

# **GAMING CONTROL ACT**

## **(Unannotated)**

### **60-2E-1. Short title.**

[Chapter 60, Article 2E](#) NMSA 1978 may be cited as the "Gaming Control Act".

**History:** Laws 1997, ch. 190, § 3; 2002, ch. 102, § 2.

### **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:

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 activity;

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

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

- (4) the value of a wagering credit;
- 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; "company" does not mean a nonprofit organization;
- 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 [60-2E-7](#) NMSA 1978;
- 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. "foreign institutional investor" means:
- (1) a government-related pension plan of a foreign government; or
  - (2) a person that meets the requirement of a qualified institutional buyer as defined by the governing financial regulatory agency of the foreign country in which the company's primary operations are located and is registered or licensed in that country as a bank, an insurance company, an investment company, an investment advisor, a collective trust fund, an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the board or a group composed entirely of entities specified in this subsection;
- O. "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;
- P. "gaming" means offering a game for play;
- Q. "gaming activity" means an endeavor associated with the manufacture or distribution of gaming devices or the conduct of gaming;
- R. "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;
- S. "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;
- T. "gaming establishment" means the premises on or in which gaming is conducted;
- U. "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;

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

W. "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;

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

Y. "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;

Z. "institutional investor" means:

(1) a foreign institutional investor;

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

(3) 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:

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

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

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

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

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

(f) 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

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

AA. "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;

BB. "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 rule;

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

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

EE. "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;

FF. "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;

GG. "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;

HH. "person" means a legal entity;

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

JJ. "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;

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

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

MM. "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;

NN. "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;

OO. "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;

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

QQ. "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; 1999, ch. 251, § 1; 2002, ch. 102, § 3; 2007, ch. 217, § 1; 2009, ch. 199, § 1.

**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; 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. Four members are appointed by the governor with the advice and consent of the senate, and one ex-officio member is the chairman of the state racing commission. 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; one appointed member of the board shall be an attorney who has been admitted to practice before the supreme court of New Mexico; and one appointed member of the board shall be a public member who has knowledge and experience in business management and financing.

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; the member who is an attorney shall be appointed for a term of three years; and the public member shall be appointed for a term of two 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 full-time board member who receives a salary pursuant to Subsection G of this section 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 full-time, salaried members.

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

G. The law enforcement, certified public accountant and attorney members of the board shall be full-time state officials and shall receive a salary set by the governor. The public member and ex-officio member of the board shall not receive salaries for their work for the

board. All appointed members of the board shall receive per diem and mileage pursuant to the provisions of the Per Diem and Mileage Act [[10-8-1 NMSA 1978](#)].

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; 2002, ch. 103, § 1.

#### **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 [[10-15-1.1](#) 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.

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 and the New Mexico Bingo and Raffle Act [[60-2F-1](#) NMSA 1978]. It has the duty to fulfill all responsibilities assigned to it pursuant to those acts, 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 and the New Mexico Bingo and Raffle Act;
- (3) develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act and the New Mexico Bingo and Raffle 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 of any prohibitory provision of the Gaming Control Act or any prohibitory provision of a regulation adopted pursuant to that act and fifty thousand dollars (\$50,000) for subsequent violations;
- (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 a 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](#) NMSA 1978];

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

(8) conduct audits, relevant to their gaming activities, 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 the applicant's or licensee's gaming activities in the presence of the applicant or licensee or the applicant's or licensee's 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 documents and records, relevant to the affiliate's gaming activities, of an affiliate of an applicant or licensee that 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;

(14) conduct background investigations pursuant to the Horse Racing Act [[60-1A-1](#) NMSA 1978]; and

(15) 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 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; 2001, ch. 262, § 1; 2002, ch. 102, § 4; 2005, ch. 349, § 6; 2007, ch. 39, § 30; 2009, ch. 81, § 28.

#### **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; 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. 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 [[14-4-1 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 the applicant's or licensee's 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 relevant to the gaming operator licensee's gaming activities 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;
- (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); and
- (19) establishing criteria and conditions for allowing temporary possession of gaming devices:
  - (a) by post-secondary educational institutions;
  - (b) for trade shows;

- (c) for film or theater productions; or
- (d) for other non-gaming purposes.

