement of the two licensees, and provided further that no licensed New Mexico racetrack shall be allowed to receive broadcasts of simulcast races unless that racetrack offers at least seventeen days per year of pari-mutuel wagering on on-track live horse races. The commission shall promulgate rules and regulations concerning the simulcasting of racing as provided in this section.
C. All simulcasting of races shall have prior approval of the state racing commission.
History: 1978 Comp., § 60-1-25, enacted by Laws 1991, ch. 195, § 6.

60-1-25.1. Interstate common-pool wagering authorized. (Effective until July 1, 2000.)

A. Subject to the Interstate Horseracing Act, 15 U.S.C.A. Sections 3001 et seq. (1978), the state racing commission may permit a licensed New Mexico racetrack to participate in interstate common pools. All provisions of the Horse Racing Act [this article] that govern pari-mutuel betting apply to pari-mutuel betting in interstate common pools except as otherwise provided in this section.
B. Subject to prior approval of the state racing commission, the following provisions apply when a licensed New Mexico racetrack participates in interstate common pools on a horse race that originates outside of New Mexico:
(1) the licensee may combine its pari-mutuel pools with comparable pari-mutuel pools at the sending racetrack and other locations. The types of wagering, takeout, distribution of winnings and rules of racing in effect for pari-mutuel pools at the sending racetrack shall govern wagers placed in this state and merged into the interstate common pool. Breakage for interstate common pools shall be calculated in accordance with the rules governing the sending racetrack and shall be distributed in a manner agreed upon by the licensed New Mexico racetrack and the sending racetrack;
(2) with the concurrence of the sending racetrack, an interstate common pool that excludes the sending racetrack may be formed among the licensee and other locations outside the state where the sending racetrack is located. When such an interstate common pool is formed, the commission may approve types of wagering, takeout, distribution of winnings, rules of racing and calculation of breakage that are different than those that would otherwise be in effect in New Mexico, provided that they are applied consistently to all persons in the interstate common pool;
(3) the licensee may deduct from retainage resulting from an interstate common pool any reasonable fee paid to the person conducting the horse race for the privilege of conducting pari-mutuel wagering on the race and participating in the interstate common pool and for payment of costs incurred to transmit the broadcast of the race; and
(4) provisions of law or contract governing the distribution of pari-mutuel taxes, breeder or other awards and purses from the takeout of wagers placed in this state shall remain in effect for wagers placed in

interstate common pools; provided that if the commission approves an adjustment in the takeout rate, the distribution of the takeout within New Mexico shall be adjusted proportionately to reflect the adjustment in the takeout rate; and provided further that with the concurrence of the licensee and the organization representing a majority of the breeders, horsemen or other persons entitled to shares of the distribution, and subject to approval of the commission, the respective shares to breeder or other awards or purses may be modified.

C. Subject to prior approval of the state racing commission, the following provisions apply when a licensed New Mexico racetrack participates in interstate common pools on a horse race that originates at the licensee's racetrack:

(1) a licensee may permit one or more of its races to be utilized for pari-mutuel wagering at, and may transmit audio-visual signals of races the licensee conducts to, one or more locations outside New Mexico. The licensee may also permit pari-mutuel pools in other locations to be combined with the licensee's comparable pari-mutuel wagering pools or with wagering pools established in other jurisdictions. The commission may modify its rules and adopt separate rules for interstate common pools and their calculation of breakage;

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

(3) except as otherwise provided in this section, any provisions of law or contract governing the distribution of shares of the takeout as New Mexico pari-mutuel taxes, breeder or other awards and purses shall remain in effect for amounts wagered within this state in interstate common pools, provided that with the concurrence of the licensee and the organization representing a majority of the breeders, horsemen or other persons entitled to shares of the distribution, and subject to approval of the commission, the respective shares to breeder or other awards or purses may be modified; and

(4) with respect to the retainage on interstate common pooling received from a guest state by a licensee, the licensee shall allocate to the New Mexico horse breeder's association five percent of the daily retainage. Of the retainage remaining after the allocation to the New Mexico horse breeder's association, fifty percent shall be allocated to race purses and fifty percent shall be retained by the licensee.

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

E. The state racing commission is authorized to adopt rules and regulations necessary or appropriate to exercise its powers pursuant to this section.

F. For the purposes of this section:

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

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

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

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

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

History: Laws 1991, ch. 195, § 4.

60-1-26. Termination of agency life; delayed repeal. (Effective until July 1, 2000.)

The state racing commission is terminated on July 1, 1999 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The commission shall continue to operate according to the provisions of Chapter 60, Article 1 NMSA 1978 until July 1, 2000. Effective July 1, 2000, Chapter 60, Article 1 NMSA 1978 is repealed.

History: 1978 Comp., § 60-1-2.1, enacted by Laws 1987, ch. 333, § 3; 1993, ch. 83, § 2; 1993, ch. 300, § 4.

ARTICLE 2D. BICYCLE RACING

60-2D-13. License; refusal to issue.

The commission, using the procedures of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]:
A. when dealing with a general bicycle-racing license, shall refuse to issue a license if the applicant:
(1) as an individual or, if a partnership, joint venture or corporation, if any partner, joint venturer, officer or director has been convicted of any crime which if committed in New Mexico is or would have been a felony or of the violation of any law of the United States or of any state concerning gambling or racing or of any rule or regulation of this or any other racing commission; or
(2) fails to pay the required fees or any other payment required by the Bicycle Racing Act [60-2D-1 to 60-2D-18 NMSA 1978];
B. when dealing with a pari-mutuel bicycle-racing license, shall refuse to issue the license for the reasons given in Subsection A of this section or, in addition, if the applicant:
(1) is not a bona-fide resident of New Mexico;
(2) is a foreign corporation;
(3) is a corporation and does not have a provision in its charter that none of the voting stock of the corporation shall be sold, mortgaged or otherwise pledged or transferred without ten days' prior written notice to the commission;
(4) is a corporation any of the voting stock of which is held for an undisclosed principal, unless the corporation is listed on a national stock exchange and the named stockholder is a recognized nominee; or
(5) refuses to agree that he will not thereafter sell, mortgage or otherwise pledge or dispose of any of the assets listed and described on the application for license without giving the commission ten days' written notice;
C. when dealing with a general bicycle-racing license, may refuse to issue the license if the applicant makes any false or fraudulent statement of a material nature in the application; or
D. when dealing with a pari-mutuel bicycle-racing license, may refuse to issue the license for the reason given in Subsection C of this section or if:
(1) the financial standing of the applicant and his ability or, if a partnership, joint venture or corporation, the financial standing of the partnership, joint venture or corporation or the ability of the partners, joint venturers, officers or directors of the corporation are such that in the opinion of the commission it is not in the best interest of the state to grant the license;
(2) the sentiments of the residents of the area and the county in which it is proposed to conduct the bicycle-racing meet are against the license; or
(3) for any other reason it is not in the best interest of the state, the racing industry and the area and county in which it is proposed to conduct the bicycle-racing meets to grant the license.
History: Laws 1991, ch. 233, § 13.

60-2D-14. Revocation and suspension.

The commission, using the procedures of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]:
A. when dealing with a general bicycle-racing license, may revoke or suspend the license if the licensee:
(1) as an individual or, if a partnership, joint venture or corporation, if any partner, joint venturer, officer or director has been convicted of any crime which if committed in New Mexico is or would have been a felony or of the violation of any law of the United States or of any state concerning gambling or racing or of any rule or regulation of this or any other racing commission; or
(2) has made any false or fraudulent statement of a material nature in his application; or
B. when dealing with a pari-mutuel bicycle-racing license, may revoke or suspend the license for any reason given in Subsection A of this section or if the licensee:
(1) incorporates as a foreign corporation;
(2) loses his residence in New Mexico;
(3) is a corporation and amends its charter to allow its voting stock to be sold, mortgaged or otherwise

pledged or transferred without ten days' prior written notice to the commission;
(4) is a corporation and sells, mortgages or otherwise pledges or transfers any of the voting stock of the corporation without ten days' prior written notice to the commission;
(5) is a corporation and allows any of its voting stock to be held for an undisclosed principal, unless the corporation is listed on a national stock exchange and the named stockholder is a recognized nominee; or
(6) sells, mortgages or otherwise pledges or disposes of any of the assets listed and described on the application for license without approval of the commission.
History: Laws 1991, ch. 233, § 14.

60-2D-15. Pari-mutuel wagering; breakage; uncashed tickets.

A. A pari-mutuel bicycle-racing licensee may conduct pari-mutuel wagering. In the conduct of such wagering, all breakage shall be split equally between the state and the licensee. Breakage shall be those odd cents remaining after paying winning ticket holders a minimum of ten cents ($.10) for each one dollar ($1.00) wagered. If during any bicycle-racing meet conducted under the Bicycle Racing Act [60-2D-1 to 60-2D-18 NMSA 1978] there are underpayments of the amount actually due to the wagerers, the amount of the excess of such underpayments, over and above overpayments to wagerers on the expiration of thirty days after the end of the meet, shall be paid to the state treasurer. Uncashed tickets may be presented to the licensee for payment at any time.
B. If a governmental agency imposes a levy on the licensee of a tax on the money wagered and upon its receipts, the licensee may collect, in addition to the percentage and breakage allowed in this section, the amount of the tax so levied. The tax and breakage and license fees provided in the Bicycle Racing Act shall be in lieu of all other license and excise taxes levied by the state or any of its political subdivisions for the privilege of conducting bicycle-racing meets licensed under the Bicycle Racing Act.
History: Laws 1991, ch. 233, § 15.

60-2D-16. Pari-mutuel wagering; taxes.

Each licensee holding a pari-mutuel bicycle-racing license shall withhold fifteen percent from the pari-mutuel bicycle-racing wagers made and pay daily:
A. thirteen percent of the gross receipts of all pari-mutuel bicycle-racing wagers at a meet to the state treasurer, which shall be deposited in the general fund; and
B. two percent of the gross receipts of all pari-mutuel bicycle-racing wagers made at a meet to the county treasurer of the county in which the meet is held.
These amounts shall constitute the "bicycle-racing pari-mutuel tax".
History: Laws 1991, ch. 233, § 16.

60-2D-17. Violations.

It is unlawful:
A. for any licensee or any trainer of any person licensed to enter any racing contest supervised by the commission to fail to comply with all rules, regulations and orders issued by the commission;
B. for any person to participate except as a spectator in any racing contest supervised by the commission without first obtaining the required license;
C. for any person to hold a bicycle-racing meet with pari-mutuel wagering without obtaining the required license;
D. for any person holding or participating in any racing contest supervised by the commission to fail to inform the commission or its employees of any violation of any law, rule, regulation or order of the commission;
E. for any licensee to permit any person who has not reached his twenty-first birthday to wager at a bicycle-racing meet;
F. to conduct pool-selling bookmaking or to conduct handbooks or to bet or wager on any bicycle-racing meet licensed by the commission, other than by the pari-mutuel method; or
G. for any pari-mutuel bicycle-racing licensee to compute breaks in the pari-mutuel system other than at ten cents ($.10).

ARTICLE 2E. GAMING CONTROL

60-2E-1. Short title.

Sections 3 through 63 [/sdCGI-BIN/om_isapi.dll?clientID=2141&infobase=nmsa1978.NFO&jump=60-2e-1&softpage=Document - JUMPDEST_60-2e-160-2E-1 to 60-2E-61 NMSA 1978] of this act may be cited as the "Gaming Control Act".
History: Laws 1997, ch. 190, § 3.

60-2E-2. Policy.

It is the state's policy on gaming that:
A. limited gaming activities should be allowed in the state if those activities are strictly regulated to ensure honest and competitive gaming that is free from criminal and corruptive elements and influences; and
B. the holder of any license issued by the state in connection with the regulation of gaming activities has a revocable privilege only and has no property right or vested interest in the license.
History: Laws 1997, ch. 190, § 4.

60-2E-3. Definitions.