**History:** Laws 1997, ch. 190, § 10; 2001, ch. 262, § 2; 2002, ch. 102, § 5; 2009, ch. 199, § 2.

**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 the governor of New Mexico's salary.

**History:** Laws 1997, ch. 190, § 11; 2007, ch. 271, § 1.

**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 [[10-9-1 NMSA 1978](#)]. 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 [[29-7-1 NMSA 1978](#)].

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

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 issue administrative citations to any licensee upon a reasonable belief that the licensee has violated or is violating any provision of the Gaming Control Act or regulations of the board;

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

(5) 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;

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

(7) 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; 2002, ch. 102, § 6.

**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 board's law enforcement officers 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 board's law enforcement officers may request and receive criminal history information from the federal bureau of investigation or any other law enforcement agency or organization. The board's law enforcement officers 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, except that the board's law enforcement officers may provide criminal history information and reports to licensees or tribal gaming casinos when conducting background checks on behalf of the licensee or tribal gaming casino.

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; 2002, ch. 102, § 7.

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

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, an employee of the board 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 the executive director's position by the board.

**History:** Laws 1997, ch. 190, § 14; 2009, ch. 199, § 3.

**60-2E-13. Activities requiring licensing.**

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

B. A person shall not sell, supply or distribute a 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 the person 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. Except as provided in Subsection D of this section, 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 the person is a manufacturer licensee. A manufacturer licensee may sell, supply or distribute only the gaming devices or associated equipment that the manufacturer licensee manufactures, fabricates, assembles, programs or modifies.

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

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

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

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

H. Except as provided in Subsections B and D of this section, a person shall not purchase, lease or acquire possession of a gaming device or associated equipment except from a distributor licensee or manufacturer licensee.

I. 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; 2002, ch. 102, § 8; 2007, ch. 217, § 2.

#### **60-2E-13.1. Temporary possession of gaming device for limited purpose.**

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

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

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

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

**History:** Laws 2002, ch. 102, § 9; 2009, ch. 199, § 4.

#### **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 the licensee's possession licensed gaming machines if that activity is otherwise allowed by the provisions of the Gaming

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

E. An applicant for a license, a certification of finding of suitability or a work permit shall apply on forms provided by the board and shall furnish to the board two sets of fingerprint cards and all other information requested by the board. Submission of an application constitutes consent to a national criminal background check of the applicant, 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. The board may obtain from the taxation and revenue department copies of tax returns filed by or on behalf of the applicant or its affiliates and information concerning liens imposed on the applicant or its affiliates by the taxation and revenue department.

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. The supplemental forms shall require two sets of fingerprint cards and complete information and details with respect to the applicant's antecedents, habits, immediate family, character, state and federal criminal records, business activities, financial affairs and business associates, covering at least a ten-year period immediately preceding the date of filing of the application.

J. In conducting a background investigation and preparing an investigative report on the applicant, the board's law enforcement officers may request and receive criminal history information from the federal bureau of investigation or any other law enforcement agency or organization. The board's law enforcement officers 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 board.

**History:** Laws 1997, ch. 190, § 16; 2002, ch. 102, § 10; 2007, ch. 39, § 31.

#### **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 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, state and federal criminal records, 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 previously 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, unless the violation that is the basis of the denial, permanent suspension or other limiting action regarding a license, certification or permit applied for or issued in this state or

another state is determined by the board to be a technical violation, and, if the board finds the violation to be a technical violation, the board may choose to issue a license or certification.

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; 2007, ch. 39, § 32; 2009, ch. 199, § 5.

#### **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. Company applicants; nonprofit organization applicants; required information.**

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

(1) 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;

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

(3) 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;

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

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

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

(7) 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 audited by independent certified public accountants; and

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

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

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

(2) 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;

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

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

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

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

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

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

**History:** Laws 1997, ch. 190, § 21; 1999, ch. 251, § 2; 2009, ch. 199, § 6.

#### **60-2E-20. Individual certification of finding of suitability of officers, directors and other persons.**

A. 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 individually apply for and obtain a certification of finding of suitability, according to the provisions of the Gaming Control Act, 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 apply for and obtain a certification of finding of suitability, the company shall require those persons to apply for certification. A person who is required to be certified pursuant to this subsection 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. A person required or requested to be certified pursuant to this subsection shall provide to the board an application for certification, including a personal history, a financial statement, copies of the person's income tax returns for the three years immediately prior to the year of the application and other information that the board deems necessary or appropriate.