As used in the Gaming Control Act [/sdCGI-BIN/om_isapi.dll?clientID=2141&infobase=nmsa1978.NFO&jump=60-2e-1&softpage=Document - JUMPDEST_60-2e-160-2E-1 to 60-2E-61 NMSA 1978]:
A. "affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a specified person;
B. "affiliated company" means a company that:
(1) controls, is controlled by or is under common control with a company licensee; and
(2) is involved in gaming activities or involved in the ownership of property on which gaming is conducted;
C. "applicant" means a person who has applied for a license or for approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the Gaming Control Act;
D. "application" means a request for the issuance of a license or for approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the Gaming Control Act, but "application" does not include a supplemental form or information that may be required with the application;
E. "associated equipment" means equipment or a mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming;
F. "board" means the gaming control board;
G. "certification" means a notice of approval by the board of a person required to be certified by the board;
H. "certified technician" means a person certified by a manufacturer licensee to repair and service gaming devices, but who is prohibited from programming gaming devices;
I. "company" means a corporation, partnership, limited partnership, trust, association, joint stock company, joint venture, limited liability company or other form of business organization that is not a natural person;
J. "distributor" means a person who supplies gaming devices to a gaming operator but does not manufacture gaming devices;
K. "equity security" means an interest in a company that is evidenced by:
(1) voting stock or similar security;
(2) a security convertible into voting stock or similar security, with or without consideration, or a security carrying a warrant or right to subscribe to or purchase voting stock or similar security;
(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 pursuant to Section 9 [60-2E-7 NMSA 1978] of the Gaming Control Act;
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 a game for play;
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 game; "gaming device" does not include a system or device that affects a game solely by stopping its operation so that the outcome remains undetermined;
R. "gaming employee" means a person connected directly with a gaming activity; "gaming employee" does not include:
(1) bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages;
(2) secretarial or janitorial personnel;
(3) stage, sound and light technicians; or
(4) other nongaming personnel;
S. "gaming establishment" means the premises on or in which gaming is conducted;
T. "gaming machine" means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate a game, whether the payoff is made automatically from the machine or in any other manner;
U. "gaming operator" means a person who conducts gaming;
V. "holding company" means a company that directly or indirectly owns or has the power or right to control a company that is an applicant or licensee, but a company that does not have a beneficial ownership of more than ten percent of the equity securities of a publicly traded corporation is not a holding company;
W. "immediate family" means natural persons who are related to a specified natural person by affinity or consanguinity in the first through the third degree;
X. "independent administrator" means a person who administers an annuity, who is not associated in any manner with the gaming operator licensee for which the annuity was purchased and is in no way associated with the person who will be receiving the annuity;
Y. "institutional investor" means a state or federal government pension plan or a person that meets the requirements of a qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, and is:
(1) a bank as defined in Section 3(a)(6) of the federal Securities Exchange Act of 1934;
(2) an insurance company as defined in Section 2(a)(17) of the federal Investment Company Act of 1940;
(3) an investment company registered under Section 8 of the federal Investment Company Act of 1940;
(4) an investment adviser registered under Section 203 of the federal Investment Advisers Act of 1940;
(5) collective trust funds as defined in Section 3(c)(11) of the federal Investment Company Act of 1940;
(6) an employee benefit plan or pension fund that is subject to the federal Employee Retirement Income Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the board; or
(7) a group comprised entirely of persons specified in Paragraphs (1) through (6) of this subsection;
Z. "intermediary company" means a company that:
(1) is a holding company with respect to a company that is an applicant or licensee; and
(2) is a subsidiary with respect to any holding company;
AA. "key executive" means an executive of a licensee or other person having the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or whose compensation exceeds an amount established by the board in a regulation;
BB. "license" means an authorization required by the board for engaging in gaming activities;
CC. "licensee" means a person to whom a valid license has been issued;
DD. "manufacturer" means a person who manufactures, fabricates, assembles, produces, programs or makes modifications to any gaming device for use or play in New Mexico or for sale, lease or distribution outside New Mexico from any location within New Mexico;
EE. "net take" means the total of the following, less the total of all cash paid out as losses to winning

patrons and those amounts paid to purchase annuities to fund losses paid to winning patrons over several years by independent administrators:
(1) cash received from patrons for playing a game;
(2) cash received in payment for credit extended by a licensee to a patron for playing a game; and
(3) compensation received for conducting a game in which the licensee is not a party to a wager;
FF. "nonprofit organization" means:
(1) a bona fide chartered or incorporated branch, lodge, order or association, in existence in New Mexico prior to January 1, 1997, of a fraternal organization that is described in Section 501(c)(8) or (10) of the federal Internal Revenue Code of 1986 and that is exempt from federal income taxation pursuant to Section 501(a) of that code; or
(2) a bona fide chartered or incorporated post, auxiliary unit or society of, or a trust or foundation for the post or auxiliary unit, in existence in New Mexico prior to January 1, 1997, of a veterans' organization that is described in Section 501(c)(19) or (23) of the federal Internal Revenue Code of 1986 and that is exempt from federal income taxation pursuant to Section 501(a) of that code;
GG. "person" means a legal entity;
HH. "premises" means land, together with all buildings, improvements and personal property located on the land;
II. "progressive jackpot" means a prize that increases over time or as gaming machines that are linked to a progressive system are played and upon conditions established by the board may be paid by an annuity;
JJ. "progressive system" means one or more gaming machines linked to one or more common progressive jackpots;
KK. "publicly traded corporation" means a corporation that:
(1) has one or more classes of securities registered pursuant to the securities laws of the United States or New Mexico;
(2) is an issuer subject to the securities laws of the United States or New Mexico; or
(3) has one or more classes of securities registered or is an issuer pursuant to applicable foreign laws that the board finds provide protection for institutional investors that is comparable to or greater than the stricter of the securities laws of the United States or New Mexico;
LL. "registration" means a board action that authorizes a company to be a holding company with respect to a company that holds or applies for a license or that relates to other persons required to be registered pursuant to the Gaming Control Act;
MM. "subsidiary" means a company, all or a part of whose outstanding equity securities are owned, subject to a power or right of control or held, with power to vote, by a holding company or intermediary company; and
NN. "work permit" means a card, certificate or permit issued by the board, whether denominated as a work permit, registration card or otherwise, authorizing the employment of the holder as a gaming employee.
History: Laws 1997, ch. 190, § 5.

60-2E-4. Limited gaming activity permitted.

Gaming activity is permitted in New Mexico only if it is conducted in compliance with and pursuant to:
A. the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978]; or
B. a state or federal law other than the Gaming Control Act that expressly permits the activity or exempts it from the application of the state criminal law, or both.
History: Laws 1997, ch. 190, § 6.

60-2E-5. Gaming control board created.

A. The "gaming control board" is created and consists of five members. Three members are appointed by the governor with the advice and consent of the senate, and two members are ex officio: the chairman of the state racing commission and the chairman of the board of the New Mexico lottery authority. All members of the board shall be residents of New Mexico and citizens of the United States. One appointed member of the board shall have a minimum of five years of previous employment in a supervisory and administrative position in a law enforcement agency; one appointed member of the board shall be a certified public accountant in New Mexico who has had at least five years of experience in public

accountancy; and one appointed member of the board shall be an attorney who has been admitted to practice before the supreme court of New Mexico.
B. The appointed members of the board shall be appointed for terms of five years, except, of the members who are first appointed, the member with law enforcement experience shall be appointed for a term of five years; the member who is a certified public accountant shall be appointed for a term of four years; and the member who is an attorney shall be appointed for a term of three years. Thereafter, all members shall be appointed for terms of five years. No person shall serve as a board member for more than two consecutive terms or ten years total.
C. No person appointed to the board may be employed in any other capacity or shall in any manner receive compensation for services rendered to any person or entity other than the board while a member of the board.
D. A vacancy on the board of an appointed member shall be filled within thirty days by the governor with the advice and consent of the senate for the unexpired portion of the term in which the vacancy occurs. A person appointed to fill a vacancy shall meet all qualification requirements of the office established in this section.
E. The governor shall choose a chairman annually from the board's appointed membership.
F. No more than three members of the board shall be from the same political party.
G. The appointed members of the board shall be full-time state officials and shall receive a salary set by the governor.
H. The department of public safety shall conduct background investigations of all members of the board prior to confirmation by the senate. To assist the department in the background investigation, a prospective board member shall furnish a disclosure statement to the department on a form provided by the department containing that information deemed by the department as necessary for completion of a detailed and thorough background investigation. The required information shall include at least:
(1) a full set of fingerprints made by a law enforcement agency on forms supplied by the department;
(2) complete information and details with respect to the prospective board member's antecedents, habits, immediate family, character, criminal record, business activities, financial affairs and business associates covering at least a ten-year period immediately preceding the date of submitting the disclosure statement;
(3) complete disclosure of any equity interest held by the prospective board member or a member of his immediate family in a company that is an applicant or licensee or an affiliate, affiliated company, intermediary company or holding company in respect to an applicant or licensee; and
(4) the names and addresses of members of the immediate family of the prospective board member.
I. No person may be appointed or confirmed as a member of the board if that person or member of his immediate family holds an equity interest in a company that is an applicant or licensee or an affiliate, affiliated company, intermediary company or holding company in respect to an applicant or licensee.
J. A prospective board member shall provide assistance and information requested by the department of public safety or the governor and shall cooperate in any inquiry or investigation of the prospective board member's fitness or qualifications to hold the office to which he is appointed. The senate shall not confirm a prospective board member if it has reasonable cause to believe that the prospective board member has:
(1) knowingly misrepresented or omitted a material fact required in a disclosure statement;
(2) been convicted of a felony, a gaming related offense or a crime involving fraud, theft or moral turpitude within ten years immediately preceding the date of submitting a disclosure statement required pursuant to the provisions of Subsection H of this section;
(3) exhibited a history of willful disregard for the gaming laws of this or any other state or the United States; or
(4) had a permit or license issued pursuant to the gaming laws of this or any other state or the United States permanently suspended or revoked for cause.
K. At the time of taking office, each board member shall file with the secretary of state a sworn statement that he is not disqualified under the provisions of Subsection I of this section.
History: Laws 1997, ch. 190, § 7.

60-2E-6. Board; meetings; quorum; records.

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

B. Written notice of the time and place of each board meeting shall be given to each member of the board at least ten days prior to the meeting.
C. Meetings of the board shall be open and public in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978], except that the board may close a meeting to hear confidential security and investigative information and other information made confidential by the provisions of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978].
D. All proceedings of the board shall be recorded by audiotape or other equivalent verbatim audio recording device.
E. The chairman of the board, the executive director or a majority of the members of the board then in office may call a special meeting of the board upon at least five days' prior written notice to all members of the board and the executive director.
History: Laws 1997, ch. 190, § 8.

60-2E-7. Board's powers and duties.

A. The board shall implement the state's policy on gaming consistent with the provisions of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978]. It has the duty to fulfill all responsibilities assigned to it pursuant to that act, and it has all authority necessary to carry out those responsibilities. It may delegate authority to the executive director, but it retains accountability. The board is an adjunct agency.
B. The board shall:
(1) employ the executive director;
(2) make the final decision on issuance, denial, suspension and revocation of all licenses pursuant to and consistent with the provisions of the Gaming Control Act;
(3) develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act;
(4) conduct itself, or employ a hearing officer to conduct, all hearings required by the provisions of the Gaming Control Act and other hearings it deems appropriate to fulfill its responsibilities;
(5) meet at least once each month; and
(6) prepare and submit an annual report in December of each year to the governor and the legislature, covering activities of the board in the most recently completed fiscal year, a summary of gaming activities in the state and any recommended changes in or additions to the laws relating to gaming in the state.
C. The board may:
(1) impose civil fines not to exceed twenty-five thousand dollars ($25,000) for the first violation and fifty thousand dollars ($50,000) for subsequent violations of any prohibitory provision of the Gaming Control Act or any prohibitory provision of a regulation adopted pursuant to that act;
(2) conduct investigations;
(3) subpoena persons and documents to compel access to or the production of documents and records, including books and memoranda, in the custody or control of any licensee;
(4) compel the appearance of employees of a licensee or persons for the purpose of ascertaining compliance with provisions of the Gaming Control Act or a regulation adopted pursuant to its provisions;
(5) administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition were pursuant to discovery rules in a civil action in the district court;
(6) sue and be sued subject to the limitations of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978];
(7) contract for the provision of goods and services necessary to carry out its responsibilities;
(8) conduct audits of applicants, licensees and persons affiliated with licensees;
(9) inspect, examine, photocopy and audit all documents and records of an applicant or licensee relevant to his gaming activities in the presence of the applicant or licensee or his agent;
(10) require verification of income and all other matters pertinent to the gaming activities of an applicant or licensee affecting the enforcement of any provision of the Gaming Control Act;
(11) inspect all places where gaming activities are conducted and inspect all property connected with gaming in those places;
(12) summarily seize, remove and impound from places inspected any gaming devices, property connected with gaming, documents or records for the purpose of examination or inspection;
(13) inspect, examine, photocopy and audit all documents and records of any affiliate of an applicant or licensee who the board knows or reasonably suspects is involved in the financing, operation or

management of the applicant or licensee. The inspection, examination, photocopying and audit shall be in the presence of a representative of the affiliate or its agent when practicable; and
(14) except for the powers specified in Paragraphs (1) and (4) of this subsection, carry out all or part of the foregoing powers and activities through the executive director.
D. The board shall monitor all activity authorized in an Indian Gaming Compact [11-13-1 NMSA 1978] between the state and an Indian nation, tribe or pueblo. The board shall appoint the state gaming representative for the purposes of the compact.
History: Laws 1997, ch. 190, § 9.

60-2E-8. Board regulations; discretionary regulations; procedure; required provisions.

A. The board may adopt any regulation:
(1) consistent with the provisions of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978]; and
(2) it decides is necessary to implement the provisions of the Gaming Control Act.
B. No regulation shall be adopted, amended or repealed without a public hearing on the proposed action before the board or a hearing officer designated by it. The public hearing shall be held in Santa Fe. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, amendment or repeal may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All regulations and actions taken on regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].
C. The board shall adopt regulations:
(1) prescribing the method and form of application to be followed by an applicant;
(2) prescribing the information to be furnished by an applicant or licensee concerning his antecedents, immediate family, habits, character, associates, criminal record, business activities and financial affairs, past or present;
(3) prescribing the manner and procedure of all hearings conducted by the board or a hearing officer;
(4) prescribing the manner and method of collection and payment of fees;
(5) prescribing the manner and method of the issuance of licenses, permits, registrations, certificates and other actions of the board not elsewhere prescribed in the Gaming Control Act;
(6) defining the area, games and gaming devices allowed and the methods of operation of the games and gaming devices for authorized gaming;
(7) prescribing under what conditions the nonpayment of winnings is grounds for suspension or revocation of a license of a gaming operator;
(8) governing the manufacture, sale, distribution, repair and servicing of gaming devices;
(9) prescribing accounting procedures, security, collection and verification procedures required of licensees and matters regarding financial responsibility of licensees;
(10) prescribing what shall be considered to be an unsuitable method of operating gaming activities;
(11) restricting access to confidential information obtained pursuant to the provisions of the Gaming Control Act and ensuring that the confidentiality of that information is maintained and protected;
(12) prescribing financial reporting and internal control requirements for licensees;
(13) prescribing the manner in which winnings, compensation from gaming activities and net take shall be computed and reported by a gaming operator licensee;
(14) prescribing the frequency of and the matters to be contained in audits of and periodic financial reports from a gaming operator licensee consistent with standards prescribed by the board;
(15) prescribing the procedures to be followed by a gaming operator licensee for the exclusion of persons from gaming establishments;
(16) establishing criteria and conditions for the operation of progressive systems;
(17) establishing criteria and conditions for approval of procurement by the board of personal property valued in excess of twenty thousand dollars ($20,000), including background investigation requirements for a person submitting a bid or proposal; and
(18) establishing an applicant fee schedule for processing applications that is based on costs of the application review incurred by the board whether directly or through payment by the board for costs

charged for investigations of applicants by state departments and agencies other than the board, which regulation shall set a maximum fee of one hundred thousand dollars ($100,000).
History: Laws 1997, ch. 190, § 10.

60-2E-9. Executive director; employment; qualifications.

A. The executive director shall be employed by, report directly to and serve at the pleasure of the board.
B. The executive director shall have had at least five years of responsible supervisory administrative experience in a governmental gaming regulatory agency.
C. The executive director shall receive an annual salary to be set by the board, but not to exceed eighty-five thousand dollars ($85,000) per year.
History: Laws 1997, ch. 190, § 11.

60-2E-10. Executive director; powers; duties.

A. The executive director shall implement the policies of the board.
B. The executive director shall employ all personnel who work for the board. The employees shall be covered employees pursuant to the provisions of the Personnel Act. Among those personnel he shall employ and designate an appropriate number of individuals as law enforcement officers subject to proper certification pursuant to the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978].
C. The executive director shall establish organizational units he determines are appropriate to administer the provisions of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978].
D. The executive director:
(1) may delegate authority to subordinates as he deems necessary and appropriate, clearly delineating the delegated authority and the limitations on it, if any;
(2) shall take administrative action by issuing orders and instructions consistent with the Gaming Control Act and regulations of the board to assure implementation of and compliance with the provisions of that act and those regulations;
(3) may conduct research and studies that will improve the operations of the board and the provision of services to the citizens of the state;
(4) may provide courses of instruction and practical training for employees of the board and other persons involved in the activities regulated by the board with the objectives of improving operations of the board and achieving compliance with the law and regulations;
(5) shall prepare an annual budget for the board and submit it to the board for approval; and
(6) shall make recommendations to the board of proposed regulations and any legislative changes needed to provide better administration of the Gaming Control Act and fair and efficient regulation of gaming activities in the state.
History: Laws 1997, ch. 190, § 12.

60-2E-11. Investigation of executive director candidates and employees.

A. A person who is under consideration in the final selection process for appointment as the executive director shall file a disclosure statement pursuant to the requirements of this section, and the board shall not make an appointment of a person as executive director until a background investigation is completed by the department of public safety and a report is made to the board.
B. A person who has reached the final selection process for employment by the executive director shall file a disclosure statement pursuant to the requirements of this section if the executive director or the board has directed the person do so. The person shall not be further considered for employment until a background investigation is completed by the department of public safety and a report is made to the executive director.
C. Forms for the disclosure statements required by this section shall be developed by the board in cooperation with the department of public safety. At least the following information shall be required of a person submitting a statement:
(1) a full set of fingerprints made by a law enforcement agency on forms supplied by the board;
(2) complete information and details with respect to the person's antecedents, habits, immediate family,

character, criminal record, business activities and business associates, covering at least a ten- year period immediately preceding the date of submitting the disclosure statement; and
(3) a complete description of any equity interest held in a business connected with the gaming industry.
D. In preparing an investigative report, the department of public safety may request and receive criminal history information from the federal bureau of investigation or any other law enforcement agency or organization. The department of public safety shall maintain confidentiality regarding information received from a law enforcement agency that may be imposed by the agency as a condition for providing the information to the department.
E. A person required to file a disclosure statement shall provide any assistance or information requested by the department of public safety or the board and shall cooperate in any inquiry or investigation.
F. If information required to be included in a disclosure statement changes or if information is added after the statement is filed, the person required to file it shall provide that information in writing to the person requesting the investigation. The supplemental information shall be provided within thirty days after the change or addition.
G. The board shall not appoint a person as executive director, and the executive director shall not employ a person, if the board or the executive director has reasonable cause to believe that the person has:
(1) knowingly misrepresented or omitted a material fact required in a disclosure statement;
(2) been convicted of a felony, a gaming related offense or a crime involving fraud, theft or moral turpitude within ten years immediately preceding the date of submitting a disclosure statement required pursuant to this section;
(3) exhibited a history of willful disregard for the gaming laws of this or any other state or the United States; or
(4) had a permit or license issued pursuant to the gaming laws of this or any other state or the United States permanently suspended or revoked for cause.
H. Both the board and the executive director may exercise absolute discretion in exercising their respective appointing and employing powers.
History: Laws 1997, ch. 190, § 13.

60-2E-12. Conflicts of interest; board; executive director.

A. In addition to all other provisions of New Mexico law regarding conflicts of interest of state officials and employees, a member of the board, the executive director, or a person in the immediate family of or residing in the household of any of the foregoing persons, shall not:
(1) directly or indirectly, as a proprietor or as a member, stockholder, director or officer of a company, have an interest in a business engaged in gaming activities in this or another jurisdiction; or
(2) accept or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality or service having an aggregate value of one hundred dollars ($100) or more in any calendar year from a licensee or applicant.
B. If a member of the board, the executive director or a person in the immediate family of or residing in the household of a member of the board or the executive director violates a provision of this section, the member of the board or executive director shall be removed from office. A board member shall be removed by the governor, and the executive director shall be removed from his position by the board.
History: Laws 1997, ch. 190, § 14.

60-2E-13. Activities requiring licensing.

A. A person shall not conduct gaming unless he is licensed as a gaming operator.
B. A person shall not sell, supply or distribute any gaming device or associated equipment for use or play in this state or for use or play outside of this state from a location within this state unless he is licensed as a distributor or manufacturer, but a gaming operator licensee may sell or trade in a gaming device or associated equipment to a gaming operator licensee, distributor licensee or manufacturer licensee.
C. A person shall not manufacture, fabricate, assemble, program or make modifications to a gaming device or associated equipment for use or play in this state or for use or play outside of this state from any location within this state unless he is a manufacturer licensee. A manufacturer licensee may sell, supply or distribute only the gaming devices or associated equipment that he manufactures, fabricates, assembles, programs or

modifies.
D. A gaming operator licensee or a person other than a manufacturer licensee or distributor licensee shall not possess or control a place where there is an unlicensed gaming machine. Any unlicensed gaming machine, except one in the possession of a licensee while awaiting transfer to a gaming operator licensee for licensure of the machine, is subject to forfeiture and confiscation by any law enforcement agency or peace officer.
E. A person shall not service or repair a gaming device or associated equipment unless he is licensed as a manufacturer, is employed by a manufacturer licensee or is a technician certified by a manufacturer and employed by a distributor licensee or a gaming operator licensee.
F. A person shall not engage in any activity for which the board requires a license or permit without obtaining the license or permit.
G. Except as provided in Subsection B of this section, a person shall not purchase, lease or acquire possession of a gaming device or associated equipment except from a licensed distributor or manufacturer.
H. A distributor licensee may receive a percentage of the amount wagered, the net take or other measure related to the operation of a gaming machine as a payment pursuant to a lease or other arrangement for furnishing a gaming machine, but the board shall adopt a regulation setting the maximum allowable percentage.
History: Laws 1997, ch. 190, § 15.

60-2E-14. Licensure; application.

A. The board shall establish and issue the following categories of licenses:
(1) manufacturer;
(2) distributor;
(3) gaming operator; and
(4) gaming machine.
B. The board shall issue certifications of findings of suitability for key executives and other persons for whom certification is required.
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 [60-2E-1 to 60-2E-61 NMSA 1978]. 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.
F. All licenses issued by the board pursuant to the provisions of this section shall be reviewed for renewal annually unless revoked, suspended, canceled or terminated.
G. A license shall not be transferred or assigned.
H. The application for a license shall include:
(1) the name of the applicant;
(2) the location of the proposed operation;
(3) the gaming devices to be operated, manufactured, distributed or serviced;
(4) the names of all persons having a direct or indirect interest in the business of the applicant and the nature of such interest; and
(5) such other information and details as the board may require.
I. The board shall furnish to the applicant supplemental forms that the applicant shall complete and file with the application. Such supplemental forms shall require complete information and details with respect to the applicant's antecedents, habits, immediate family, character, criminal record, business activities, financial affairs and business associates, covering at least a ten-year period immediately preceding the date of filing of the application.
History: Laws 1997, ch. 190, § 16.

60-2E-15. License, certification and work permit fees.