B. The key executives of a nonprofit organization that holds or has applied for a license shall individually apply for and obtain a certification of finding of suitability. For purposes of this subsection, key executives are those officers, employees, volunteers and other persons who are designated by the nonprofit organization as key executives. The board may require additional officers, employees, volunteers and other persons to apply for and obtain a certification of finding of suitability if the board determines the public interest is served by the additional certifications. A person who is required to be certified pursuant to this subsection shall apply for certification within thirty days after becoming an officer 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. A person required or requested to be certified pursuant to this subsection shall provide to the board an application for certification, including a personal history, a financial statement, copies of the person's income tax returns for the three years immediately prior to the year of the application and other information that the board deems necessary or appropriate.

**History:** Laws 1997, ch. 190, § 22; 1999, ch. 251, § 3; 2002, ch. 101, § 1; 2009, ch. 199, § 7.

#### **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 two hundred fifty thousand dollars (\$250,000) per year;

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

(j) management and service contracts pertaining to the licensee or applicant, if deemed necessary by the board;

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

(l) balance sheets and profit and loss statements, audited by independent certified public accountants or their foreign equivalents, 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 or its foreign equivalent within thirty days after the return is filed.

B. The board may require all holders of five percent or more of the equity security of a holding company or intermediary company to apply for a certification of 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 [60-2E-22](#) NMSA 1978.

**History:** Laws 1997, ch. 190, § 23; 2009, ch. 199, § 8.

#### **60-2E-22. Change in company ownership.**

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

(1) if the company is a publicly traded corporation, 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 company operates;

(5) if the company is a publicly traded corporation, 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) if the company is a publicly traded corporation, 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 company;

(8) remuneration exceeding one hundred thousand dollars (\$100,000) 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 company;

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

(10) management and service contracts of the company 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 or their foreign equivalents, for not less than the three fiscal years preceding the date of the proposed transfer of ownership;

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

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

B. The board shall determine whether the proposed transaction is a transfer or assignment of the license as prohibited by Subsection G of Section [60-2E-14](#) NMSA 1978. If the board

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

(1) the business history of the company, 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 company, 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 company 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 company 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 company 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.

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

**History:** Laws 1997, ch. 190, § 24; 2009, ch. 199, § 9.

**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 who the board determines is or is to become actively and directly engaged in the administration or supervision of, or in 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; 1999, ch. 251, § 4; 2002, ch. 102, § 11.

**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 ownership; 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 ownership to a 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 the officer or director was elected or appointed.

C. A company licensee shall report to the board in writing a 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; 2009, ch. 199, § 10.

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

A. An applicant for a gaming operator's license 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 by the board is a condition of issuance of the license.

B. An applicant for a gaming operator's license 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 current financial status and gaming protection plan;
- (5) a security plan;
- (6) a staffing plan for gaming machine operations;
- (7) internal control systems in compliance with Section [60-2E-35](#) NMSA 1978; and
- (8) details of any proposed progressive systems.

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

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

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.

**History:** Laws 1997, ch. 190, § 28; 2009, ch. 199, § 11.

**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 [60-1A-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 parimutuel wagering; or
- (2) the racetrack fails to maintain a minimum of four live race days a week with at least nine live races on each race day during its licensed race meet, except as provided in Subsection F of this section.

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

D. By execution of an allocation agreement, signed by both the allocating racetrack and the racetrack to which the allocation is made, a gaming operator licensee that is a racetrack may allocate any number of its authorized gaming machines to another gaming operator licensee that is a racetrack. To be valid, the allocation agreement must bear the written approval of the board and the state racing commission, and this approval shall make specific reference to the meeting at which the action of approval was taken and the number of votes cast both for and against the approval. By allocating a number of its authorized machines to another racetrack, the allocating racetrack automatically surrenders all rights to operate the number of machines allocated. No racetrack shall operate or be authorized to operate more than seven hundred fifty gaming machines.

E. 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. On days when gaming machines are permitted to be operated, a racetrack gaming operator licensee may offer gaming machines for operation for up to eighteen hours per day; provided that the total number of hours in which gaming machines are operated does not exceed one hundred twelve hours in a one-week period beginning on Tuesday at 8:00 a.m. and ending at 8:00 a.m. on the following Tuesday. A racetrack gaming operator licensee may offer gaming machines for play at any time during a day; provided that the total hours of operation in each day from just after midnight of the previous day until midnight of the current day does not exceed eighteen hours. A racetrack gaming operator licensee shall determine, within the limitations imposed by this subsection, the hours it will offer gaming machines for operation each day and shall notify the board in writing of those hours.