A. License and other fees shall be established by board regulation but shall not exceed the following amounts:
(1) manufacturer's license, twenty thousand dollars ($20,000) for the initial license and five thousand dollars ($5,000) for annual renewal;
(2) distributor's license, ten thousand dollars ($10,000) for the initial license and one thousand dollars ($1,000) for annual renewal;
(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;
(4) gaming operator's license for a nonprofit organization, one thousand dollars ($1,000) for the initial license and two hundred dollars ($200) for annual renewal;
(5) for each separate gaming machine licensed to a person holding an operator's license, five hundred dollars ($500) for the initial license and one hundred dollars ($100) for annual renewal; and
(6) work permit, one hundred dollars ($100) annually.
B. The board shall establish the fee for certifications or other actions by regulation, but no fee established by the board shall exceed one thousand dollars ($1,000), except for fees established pursuant to Paragraph (18) of Subsection C of Section 10 [60-2E-8 NMSA 1978] of the Gaming Control Act.
C. All license, certification or work permit fees shall be paid to the board at the time and in the manner established by regulations of the board.
History: Laws 1997, ch. 190, § 17.

60-2E-16. Action by board on applications.

A. A person that the board determines is qualified to receive a license pursuant to the provisions of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978] may be issued a license. The burden of proving qualifications is on the applicant.
B. A license shall not be issued unless the board is satisfied that the applicant is:
(1) a person of good moral character, honesty and integrity;
(2) a person whose prior activities, criminal record, reputation, habits and associations do not pose a threat to the public interest or to the effective regulation and control of gaming or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; and
(3) in all other respects qualified to be licensed consistent with the laws of this state.
C. A license shall not be issued unless the applicant has satisfied the board that:
(1) the applicant has adequate business probity, competence and experience in business and gaming;
(2) the proposed financing of the applicant is adequate for the nature of the proposed license and from a suitable source; any lender or other source of money or credit that the board finds does not meet the standards set forth in Subsection B of this section shall be deemed unsuitable; and
(3) the applicant is sufficiently capitalized under standards set by the board to conduct the business covered by the license.
D. An application to receive a license, certification or work permit constitutes a request for a determination of the applicant's general moral character, integrity and ability to participate or engage in or be associated with gaming. Any written or oral statement made in the course of an official proceeding of the board or by a witness testifying under oath that is relevant to the purpose of the proceeding is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.
E. The board shall not issue a license or certification to an applicant who has been denied a license or certification in this state or another state, who has had a certification, permit or license issued pursuant to the gaming laws of a state or the United States permanently suspended or revoked for cause or who is currently under suspension or subject to any other limiting action in this state or another state involving gaming activities or licensure for gaming activities.
F. The board shall investigate the qualifications of each applicant before a license, certification or work permit is issued by the board and shall continue to observe and monitor the conduct of all licensees, work permit holders, persons certified as being suitable and the persons having a material involvement directly or indirectly with a licensee.
G. The board has the authority to deny an application or limit, condition, restrict, revoke or suspend a

license, certification or permit for any cause.
H. After issuance, a license, certification or permit shall continue in effect upon proper payment of the initial and renewal fees, subject to the power of the board to revoke, suspend, condition or limit licenses, certifications and permits.
I. The board has full and absolute power and authority to deny an application for any cause it deems reasonable. If an application is denied, the board shall prepare and file its written decision on which its order denying the application is based.
History: Laws 1997, ch. 190, § 18.

60-2E-17. Investigation for licenses, certifications and permits.

The board shall initiate an investigation of the applicant within thirty days after an application is filed and supplemental information that the board may require is received.
History: Laws 1997, ch. 190, § 19.

60-2E-18. Eligibility requirements for companies.

In order to be eligible to receive a license, a company shall:
A. be incorporated or otherwise organized and in good standing in this state or incorporated or otherwise organized in another state, qualified to do business in this state and in good standing in this state and in the state of incorporation;
B. comply with all of the requirements of the laws of this state pertaining to the company;
C. maintain a ledger in the principal office of the company in this state, which shall:
(1) at all times reflect the ownership according to company records of every class of security issued by the company; and
(2) be available for inspection by the board at all reasonable times without notice; and
D. file notice of all changes of ownership of all classes of securities issued by the company with the board within thirty days of the change.
History: Laws 1997, ch. 190, § 20.

60-2E-19. Registration with board by company applicants; required information.

A company applicant shall provide the following information to the board on forms provided by the board:
A. the organization, financial structure and nature of the business to be operated, including the names and personal histories of all officers, directors and key executives;
B. the rights and privileges acquired by the holders of different classes of authorized securities;
C. the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest evidenced by a security instrument pertaining to the proposed gaming operation or other licensed activity in this state and the name and address of the person who is servicing the loan, mortgage, trust deed, pledge or other indebtedness or security interest;
D. remuneration to persons, other than directors, officers and key executives, exceeding fifty thousand dollars ($50,000) per year;
E. bonus and profit-sharing arrangements within the company;
F. management and service contracts pertaining to the proposed gaming activity in this state;
G. balance sheets and profit and loss statements for at least the three preceding fiscal years, or, if the company has not been in business for a period of three years, balance sheets and profit and loss statements from the time of its commencement of business operations and projected for three years from the time of its commencement of business operations. All balance sheets and profit and loss statements shall be certified by independent certified public accountants; and
H. any further financial data that the board deems necessary or appropriate.
History: Laws 1997, ch. 190, § 21.

60-2E-20. Individual certification of officers, directors and other persons.

An officer, director, equity security holder of five percent or more, partner, general partner, limited partner, trustee or beneficiary of the company that holds or has applied for a license shall be certified individually, according to the provisions of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978], and if in the judgment of the board the public interest is served by requiring any or all of the company's key executives to be certified, the company shall require those persons to apply for certification. A person who is required to be certified pursuant to this section shall apply for certification within thirty days after becoming an officer, director, equity security holder of five percent or more, partner, general partner, limited partner of five percent or more, trustee, beneficiary or key executive. A person who is required to be certified pursuant to a decision of the board shall apply for certification within thirty days after the board so requests.

History: Laws 1997, ch. 190, § 22.

60-2E-21. Requirements if company is or becomes a subsidiary; investigations; restrictions on unsuitable persons; other requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

upon the terms and within the time period ordered by the board.
E. Beginning on the date when the board serves notice that a person has been found to be unsuitable pursuant to Subsection D of this section, it is unlawful for the unsuitable person to:
(1) receive any dividend or interest upon any securities held in the holding company or intermediary company, or any dividend, payment or distribution of any kind from the holding company or intermediary company;
(2) exercise, directly or indirectly or through a proxy, trustee or nominee, any voting right conferred by the securities or interest; or
(3) receive remuneration in any form from the licensee, or from any holding company or intermediary company with respect to that licensee, for services rendered or otherwise.
F. A holding company or intermediary company subject to the provisions of Subsection A of this section shall not make any public offering of any of its equity securities unless such public offering has been approved by the board.
G. This section does not apply to a holding company or intermediary company that is a publicly traded corporation, the stock of which is traded on recognized stock exchanges, which shall instead comply with the provisions of Section 24 [60-2E-22 NMSA 1978] of the Gaming Control Act.
History: Laws 1997, ch. 190, § 23.

60-2E-22. Registration and certification of publicly traded corporations.

A. If a company applicant or company licensee is or becomes a publicly traded corporation, it shall register with the board and provide the following information:
(1) as of the date the company became a publicly traded corporation, and on any later date when the information changes, the names of all stockholders of record who hold five percent or more of the outstanding shares of any class of equity securities issued by the publicly traded corporation;
(2) the names of all officers within thirty days of their respective appointments;
(3) the names of all directors within thirty days of their respective elections or appointments;
(4) the organization, financial structure and nature of the businesses the publicly traded corporation operates;
(5) the terms, position, rights and privileges of the different classes of securities outstanding as of the date the company became a publicly traded corporation;
(6) the terms on which the company's securities were issued during the three years preceding the date on which the company became a publicly traded corporation and the terms on which the publicly traded corporation's securities are to be offered to the public as of the date the company became a publicly traded corporation;
(7) the terms and conditions of all outstanding indebtedness and evidence of security pertaining directly or indirectly to the publicly traded corporation;
(8) remuneration exceeding fifty thousand dollars ($50,000) per year paid to persons other than directors, officers and key executives who are actively and directly engaged in the administration or supervision of the gaming activities of the publicly traded corporation;
(9) bonus and profit-sharing arrangements within the publicly traded corporation directly or indirectly relating to its gaming activities;
(10) management and service contracts of the corporation pertaining to its gaming activities;
(11) options existing or to be created pursuant to its equity securities;
(12) balance sheets and profit and loss statements, certified by independent certified public accountants, for not less than the three fiscal years preceding the date the company became a publicly traded corporation;
(13) any further financial statements deemed necessary or appropriate by the board; and
(14) a description of the publicly traded corporation's affiliated companies and intermediary companies and gaming licenses, permits and approvals held by those entities.
B. The board shall consider the following criteria in determining whether to certify a publicly traded corporation:
(1) the business history of the publicly traded corporation, including its record of financial stability, integrity and success of its gaming operations in other jurisdictions;
(2) the current business activities and interests of the applicant, as well as those of its officers, promoters, lenders and other sources of financing, or any other persons associated with it;

(3) the current financial structure of the publicly traded corporation as well as changes that could reasonably be expected to occur to its financial structure as a consequence of its proposed action;
(4) the present and proposed compensation arrangements between the publicly traded corporation and its directors, officers, key executives, securities holders, lenders or other sources of financing;
(5) the equity investment, commitment or contribution of present or prospective directors, key executives, investors, lenders or other sources of financing; and
(6) the dealings and arrangements, prospective or otherwise, between the publicly traded corporation and its investment bankers, promoters, finders or lenders and other sources of financing.
C. The board may issue a certification upon receipt of a proper application and consideration of the criteria set forth in Subsection B of this section if it finds that the certification would not be contrary to the public interest or the policy set forth in the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978].
History: Laws 1997, ch. 190, § 24.

60-2E-23. Finding of suitability required for directors, officers and key executives; removal from position if found unsuitable; suspension of suitability by board.

A. Each officer, director and key executive of a holding company, intermediary company or publicly traded corporation that the board determines is or is to become actively and directly engaged in the administration or supervision of, or any other significant involvement with, the activities of the subsidiary licensee or applicant shall apply for a finding of suitability.
B. If any officer, director or key executive of a holding company, intermediary company or publicly traded corporation required to be found suitable pursuant to Subsection A of this section fails to apply for a finding of suitability within thirty days after being requested to do so by the board, or is not found suitable by the board, or if his finding of suitability is revoked after appropriate findings by the board, the holding company, intermediary company or publicly traded corporation shall immediately remove that officer, director or key executive from any office or position in which the person is engaged in the administration or supervision of, or any other involvement with, the activities of the certified subsidiary until the person is thereafter found to be suitable. If the board suspends the finding of suitability of any officer, director or key executive, the holding company, intermediary company or publicly traded corporation shall immediately and for the duration of the suspension suspend that officer, director or key executive from performance of any duties in which he is actively and directly engaged in the administration or supervision of, or any other involvement with, the activities of the subsidiary licensee.
History: Laws 1997, ch. 190, § 25.

60-2E-24. Suitability of individuals acquiring beneficial ownership of voting security in publicly traded corporation; report of acquisition; application; prohibition.

A. Each person who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of five percent or more of any voting securities in a publicly traded corporation registered with the board may be required to be found suitable if the board has reason to believe that the acquisition of the ownership would otherwise be inconsistent with the declared policy of this state.
B. Each person who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of five percent or more of any class of voting securities of a publicly traded corporation certified by the board shall notify the board within ten days after acquiring such interest.
C. Each person who, individually or in association with others, acquires, directly or indirectly, the beneficial ownership of more than ten percent of any class of voting securities of a publicly traded corporation certified by the board shall apply to the board for a finding of suitability within thirty days after acquiring such interest.
D. Institutional investors that have been exempted from or have received a waiver of suitability requirements pursuant to regulations adopted by the board are not required to comply with this section.
E. Any person required by the board or by the provisions of this section to be found suitable shall apply for a finding of suitability within thirty days after the board requests that he do so.
F. Any person required by the board or the provisions of this section to be found suitable who subsequently is found unsuitable by the board shall not hold directly or indirectly the beneficial ownership of any security of a publicly traded corporation that is registered with the board beyond that period of time

prescribed by the board.
G. The board may, but is not required to, deem a person qualified to hold a license or be found suitable as required by this section if the person currently holds a valid license issued by, or has been found suitable by, gaming regulatory authorities in another jurisdiction, provided that the board finds that the other jurisdiction has conducted a thorough investigation of the applicant and has criteria substantially similar to those of the board to determine when a person is to be found suitable or to obtain a license.
History: Laws 1997, ch. 190, § 26.