F. Maintaining fewer than four live race days or nine live races on each race day during a licensed race meet does not constitute a failure to maintain the minimum number of live race days or races as required by Paragraph (2) of Subsection B of this section if the licensee submits

to the board written approval by the state racing commission for the licensee to vary the minimum number of live race days or races, and the variance is due to:

- (1) the inability of a racetrack gaming operator licensee to fill races as published in the licensee's condition book;
- (2) severe weather or other act, event or occurrence resulting from natural forces;
- (3) a strike or work stoppage by jockeys or other persons necessary to conduct a race or meet;
- (4) a power outage, electrical failure or failure or unavailability of any equipment or supplies necessary to conduct a race or meet;
- (5) hazardous conditions or other threats to the public health or safety; or
- (6) any other act, event or occurrence that the board finds is not within the control of the licensee even with the exercise of reasonable diligence or care.

G. Alcoholic beverages shall not be sold, served, delivered or consumed in the area restricted pursuant to Subsection F of Section [60-2E-26](#) NMSA 1978.

**History:** Laws 1997, ch. 190, § 29; 2000, ch. 90, § 1; 2001, ch. 334, § 1; 2005, ch. 350, § 1; 2009, ch. 199, § 12.

**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.

**History:** Laws 1997, ch. 190, § 30; 2002, ch. 107, § 1.

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

A. It is unlawful for a person to operate, carry on, conduct or maintain any form of manufacturing of a gaming device or associated equipment for use or play in New Mexico or any form of manufacturing of a 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 an 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, 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; 2009, ch. 199, § 13.

### **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 or any form of distribution of any gaming device in New Mexico for use or play outside of 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, 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; 2002, ch. 102, § 12.

**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 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 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.

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

H. 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.

I. The board's order is effective on the date issued and continues in effect unless 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; 2002, ch. 102, § 13.

### **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 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 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-34.1. Self-exclusion from gaming establishments; procedure; fines; confidentiality.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**History:** 1978 Comp., § 60-2E-34.1 as enacted by Laws 2009, ch. 199, § 14.

**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; 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 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, 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 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;

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;

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; 2001, ch. 208, § 1; 2003, ch. 185, § 1.

#### **60-2E-45. Repealed.**

#### **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; ten percent of the net take of a gaming operator licensee that is a nonprofit organization; and twenty-six percent of the net take of every other 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 [7-1-1 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 rules adopted by the state racing commission. An amount not to exceed twenty percent of the interest earned on the balance of any fund consisting of money for purses distributed by racetrack gaming operator licensees pursuant to this subsection may be expended for the costs of administering the distributions. A racetrack gaming operator licensee shall spend no less than one-fourth 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 sixty 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; 1999, ch. 187, § 1; 2001, ch. 256, § 1; 2001, ch. 262, § 3; 2002, ch. 48, § 1; 2005, ch. 350, § 2.

#### **60-2E-47.1. County gaming tax credit.**

A. Subject to the provisions of Subsection C of this section, beginning January 1, 2011, a taxpayer that is a gaming operator licensee that is a racetrack may claim, and the department may allow, a tax credit in an amount of up to fifty percent of the taxpayer's monthly gaming tax liability pursuant to Section [60-2E-47](#) NMSA 1978, not to exceed a maximum credit of seven hundred fifty thousand dollars (\$750,000) per state fiscal year, if the taxpayer:

(1) is located in a county in which the board of county commissioners has imposed and the electors have approved a county business retention gross receipts tax; and

(2) had in the immediately prior calendar year a combined net take and receipts, not including receipts for purses, from an allocation agreement made pursuant to Section [60-2E-27](#) NMSA 1978 of under fifteen million dollars (\$15,000,000).

B. The tax credit that may be claimed pursuant to this section may be referred to as the "county gaming tax credit".

C. If in the prior fiscal year the total amount of county gaming tax credit claimed by the taxpayer exceeded the amount distributed to the state from the proceeds of a county business retention gross receipts tax imposed by the county in which the taxpayer is located, the taxpayer shall be deemed to owe an amount equal to the excess credit and shall remit to the state an amount equal to the excess credit. The taxpayer may not again claim the county gaming tax credit until the excess amount calculated pursuant to this subsection has been remitted to the state.

D. The county gaming tax credit shall be administered by the taxation and revenue department pursuant to the Tax Administration Act [[7-1-1](#) NMSA 1978] .

E. Subject to the provisions of Subsection C of this section, the credit created in this section may be claimed on a monthly basis against the gaming tax remitted to the state on a form provided by the department. The credit claimed each month may not exceed one-twelfth of fifty percent of the gaming tax paid in the prior calendar year. Any additional credit that may be allowed may be claimed in the last month of the fiscal year. The maximum county gaming tax credit claimed shall not exceed fifty percent of the gaming tax due from the taxpayer in the fiscal year.

**History:** Laws 2010, ch. 31, § 3.

**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.

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, 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 gaming 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; 2002, ch. 102, § 14.

**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 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. 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 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 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 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 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. 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 thirty 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 Albuquerque or, upon written request by an aggrieved person, in the place or area affected.

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; 2002, ch. 102, § 15.

#### **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 60-2E-59](#) NMSA 1978 may appeal the action to the court of appeals within thirty days after the date the action is taken. 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; 2002, ch. 102, § 16.

## **60-2E-61. Repealed.**

### **60-2E-61.1. Lien on winnings for debt owed to or collected by human services department; procedure.**

A. By operation of law, a lien attaches to a payout of one thousand two hundred dollars (\$1,200) or more from a gaming machine of a racetrack gaming operator licensee when won by a person owing a debt to or collected by the human services department acting as the state's child support enforcement agency pursuant to Title IV-D of the federal Social Security Act.

B. The human services department shall periodically provide the board with a verified list of names, social security numbers and the last known addresses of obligors owing a debt to or collected pursuant to Section 1 Subsection A by the department.

C. In order to enforce the lien, the board shall by rule adopt procedures applicable to racetrack gaming operator licensees when a payout occurs. The board shall provide a racetrack gaming operator licensee with an electronic system to search by the names and social security numbers of persons currently owing a debt subject to or collected by the human services department. Prior to the payment of a payout, the licensee shall make a good-faith effort to check the name of the winner against the list of names and social security numbers provided by the human services department to the board.

D. If the winner is a person owing a debt to or collected by the human services department, the racetrack gaming operator licensee shall retain the payout and promptly notify the department and the board on a form approved by the department. The human services department shall establish by rule an administrative process for support obligors to contest the obligation prior to release of the funds by the licensee to the department. The human services department shall, within seven working days of receipt of notice of the payout, provide the racetrack gaming operator licensee with written notice of its intent to enforce the administrative lien and of the amount claimed. After receiving the notice of intent, the racetrack gaming operator licensee shall retain the amount claimed in a suspense account and remit the balance to the payout winner. Upon final disposition of the administrative procedure, the human services department shall immediately notify the racetrack gaming operator licensee in writing of the amount to be tendered to the department and release the lien for any funds to be distributed to the payout winner.

E. The board shall by rule adopt lien attachment and enforcement procedures applicable to other gaming operator licensees when a gaming machine payout equals one thousand two hundred dollars (\$1,200) or more.

F. Neither the board nor any gaming operator shall be liable to the human services department or to the person on whose behalf the department is collecting the debt if the licensee

fails, in good faith, to match a winner's name to a name on the list provided pursuant to Subsection B of this section.

**History:** Laws 2009, ch. 149, § 1.

**60-2E-62. Crime; unlawful possession of gaming device.**

A. It is unlawful for a person intentionally to possess an unlicensed or illegal gaming device, except that:

(1) a distributor licensee or a manufacturer licensee may possess an unlicensed gaming device while awaiting transfer of the gaming device to a gaming operator licensee for licensure; and

(2) a person may possess an unlicensed gaming device for the limited purposes provided for in [Section 60-2E-13.1](#) NMSA 1978.

B. A person may possess an antique gambling device as defined in Subsection A of [Section 30-19-1](#) NMSA 1978, provided the antique gambling device is not used in gambling.

C. A person violating this section is guilty of a fourth degree felony and shall be sentenced pursuant to [Section 31-18-15](#) NMSA 1978.

**History:** Laws 2002, ch. 102, § 18.