60-2E-25. Report of proposed issuance or transfer of securities; report of change in corporate officers and directors; approval of board.

A. Before a company licensee, other than a publicly traded corporation, may issue or transfer five percent or more of its securities to any person, it shall file a report of its proposed action with the board, which report shall request the approval of the board. The board shall have ninety days within which to approve or deny the request. If the board fails to act in ninety days, the request is deemed approved. If the board denies the request, the company shall not issue or transfer five percent or more of its securities to the person about whom the request was made.
B. A company licensee shall file a report of each change of the corporate officers and directors with the board within thirty days of the change. The board shall have ninety days from the date the report is filed within which to approve or disapprove such change. During the ninety-day period and thereafter, if the board does not disapprove the change, an officer or director is entitled to exercise all powers of the office to which he was elected or appointed.
C. A company licensee shall report to the board in writing any change in company personnel who have been designated as key executives. The report shall be made no later than thirty days after the change.
D. The board may require that a company licensee furnish the board with a copy of its federal income tax return within thirty days after the return is filed.
History: Laws 1997, ch. 190, § 27.

60-2E-26. Gaming operator licensees; general provisions; business plan; player age limit; restrictions.

A. An applicant for licensure as a gaming operator shall submit with the application a plan for assisting in the prevention, education and treatment of compulsive gambling. The plan shall include regular educational training sessions for employees. Plan approval is a condition of issuance of the license.
B. An applicant for licensure as a gaming operator shall submit with the application a proposed business plan. The plan shall include at least:
(1) a floor plan of the area to be used for gaming machine operations;
(2) an advertising and marketing plan;
(3) the proposed placement and number of gaming machines;
(4) a financial control plan;
(5) a security plan;
(6) a staffing plan for gaming machine operations; and
(7) details of any proposed progressive systems.
C. A gaming operator licensee shall be granted a license to operate a specific number of machines at a gaming establishment identified in the license application and shall be granted a license for each gaming machine.
D. A gaming operator licensee who desires to change the number of machines in operation at a gaming establishment shall apply to the board for an amendment to his license authorizing a change in the number of machines.
E. Gaming machines may be available for play only in an area restricted to persons twenty-one years of age or older.
F. A gaming operator licensee shall erect a permanent physical barrier to allow for multiple uses of the premises by persons of all ages. For purposes of this subsection, "permanent physical barrier" means a floor-to-ceiling wall separating the general areas from the restricted areas. The entrance to the area where gaming machines are located shall display a sign that the premises are restricted to persons twenty-one

years of age or older. Persons under the age of twenty-one shall not enter the area where gaming machines are located.
G. A gaming operator licensee shall not have automated teller machines in the area restricted pursuant to Subsection F of this section.
H. A gaming operator licensee shall not provide, allow, contract or arrange to provide alcohol or food for no charge or at reduced prices as an incentive or enticement for patrons to game.
I. 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 [60-2E-1 to 60-2E-61 NMSA 1978].
History: Laws 1997, ch. 190, § 28.

60-2E-27. Gaming operator licensees; 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 [Chapter 60, Article 1 NMSA 1978] to conduct live horse races or simulcast races may be issued a gaming operator's license to operate gaming machines on its premises where live racing is conducted.
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
(2) the racetrack fails to maintain a minimum of three live race days a week with at least nine live races on each race day during its licensed race meet in the 1997 calendar year and in the 1998 and subsequent calendar years, four live race days a week with at least nine live races on each race day during its licensed race meet.
C. A gaming operator licensee that is a racetrack may have up to three 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. Except as provided in Subsection F of this section, gaming machines on a racetrack gaming operator licensee's premises may be played only on days when the racetrack is either conducting live horse races or simulcasting horse race meets. A gaming operator licensee that is a racetrack shall be permitted to conduct such games on only the aforementioned days for a daily period not to exceed twelve hours at the discretion of such licensee.
E. Alcoholic beverages shall not be sold, served, delivered or consumed in the area restricted pursuant to Subsection F of Section 28 [60-2E-26 NMSA 1978] of the Gaming Control Act.
F. A gaming operator licensee that is a racetrack located on state land within the boundaries of a municipality with a population of more than two hundred thousand persons according to the 1990 decennial census shall not operate gaming machines later than 10:00 p.m. on any day of the year.
History: Laws 1997, ch. 190, § 29.

60-2E-28. Gaming operator licensees; special conditions for nonprofit organizations; number of gaming machines; days and hours of operations.

A. A nonprofit organization may be issued a gaming operator's license to operate licensed gaming machines on its premises to be played only by active and auxiliary members.
B. No more than fifteen gaming machines may be offered for play on the premises of a nonprofit organization gaming operator licensee.
C. No gaming machine on the premises of a nonprofit organization gaming operator licensee may award a prize that exceeds four thousand dollars ($4,000).
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.
E. Alcoholic beverages shall not be sold, served, delivered or consumed in the area where gaming machines are installed and operated on the premises of a nonprofit organization gaming operator licensee.
History: Laws 1997, ch. 190, § 30.

60-2E-29. Licensing of manufacturers of gaming devices; exception; disposition of gaming devices.

A. It is unlawful for any person to operate, carry on, conduct or maintain any form of manufacturing of any gaming device or associated equipment for use or play in New Mexico or any form of manufacturing of any gaming device or associated equipment in New Mexico for use or play outside of New Mexico without first obtaining and maintaining a manufacturer's license.
B. If the board revokes a manufacturer's license:
(1) no new gaming device manufactured by the manufacturer may be approved for use in this state;
(2) any previously approved gaming device manufactured by the manufacturer is subject to revocation of approval if the reasons for the revocation of the license also apply to that gaming device;
(3) no new gaming device or associated equipment made by the manufacturer may be distributed, sold, transferred or offered for use or play in New Mexico; and
(4) any association or agreement between the manufacturer and a distributor licensee or gaming operator licensee in New Mexico shall be terminated.
C. An agreement between a manufacturer licensee and a distributor licensee or a gaming operator licensee in New Mexico shall be deemed to include a provision for its termination without liability for the termination on the part of either party upon a finding by the board that either party is unsuitable. Failure to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.
D. A gaming device shall not be used and offered for play by a gaming operator licensee unless it is identical in all material aspects to a model that has been specifically tested and approved by:
(1) the board;
(2) a laboratory selected by the board; or
(3) gaming officials in Nevada or New Jersey for current use.
E. The board may inspect every gaming device that is manufactured:
(1) for use in New Mexico; or
(2) in New Mexico for use outside of New Mexico.
F. The board may inspect every gaming device that is offered for play within New Mexico by a gaming operator licensee.
G. The board may inspect all associated equipment that is manufactured and sold for use in New Mexico or manufactured in New Mexico for use outside of New Mexico.
H. In addition to all other fees and charges imposed pursuant to the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978], the board may determine, charge and collect from each manufacturer an inspection fee, which shall not exceed the actual cost of inspection and investigation.
I. The board may prohibit the use of a gaming device by a gaming operator licensee if it finds that the gaming device does not meet the requirements of this section.
History: Laws 1997, ch. 190, § 31.

60-2E-30. Licensing of distributors of gaming devices.

A. It is unlawful for any person to operate, carry on, conduct or maintain any form of distribution of any gaming device for use or play in New Mexico without first obtaining and maintaining a distributor's or manufacturer's license.
B. If the board revokes a distributor's license:
(1) no new gaming device distributed by the person may be approved;
(2) any previously approved gaming device distributed by the distributor is subject to revocation of approval if the reasons for the revocation of the license also apply to that gaming device;
(3) no new gaming device or associated equipment distributed by the distributor may be distributed, sold, transferred or offered for use or play in New Mexico; and
(4) any association or agreement between the distributor and a gaming operator licensee shall be terminated. An agreement between a distributor licensee and a gaming operator licensee shall be deemed to include a provision for its termination without liability on the part of either party upon a finding by the board that the other party is unsuitable. Failure to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.
C. The board may inspect every gaming device that is distributed for use in New Mexico.

D. In addition to all other fees and charges imposed by the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978], the board may determine, charge and collect from each distributor an inspection fee, which shall not exceed the actual cost of inspection and investigation.
History: Laws 1997, ch. 190, § 32.

60-2E-31. Suitability of certain persons furnishing services or property or doing business with gaming operators; termination of association.

A. The board may determine the suitability of any person who furnishes services or property to a gaming operator licensee under any arrangement pursuant to which the person receives compensation based on earnings, profits or receipts from gaming. The board may require the person to comply with the requirements of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978] and with the regulations of the board. If the board determines that the person is unsuitable, it may require the arrangement to be terminated.
B. The board may require a person to apply for a finding of suitability to be associated with a gaming operator licensee if the person:
(1) does business on the premises of a gaming establishment; or
(2) provides any goods or services to a gaming operator licensee for compensation that the board finds to be grossly disproportionate to the value of the goods or services.
C. If the board determines that a person is unsuitable to be associated with a gaming operator licensee, the association shall be terminated. Any agreement that entitles a business other than gaming to be conducted on the premises of a gaming establishment, or entitles a person other than a licensee to conduct business with the gaming operator licensee, is subject to termination upon a finding of unsuitability of the person seeking association with a gaming operator licensee. Every agreement shall be deemed to include a provision for its termination without liability on the part of the gaming operator licensee upon a finding by the board of the unsuitability of the person seeking or having an association with the gaming operator licensee. Failure to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement. If the application is not presented to the board within thirty days following demand or the unsuitable association is not terminated, the board may pursue any remedy or combination of remedies provided in the Gaming Control Act.
History: Laws 1997, ch. 190, § 33.

60-2E-32. Reasons for investigations by board; complaint by board; board to appoint hearing examiner; review by board; order of board.

A. The board shall make appropriate investigations to:
(1) determine whether there has been any violation of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978] or of any regulations adopted pursuant to that act;
(2) determine any facts, conditions, practices or matters that it deems necessary or proper to aid in the enforcement of the Gaming Control Act or regulations adopted pursuant to that act;
(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 confidential and made available only to the respondent until such time as it is offered into evidence at any public hearing on the matter.

C. The respondent shall file an answer within thirty days after service of the complaint.
D. Upon filing the complaint the board shall appoint a hearing examiner to conduct further proceedings.
E. The hearing examiner shall conduct proceedings in accordance with the Gaming Control Act and the regulations adopted by the board. At the conclusion of the proceedings, the hearing examiner may recommend that the board take any appropriate action, including revocation, suspension, limitation or conditioning of a license or imposition of a fine not to exceed fifty thousand dollars ($50,000) for each violation or any combination or all of the foregoing actions.
F. The hearing examiner shall prepare a written decision containing his recommendation to the board and shall serve it on all parties. Any respondent who disagrees with the hearing examiner's recommendation may request the board, within ten days of service of the recommendation, to review the recommendation.
G. Upon proper request, the board shall review the recommendation. The board may remand the case to the hearing examiner for the presentation of additional evidence upon a showing of good cause why such evidence could not have been presented at the previous hearing.
H. The board shall by a majority vote accept, reject or modify the recommendation.
I. If the board limits, conditions, suspends or revokes any license or imposes a fine or limits, conditions, suspends or revokes any registration, finding of suitability or prior approval, it shall issue a written order specifying its action.
J. The board's order is effective unless and until reversed upon judicial review, except that the board may stay its order pending a rehearing or judicial review upon such terms and conditions as it deems proper.
History: Laws 1997, ch. 190, § 34.

60-2E-33. Emergency orders of board.

The board may issue an emergency order for suspension, limitation or conditioning of a license, registration, finding of suitability or work permit or may issue an emergency order requiring a gaming operator licensee to exclude an individual licensee from the premises of the gaming operator licensee's gaming establishment or not to pay an individual licensee any remuneration for services or any profits, income or accruals on his investment in the licensed gaming establishment in the following manner:
A. an emergency order may be issued only when the board believes that:
(1) a licensee has willfully failed to report, pay or truthfully account for and pay over any fee imposed by the provisions of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978] or willfully attempted in any manner to evade or defeat any fee or payment thereof;
(2) a licensee or gaming employee has cheated at a game; or
(3) the emergency order is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare;
B. the emergency order shall set forth the grounds upon which it is issued, including a statement of facts constituting the alleged emergency necessitating such action;
C. the emergency order is effective immediately upon issuance and service upon the licensee or resident agent of the licensee or gaming employee or, in cases involving registration or findings of suitability, upon issuance and service upon the person or entity involved or resident agent of the entity involved; the emergency order may suspend, limit, condition or take other action in relation to the license of one or more persons in an operation without affecting other individual licensees or the gaming operator licensee. The emergency order remains effective until further order of the board or final disposition of the case; and
D. within five days after issuance of an emergency order, the board shall cause a complaint to be filed and served upon the person or entity involved; thereafter, the person or entity against whom the emergency order has been issued and served is entitled to a hearing before the board and to judicial review of the decision and order of the board in accordance with the provisions of the board's regulations.
History: Laws 1997, ch. 190, § 35.

60-2E-34. Exclusion or ejection of certain persons from gaming establishments; persons included.

A. The board shall by regulation provide for the establishment of a list of persons who are to be excluded or ejected from a gaming establishment. The list may include any person whose presence in the gaming establishment is determined by the board to pose a threat to the public interest or licensed gaming activities.
B. In making the determination in Subsection A of this section, the board may consider a:

(1) prior conviction for a crime that is a felony under state or federal law, a crime involving moral turpitude or a violation of the gaming laws of any jurisdiction;
(2) violation or conspiracy to violate the provisions of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978] relating to:
(a) the failure to disclose an interest in a gaming activity for which the person must obtain a license; or
(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.
History: Laws 1997, ch. 190, § 36.

60-2E-35. 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, including reports to the board; and
(3) a system by which the amount wagered on each gaming machine and the amount paid out by each gaming machine is recorded on a daily basis, which results may be obtained by the board by appropriate means as described in regulations adopted by the board; all manufacturers are required to have such a system available for gaming operators for the gaming machines that it supplies for use in New Mexico, and all distributors shall make such a system available to gaming operators.
B. The internal control system shall be designed to reasonably ensure that:
(1) assets are safeguarded;
(2) financial records are accurate and reliable;
(3) transactions are performed only in accordance with management's general or specific authorization;
(4) transactions are recorded adequately to permit proper reporting of gaming revenue and of fees and taxes and to maintain accountability of assets;
(5) access to assets is allowed only in accordance with management's specific authorization;
(6) recorded accountability for assets is compared with actual assets at reasonable intervals and appropriate action is taken with respect to any discrepancies; and
(7) functions, duties and responsibilities are appropriately segregated and performed in accordance with sound accounting and management practices by competent, qualified personnel.
C. A gaming operator licensee and an applicant for a gaming operator's license shall describe, in the manner the board may approve or require, its administrative and accounting procedures in detail in a written system of internal control. A gaming operator licensee and an applicant for a gaming operator's license shall submit a copy of its written system to the board. Each written system shall include:
(1) an organizational chart depicting appropriate segregation of functions and responsibilities;
(2) a description of the duties and responsibilities of each position shown on the organizational chart;
(3) a detailed, narrative description of the administrative and accounting procedures designed to satisfy the requirements of Subsection A of this section;
(4) a written statement signed by the licensee's chief financial officer and either the licensee's chief executive officer or a licensed owner attesting that the system satisfies the requirements of this section;
(5) if the written system is submitted by an applicant, a letter from an independent certified public accountant stating that the applicant's written system has been reviewed by the accountant and complies with the requirements of this section; and
(6) other items as the board may require.
D. The board shall adopt and publish minimum standards for internal control procedures.
History: Laws 1997, ch. 190, § 37.

60-2E-36. Gaming employees; issuance of work permits; revocation of work permits.

A. A person shall not be employed as a gaming employee unless the person holds a valid work permit issued by the board.
B. A work permit shall be issued and may be revoked by the board as provided in regulations adopted by the board.
C. Any person whose work permit has been denied or revoked may seek judicial review.
History: Laws 1997, ch. 190, § 38.

60-2E-37. Age requirement for patrons and gaming employees.

A person under the age of twenty-one years shall not:
A. play, be allowed to play, place wagers on or collect winnings from, whether personally or through an agent, any game authorized or offered to play pursuant to the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978]; or
B. be employed as a gaming employee.
History: Laws 1997, ch. 190, § 39.

60-2E-38. Calculation of net take; certain expenses not deductible.

In calculating net take from gaming machines, the actual cost to the licensee of any personal property distributed to a patron as the result of a legitimate wager may be deducted as a loss, except for travel expenses, food, refreshments, lodging or services. For the purposes of this section, "as the result of a legitimate wager" means that the patron must make a wager prior to receiving the personal property, regardless of whether the receipt of the personal property is dependent on the outcome of the wager.
History: Laws 1997, ch. 190, § 40.

60-2E-39. Limitations on taxes and license fees.

A political subdivision of the state shall not impose a license fee or tax on any licensee licensed pursuant to the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978] except for the imposition of property taxes, local option gross receipts taxes with respect to receipts not subject to the gaming tax and the distribution provided for and determined pursuant to Subsection C of Section 60-1-15 and Section 60-1-15.2 NMSA 1978.
History: Laws 1997, ch. 190, § 41.

60-2E-40. Use of chips, tokens or legal tender required for all gaming.

All gaming shall be conducted with chips, tokens or other similar objects approved by the board or with the legal currency of the United States.
History: Laws 1997, ch. 190, § 42.

60-2E-41. Communication or document of applicant or licensee absolutely confidential; confidentiality not waived; disclosure of confidential information prohibited.

A. Any communication or document of an applicant or licensee is confidential and does not impose liability for defamation or constitute a ground for recovery in any civil action if it is required by:
(1) law or the regulations of the board; or
(2) a subpoena issued by the board to be made or transmitted to the board.
B. The confidentiality created pursuant to Subsection A of this section is not waived or lost because the document or communication is disclosed to the board.
C. Notwithstanding the powers granted to the board by the Gaming Control Act [60-2E-1 to 60-

2E-61 NMSA 1978], the board:
(1) may release or disclose any confidential information, documents or communications provided by an applicant or licensee only with the prior written consent of the applicant or licensee or pursuant to a lawful court order after timely notice of the proceedings has been given to the applicant or licensee;
(2) shall maintain all confidential information, documents and communications in a secure place accessible only to members of the board; and
(3) shall adopt procedures and regulations to protect the confidentiality of information, documents and communications provided by an applicant or licensee.
History: Laws 1997, ch. 190, § 43.

60-2E-42. Motion for release of confidential information.

An application to a court for an order requiring the board to release any information declared by law to be confidential shall be made only by petition in district court. A hearing shall be held on the petition not less than ten days and not more than twenty days after the date of service of the petition on the board, the attorney general and all persons who may be affected by the entry of that order. A copy of the petition, all papers filed in support of it and a notice of hearing shall be served.
History: Laws 1997, ch. 190, § 44.

60-2E-43. Gaming machine central system.

The board shall develop and operate a central system into which all licensed gaming machines are connected. The central system shall be capable of:
A. monitoring continuously, retrieving and auditing the operations, financial data and program information of the network;
B. disabling from operation or play any gaming machine in the network that does not comply with the provisions of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978] or the regulations of the board;
C. communicating, through program modifications or other means equally effective, with all gaming machines licensed by the board;
D. interacting, reading, communicating and linking with gaming machines from a broad spectrum of manufacturers and associated equipment; and
E. providing linkage to each gaming machine in the network at a reasonable and affordable cost to the state and the gaming operator licensee and allowing for program modifications and system updating at a reasonable cost.
History: Laws 1997, ch. 190, § 45.

60-2E-44. Machine specifications.

To be eligible for licensure, each gaming machine shall meet all specifications established by regulations of the board and:
A. be unable to be manipulated in a manner that affects the random probability of winning plays or in any other manner determined by the board to be undesirable;
B. have at least one mechanism that accepts coins or currency, but does not accept bills of denominations greater than twenty dollars ($20.00);
C. be capable of having play suspended through the central system by the executive director until he resets the gaming machine;
D. house nonresettable mechanical and electronic meters within a readily accessible locked area of the gaming machine that maintain a permanent record of all money inserted into the machine, all cash payouts of winnings, all refunds of winnings, all credits played for additional games and all credits won by players;
E. be capable of printing out, at the request of the executive director, readings on the electronic meters of the machine;
F. for machines that do not dispense coins or tokens directly to players, be capable of printing a ticket voucher stating the value of a cash prize won by the player at the completion of each game, the date and time of day the game was played in a twenty-four-hour format showing hours and minutes, the machine

serial number, the sequential number of the ticket voucher and an encrypted validation number for determining the validity of a winning ticket voucher;
G. be capable of being linked to the board's central system for the purpose of being monitored continuously as required by the board;
H. provide for a payback value for each credit wagered, determined over time, of not less than eighty percent or more than ninety-six percent;
I. meet the standards and specifications set by laws or regulations of the states of Nevada and New Jersey for gaming machines, whichever are more stringent;
J. offer only games authorized and examined by the board; and
K. display the gaming machine license issued for that machine in an easily accessible place, before and during the time that a machine is available for use.
History: Laws 1997, ch. 190, § 46.

60-2E-45. Posting of gaming machine odds.

The odds of winning on each gaming machine shall be posted on or near each gaming machine. The board shall provide the manner in which the odds shall be determined and posted by regulation.
History: Laws 1997, ch. 190, § 47.

60-2E-46. Examination of gaming devices; cost allocation.

A. The board shall examine prototypes of gaming devices of manufacturers seeking a license as required.
B. The board by regulation shall require a manufacturer to pay the anticipated actual costs of the examination of a gaming device in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the board for underpayment of actual costs.
C. The board may contract for the examination of gaming devices to meet the requirements of this section.
History: Laws 1997, ch. 190, § 48.

60-2E-47. Gaming tax; imposition; administration.

A. An excise tax is imposed on the privilege of engaging in gaming activities in the state. This tax shall be known as the "gaming tax".
B. The gaming tax is an amount equal to ten percent of the gross receipts of manufacturer licensees from the sale, lease or other transfer of gaming devices in or into the state, except receipts of a manufacturer from the sale, lease or other transfer to a licensed distributor for subsequent sale or lease may be excluded from gross receipts; ten percent of the gross receipts of distributor licensees from the sale, lease or other transfer of gaming devices in or into the state; and twenty-five percent of the net take of every gaming operator licensee. For the purposes of this section, "gross receipts" means the total amount of money or the value of other consideration received from selling, leasing or otherwise transferring gaming devices.
C. The gaming tax imposed on a licensee is in lieu of all state and local gross receipts taxes on that portion of the licensee's gross receipts attributable to gaming activities.
D. The gaming tax is to be paid on or before the fifteenth day of the month following the month in which the taxable event occurs. The gaming tax shall be administered and collected by the taxation and revenue department in cooperation with the board. The provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] apply to the collection and administration of the tax.
E. In addition to the gaming tax, a gaming operator licensee that is a racetrack shall pay twenty percent of its 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.
F. A nonprofit gaming operator licensee shall distribute at least eighty-eight percent of the balance of its net take, after payment of the gaming tax and any income taxes, for charitable or educational purposes.
History: Laws 1997, ch. 190, § 49; 1998, ch. 15, § 1.

60-2E-48. Civil actions to restrain violations of Gaming Control Act.

A. The attorney general, at the request of the board, may institute a civil action in any court of this state against any person to enjoin a violation of a prohibitory provision of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978].

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

History: Laws 1997, ch. 190, § 50.

60-2E-49. Testimonial immunity.

A. The board may order a person to answer a question or produce evidence and confer immunity pursuant to this section. If, in the course of an investigation or hearing conducted pursuant to the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978], a person refuses to answer a question or produce evidence on the ground that he will be exposed to criminal prosecution by doing so, then the board may by approval of three members, after the written approval of the attorney general, issue an order to answer or to produce evidence with immunity.

B. If a person complies with an order issued pursuant to Subsection A of this section, he shall be immune from having a responsive answer given or responsive evidence produced, or evidence derived from either, used to expose him to criminal prosecution, except that the person may be prosecuted for any perjury committed in the answer or production of evidence and may also be prosecuted for contempt for failing to act in accordance with the order of the board. An answer given or evidence produced pursuant to the grant of immunity authorized by this section may be used against the person granted immunity in a prosecution of the person for perjury or a proceeding against him for contempt.

History: Laws 1997, ch. 190, § 51.

60-2E-50. Crime; manipulation of gaming device with intent to cheat.

A person who manipulates, with the intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose of the component, including varying the pull of the handle of a slot machine with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1997, ch. 190, § 52.

60-2E-51. Crime; use of counterfeit or unapproved tokens, currency or devices; possession of certain devices, equipment, products or materials.

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

B. A person who knowingly has on his person or in his possession within a gaming establishment any device intended to be used by him to violate the provisions of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978] is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

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

D. A person who knowingly and with intent to use them for cheating has on his person or in his possession

any paraphernalia for manufacturing slugs is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. As used in this subsection, "paraphernalia for manufacturing slugs" means the equipment, products and materials that are intended for use or designed for use in manufacturing, producing, fabricating, preparing, testing, analyzing, packaging, storing or concealing a counterfeit facsimile of tokens approved by the board or a lawful coin of the United States, the use of which is unlawful pursuant to the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978]. The term includes:
(1) lead or lead alloy;
(2) molds, forms or similar equipment capable of producing a likeness of a gaming token or coin;
(3) melting pots or other receptacles;
(4) torches; and
(5) tongs, trimming tools or other similar equipment.
E. Possession of more than two items of the equipment, products or material described in Subsection D of this section permits a rebuttable inference that the possessor intended to use them for cheating.
History: Laws 1997, ch. 190, § 53.

60-2E-52. Crime; cheating.

A person who knowingly cheats at any game is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.
History: Laws 1997, ch. 190, § 54.

60-2E-53. Crime; possession of gaming device manufactured, sold or distributed in violation of law.

A person who knowingly possesses any gaming device that has been manufactured, sold or distributed in violation of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978] is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.
History: Laws 1997, ch. 190, § 55.

60-2E-54. Crime; reporting and record violations; penalty.

A person who, in an application, book or record required to be maintained by the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978] or by a regulation adopted under that act or in a report required to be submitted by that act or a regulation adopted under that act, knowingly makes a statement or entry that is false or misleading or fails to maintain or make an entry the person knows is required to be maintained or made is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.
History: Laws 1997, ch. 190, § 56.

60-2E-55. Crime; unlawful manufacture, sale, distribution, marking, altering or modification of devices associated with gaming; unlawful instruction; penalty.

A. A person who manufactures, sells or distributes a device that is intended by him to be used to violate any provision of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978] is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.
B. A person who marks, alters or otherwise modifies any gaming device in a manner that affects the result of a wager by determining win or loss or alters the normal criteria of random selection that affects the operation of a game or that determines the outcome of a game is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.
History: Laws 1997, ch. 190, § 57.

60-2E-56. Underage gaming; penalty for permitting or participation.

A. A person who knowingly permits an individual who the person knows is younger than twenty-one years of age to participate in gaming is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.
B. An individual who participates in gaming when he is younger than twenty-one years of age at the time of participation is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.
History: Laws 1997, ch. 190, § 58.

60-2E-57. Crime; general penalties for violation of act.

A person who willfully violates, attempts to violate or conspires to violate any of the provisions of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978] specifying prohibited acts, the classification of which is not specifically stated in that act, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.
History: Laws 1997, ch. 190, § 59.

60-2E-58. Detention and questioning of a person suspected of violating act; limitations on liability; posting of notice.

A. A gaming operator licensee or its officers, employees or agents may question a person in its gaming establishment suspected of violating any of the provisions of the Gaming Control Act [60-2E-1 to 60-2E-61 NMSA 1978]. No gaming operator licensee or any of its officers, employees or agents is criminally or civilly liable:
(1) on account of any such questioning; or
(2) for reporting to the board or law enforcement authorities the person suspected of the violation.
B. A gaming operator licensee or any of its officers, employees or agents who has reasonable cause for believing that there has been a violation of the Gaming Control Act in the gaming establishment by a person may detain that person in the gaming establishment in a reasonable manner and for a reasonable length of time. Such a detention does not render the gaming operator licensee or his officers, employees or agents criminally or civilly liable unless it is established by clear and convincing evidence detention was unreasonable under the circumstances.
C. No gaming operator licensee or its officers, employees or agents are entitled to the immunity from liability provided for in Subsection B of this section unless there is displayed in a conspicuous place in the gaming establishment a notice in boldface type clearly legible and in substantially this form:
"Any gaming operator licensee or any of his officers, employees or agents who have reasonable cause for believing that any person has violated any provision of the Gaming Control Act prohibiting cheating in gaming may detain that person in the establishment."
History: Laws 1997, ch. 190, § 60.

60-2E-59. Administrative appeal of board action.

A. Any person aggrieved by an action taken by the board or one of its agents may request and receive a hearing for the purpose of reviewing the action. To obtain a hearing the aggrieved person shall file a request for hearing with the board within thirty days after the date the action is taken. Failure to file the request within the specified time is an irrevocable waiver of the right to a hearing, and the action complained of shall be final with no further right to review, either administratively or by a court.
B. The board shall adopt procedural regulations to govern the procedures to be followed in administrative hearings pursuant to the provisions of this section. At a minimum, the regulations shall provide:
(1) for the hearings to be public;
(2) for the appointment of a hearing officer to conduct the hearing and make his recommendation to the board not more than ten days after the completion of the hearing;
(3) procedures for discovery;
(4) assurance that procedural due process requirements are satisfied;
(5) for the maintenance of a record of the hearing proceedings and assessment of costs of any transcription of testimony that is required for judicial review purposes; and

(6) for the hearing to be held in Santa Fe for enforcement hearings and hearings on actions of statewide application, and to be held in the place or area affected for enforcement hearings and hearings on actions of limited local concern.
C. Actions taken by the board after a hearing pursuant to the provisions of this section shall be:
(1) written and shall state the reasons for the action;
(2) made public when taken;
(3) communicated to all persons who have made a written request for notification of the action taken; and
(4) taken not more than thirty days after the submission of the hearing officer's report to the board.
History: Laws 1997, ch. 190, § 61.

60-2E-60. Judicial review of administrative actions.

A. Any person adversely affected by an action taken by the board after review pursuant to the provisions of Section 61 [60-2E-59 NMSA 1978] of the Gaming Control Act may appeal the action to the court of appeals. The appeal shall be on the record made at the hearing. To support his appeal, the appellant shall make arrangements with the board for a sufficient number of transcripts of the record of the hearing on which the appeal is based. The appellant shall pay for the preparation of the transcripts.
B. On appeal, the court of appeals shall set aside the administrative action only if it is found to be:
(1) arbitrary, capricious or an abuse of discretion;
(2) not supported by substantial evidence in the whole record; or
(3) otherwise not in accordance with law.
History: Laws 1997, ch. 190, § 62.

60-2E-61. Lien on winnings for debt collected by human services department; payment to department; procedure.

A. The human services department, acting as the state's child support enforcement agency pursuant to Title IV-D of the Social Security Act, shall periodically certify to the board the names and social security numbers of persons owing a debt to or collected by the human services department.
B. Prior to the payment of a gaming machine amount in excess of six hundred dollars ($600), the board shall check the name of the winner against the list of names and social security numbers of persons owing a debt to or collected by the human services department.
C. If the winner is on the list of persons owing a debt to or collected by the agency, the board shall make a good-faith attempt to notify the human services department, and the department then has a lien against the winnings in the amount of the debt owed to or collected by the agency. The board has no liability to the human services department or the person on whose behalf the department is collecting the debt if the board fails to match a winner's name to a name on the list or is unable to notify the department of a match. The department shall provide the board with written notice of a support lien promptly within five working days after the board notifies the department of a match.
D. If the amount won is to be paid directly by the board, the amount of the debt owed to or collected by the human services department shall be held by the board for a period of thirty days from the board's confirmation of the amount of the debt to allow the department to institute any necessary garnishment or wage withholding proceedings. If a garnishment or withholding proceeding is not initiated within the thirty-day period, the board shall release the amount won to the winner.
E. The human services department, in its discretion, may release or partially release the support lien upon written notice to the board.
F. A support lien under this section is in addition to any other lien created by law.
History: Laws 1997, ch. 190, § 63.

ARTICLE 4B. SPECIAL INVESTIGATIONS DIVISION

60-4B-4.1. Local law enforcement; department of public safety; reporting requirements; authority to request investigations.

A. Within thirty days following the date of issuance of a citation pursuant to the provisions of the Liquor Control Act, the department of public safety or the law enforcement agency of a municipality or county shall report alleged violations of that act to the alcohol and gaming division of the regulation and licensing department.
B. The director of the alcohol and gaming division of the regulation and licensing department may request the investigators of the special investigations division of the department of public safety to investigate licensees or activities that the director has reasonable cause to believe are in violation of the Liquor Control Act.
History: 1978 Comp., § 60-4B-4.1, enacted by Laws 1993, ch. 329, § 1.

ARTICLE 6D. ALCOHOL SERVER EDUCATION ACT

60-6D-3. Definitions.

As used in the Alcohol Server Education Act [this article]:
A. "director" means the director of the alcohol and gaming division of the regulation and licensing department;
B. "division" means the alcohol and gaming division of the regulation and licensing department;
C. "licensee" means a person in possession of a license issued pursuant to the provisions of the Liquor Control Act;
D. "program" means an alcohol education server program and examination administered to servers and licensees pursuant to the provisions of the Alcohol Server Education Act;
E. "provider" means an individual, partnership, corporation, public or private school or any other legal entity certified by the director to provide a program; and
F. "server" means an individual who sells or serves alcoholic beverages for consumption on or off the premises of a business licensed pursuant to the provisions of the Liquor Control Act.
History: Laws 1993, ch. 68, § 30.

ARTICLE 7A. OFFENSES

60-7A-19. Commercial gambling on licensed premises

A. It is a violation of the Liquor Control Act for a licensee to knowingly allow commercial gambling on the licensed premises.
B. In addition to any criminal penalties, any person who violates Subsection A of this section may have his license suspended or revoked or a fine imposed, or both, pursuant to the Liquor Control Act.
C. As used in this section:
(1) "commercial gambling" means:
(a) participating in the earnings of or operating a gambling place;
(b) receiving, recording or forwarding bets or offers to bet;
(c) possessing facilities with the intent to receive, record or forward bets or offers to bet;
(d) for gain, becoming a custodian of anything of value bet or offered to be bet;
(e) conducting a lottery where both the consideration and the prize are money, or whoever with intent to conduct a lottery possesses facilities to do so; or
(f) setting up for use for the purpose of gambling, or collecting the proceeds of, any gambling device or game; and
(2) "commercial gambling" does not mean:
(a) activities authorized pursuant to the New Mexico Lottery Act [6-24-1 to 6-24-34 NMSA 1978];
(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 [60-2E-1 to 60-2E-61 MNSA 1978] on the premises of a gaming operator licensee licensed pursuant to that act.
History: Laws 1981, ch. 39, § 96; 1997, ch. 190, § 68.

ARTICLE 7B. REGULATION OF SALES AND SERVICE TO MINORS

60-7B-10. Minors in licensed premises; regulations

A. Any person licensed pursuant to the provisions of the Liquor Control Act or any employee, agent or lessee of that person who permits a minor to enter and remain in any area of a licensed premises that is prohibited to the use of minors is guilty of a violation of the Liquor Control Act.
B. A minor shall not enter or attempt to enter any area of a licensed premises that is posted or otherwise identified as being prohibited to the use of minors, except as authorized by regulation or as necessitated by an emergency. A person who violates the provisions of this subsection is guilty of a petty misdemeanor and shall be punished pursuant to the provisions of Section 31-19-1 NMSA 1978.
C. The director of the alcohol and gaming division of the regulation and licensing department shall adopt regulations classifying the types of licensed premises or areas of licensed premises where minors may be present. The director shall require that signs issued by the division be posted by licensees to inform the public, including minors, of the areas in licensed premises that are open to minors. The regulations may allow minors in those areas of licensed premises where:
(1) the consumption of alcoholic beverages is the primary activity, when a minor is accompanied by a parent, adult spouse or legal guardian; or
(2) there is no consumption of alcoholic beverages.
History: Laws 1981, ch. 39, § 90; 1991, ch. 119, § 5; 1993, ch. 68, § 25; 1994, ch. 50, § 1.

CHAPTER 63. RAIROADS AND COMMUNICATIONS

ARTICLE 2. POWERS AND CONSTRUCTION OF ROADS

63-2-2. [Additional powers of corporations.]

In addition to the foregoing, every railroad corporation shall have the following powers:
A. to cause such examinations and surveys to be made as may be necessary to the selection of the most suitable routes for its railroad and telegraph lines, and for that purpose, by its officers and agents, to enter upon the lands and waters of the state, of private persons and of private and public corporation [corporations], subject, however, to responsibility for all damages which it may do thereto;
B. to take, hold and convey, by deed or otherwise, the same as a natural person, such voluntary grants and donations of real and personal property as may be made to aid the construction and maintenance, and to provide for the accommodation of its railroad and telegraph lines, or either thereof;
C. to purchase, and, by voluntary grants and donations, to receive and take, and by its officers, engineers, surveyors and agents, to enter upon, possess, hold and use in any manner it may deem proper, all such lands and other property as its directors may deem necessary, proper and convenient, for the construction, maintenance and operation of its railroad and telegraph lines, or either thereof, and for the erection of stations, depots, water tanks, sidetracks, turnouts, turntables, yards, workshops, warehouses, and for all other purposes necessary or convenient to said corporation in the transaction of its business;
D. to lay out its railroad and branches, not exceeding two hundred feet wide, and to construct and maintain the same, with single or double track, with such appendages as its directors may deem necessary for the convenient use thereof. For the purpose of making embankments, excavations, ditches, drains, culverts and the like, and of procuring timber, stone, gravel and other materials for the proper construction and security of its railroad and branches, such corporation may take and occupy as much more land as its directors may deem necessary or convenient for the purposes aforesaid;
E. to construct its railroads and telegraphs across, along or upon any stream of water, watercourse, street, avenue or highway, or across any railway, canal, ditch or flume which its railroad and telegraph, or either thereof, shall intersect, cross or run along but such corporation shall restore such stream, watercourses, streets, avenues, highways, railways, canals, ditches and flumes, so intersected, to their former state, as near as may be, so as not to unnecessarily impair their use or injure their franchises and wherever its road shall cross a navigable stream or body of water, the bridge shall be constructed with a draw, if a draw be necessary, to avoid obstructing the navigation of such stream or body of water;
F. to cross, intersect, join and unite its railroad with any other railroads that have been heretofore

constructed, or that may be hereafter constructed, at any point or points on the routes thereof, and upon the grounds of such other railroad companies, with the necessary turnouts, sidings and switches and such other conveniences and appliances as may be necessary to make and complete said crossings, intersections and connections and such other railroad companies shall unite with the directors of such corporation in making said crossings, intersections and connections, and shall grant the facilities therefor upon such terms and conditions as may be agreed upon between them but if they are unable to agree upon the compensation to be made therefor, or the points at which, or the manner in which such crossings, intersections and connections shall be made, the same shall be ascertained, determined and declared in the manner and by the proceedings hereinafter provided, for the taking of private property for the use of such corporation;

G. to purchase or take by donation, or otherwise, lands, timber, stone, gravel or other materials to be used in the construction and maintenance of its railroads and telegraphs, or either thereof and if the same cannot be obtained by agreement with the owners thereof, to take the same by the proceedings and in the manner hereinafter provided for the taking of private property for the use of such corporation;

H. to take, transport, carry and convey persons and property on its railroads by the force and power of steam, of animals or any other mechanical power, or by any combination thereof, and to collect and receive tolls or compensation therefor;

I. to erect and maintain all necessary and convenient buildings, stations, depots, watering places, fixtures and machinery for the accommodation of its passengers, freight and business, and to obtain and hold, by purchase, donation or condemnation, as hereinafter provided, lands and other property necessary therefor;

J. to take, possess and enjoy, by purchase, donation or condemnation, such natural springs and streams of water, or so much thereof as may be necessary for its uses and purposes in operating its railroads, together with the right-of-way thereto for pipes, ditches, canals or aqueducts for the conveyance thereof;

K. to regulate the time and manner in which passengers and property shall be transported over its roads, and the tolls or compensation to be paid therefor: provided, that it shall be unlawful for such corporation to charge more than six cents [($.06)] per mile for each passenger, and fifteen cents [($.15)] per mile for each ton of two thousand pounds, or forty cubic feet, of freight transported on its roads: provided, further, that in no case shall such corporation be required to receive less than twenty-five cents [($.25)] for any one lot of freight for any distance: provided, further, that such corporation shall not be required to transport domestic animals, nitroglycerine compounds, gunpowder, acids, phosphorus and other explosive or destructive combustible materials, except upon such terms, conditions and rates of freightage as its board of directors may from time to time prescribe and establish;

L. to regulate the force and speed of its locomotive, cars, trains or other machinery used on its roads, and to establish, execute and enforce all needful and proper rules and regulations for the management of its trains, the conduct of its business, and to secure the safety, comfort and good behavior of its passengers and employes and agents and for the prevention and suppression of gambling of every kind and description on its cars, or within its depots or station grounds;

M. to expel from its cars at any stopping place, using no more force than may be necessary, any passenger who, upon demand, shall refuse to pay his fare, or shall behave in a rude, riotous or disorderly manner toward other passengers, or the employes of such corporations in charge of such cars or, upon his attention being called thereto, shall persist in violating the rules of the corporation against gambling upon its cars;

N. to borrow on the credit of the corporation and under authority of its board of directors or in such manner as said board may prescribe under regulation, resolution, or otherwise, such sums of money as may be necessary for constructing and equipping its railroad and telegraph lines or for making extensions or additions thereto, or betterments or improvements thereof, or for funding or refunding its outstanding indebtedness, or retiring its obligations, and for such other purposes as may be deemed proper in the conduct of its business or in the execution of its powers, and to issue and dispose of its bonds and promissory notes or obligations therefor in denominations of not less than one hundred dollars [($100)] or any multiple thereof, and at a rate of interest not exceeding ten percent per annum, and for such amounts as the board of directors may deem proper, although in excess of its capital stock; and to secure the payment of such bonds, notes or obligations, or the bonds or obligations of any other corporation which may be issued in its interest, or for any of the above purposes, or to raise funds therefor, it may mortgage or convey in trust its corporate property or any part thereof, and the rights, privileges, powers and franchises in connection therewith or appurtenant thereto;

O. to grant to any railroad corporation the right to use in common with it, its railroad and telegraph lines, or any part thereof. In making such grants, and in agreeing upon, and prescribing the terms and conditions thereof, the amount and nature of the consideration therefor, such corporation shall have all the rights,

powers, capacities and abilities which are enjoyed by natural persons;
P. to take grants of the right to use in common railroad and telegraph lines of other railroad corporations and, in taking and receiving such grants, to have and enjoy the same rights, powers, capacities and abilities, which are granted in said last preceding subdivision of this section;
Q. to change the line of its road, in whole or in part, whenever a majority of its directors may so determine: provided, no such change shall vary the general route of such road, as described in its articles of incorporation. The land required for such new line may be acquired by contract with the owners thereof, or by condemnation, as provided by law, as in the case of the original line;
R. to increase or diminish its capital stock, if at any time it shall appear that the amount thereof, as fixed in its articles of incorporation, is either more or less than is actually required for constructing, equipping, operating and maintaining its road and telegraph lines. Such increase or decrease shall not be made, except by a vote of stockholders representing at least two-thirds of the subscribed capital stock. A certified copy of the proceedings of the meeting, and its action in the premises, under the seal of the corporation, must be filed in the office of the state corporation commission, and be by said commission attached to the articles of incorporation on file in its office;
S. to consolidate with one or more railroad corporations, or under the laws of any other state or territory, its capital stock, properties, roads, equipments, adjuncts, franchises, claims, demands, contracts, agreements, obligations, debts, liabilities and assets of every kind and description, upon such terms and in such manner as may be agreed upon by the respective boards of directors: provided, no such consolidation shall take effect until the same shall have been ratified and confirmed in writing by stockholders of the respective corporations representing three-fourths of the subscribed capital stock of their respective corporations. In case of such consolidation, articles of incorporation and consolidation, must be prepared setting forth:
(1) the name of the new corporation;
(2) the purpose for which it is formed;
(3) the place where its principal business is to be transacted;
(4) the term for which it is to exist, which shall not exceed fifty years;
(5) the number of its directors, which shall not be less than five nor more than eleven, and the names and residences of the persons appointed to act as such until their successors are elected and qualified;
(6) the amount of its capital stock, which shall not exceed the amount actually required for the purposes of the new corporation, as estimated by competent engineers, and the number of shares into which it is divided;
(7) the amount of stock actually subscribed, and by whom;
(8) the termini of its road or roads, and branches;
(9) the estimated length of its road or roads, and branches;
(10) that at least ten percent of its subscribed capital stock has been paid in;
(11) the names of the constitutent [constituent] corporations and the terms and conditions of consolidation in full.
Said articles of incorporation and consolidation must be signed and countersigned by the presidents and secretaries of the several constituent corporations and sealed with their corporate seals. There must be annexed thereto memoranda of the ratification and confirmation thereof by the stockholders of each constituent corporation, which must be respectively signed by stockholders representing at least three-fourths of the capital stock of their respective corporations. When completed, as aforesaid, said articles must be filed in the office of the state corporation commission, and thereupon the constituent corporations named therein must be deemed and held to have become extinct in all courts and places, and said new corporation must be deemed and held in all courts and places to have succeeded to all their several capital stocks, properties, roads, equipments, adjuncts, franchises, claims, demands, contracts, agreements, assets, choses and rights in action, of every kind and description, both at law and in equity, and to be entitled to possess, enjoy and enforce the same and every thereof, as fully and completely as either and every of its constituents might have done, had no consolidation taken place. Said consolidated or new corporation must also, in all courts and places, be deemed and held to have become subrogated to its several constituents and each thereof, in respect to all their contracts and agreements with other parties, and all their debts, obligations and liabilities of every kind and nature, to any persons, corporations or bodies politic, whomsoever, or whatsoever, and said new corporation must sue and be sued in its own name in any and every case in which any or either of its constituents might have sued or might have been sued, at law or in equity, had no such consolidation been made. Such consolidated or new corporation shall possess, enjoy and exercise all its franchises, properties, powers, privileges, abilities, rights and immunities, under the

provisions of this chapter, and shall conduct its business according to its provisions, and be subject to all its pains and penalties. Nothing in this subdivision contained shall be construed to impair the obligation of any contract to which any of such constituents were parties at the date of such consolidation. All such contracts may be enforced by action or suit, as the case may be, against the consolidated corporation and satisfaction obtained out of the property which, at the date of the consolidation, belonged to the constituent, which was a party to the contract in action or suit, as well as out of any other property belonging to the consolidated corporation;

T. every railroad corporation, in addition to the foregoing, shall have such further powers as may be necessary or convenient to enable it to exercise and enjoy, fully and completely, all the powers granted by this chapter; and, generally all such powers as are usually conferred upon, required and exercised by railroad corporations; and in the exercise of its powers and every thereof, shall have and enjoy all the rights, privileges, abilities and capacities which are enjoyed by natural persons.

History: Laws 1878, ch. 1, ch. [tit.] 6, § 2; C.L. 1884, § 2665; C.L. 1897, § 3847; Laws 1913, ch. 31, § 1; Code 1915, § 4697; Laws 1915, ch. 20, § 1; C.S. 1929, § 116-202; 1941 Comp., § 74-202; 1953 Comp., § 69-2-2.