

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 1 GAMES AND GAMING GENERAL PROVISIONS
PART 22 FORFEITURE PROCEEDINGS UNDER THE GAMING CONTROL ACT

15.1.22.1 ISSUING AGENCY: New Mexico Gaming Control Board.
[15.1.22.1 NMAC – N, 3/15/99]

15.1.22.2 SCOPE: This rule applies to all persons owning or in possession of property subject to seizure and forfeiture under the Gaming Control Act and Article 19 of the Criminal Code.
[15.1.22.2 NMAC – N, 3/15/99]

15.1.22.3 STATUTORY AUTHORITY: Section 60-2E-7(B)(3) of the Gaming Control Act authorizes the board to develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act.
[15.1.22.3 NMAC – N, 3/15/99]

15.1.22.4 DURATION: Permanent.
[15.1.22.4 NMAC – N, 3/15/99]

15.1.22.5 EFFECTIVE DATE: March 15, 1999, unless a later date is cited at the end of a section.
[15.1.22.5 NMAC – N, 3/15/99; A, 1/31/02]

15.1.22.6 OBJECTIVE: The objective of this rule is to establish forfeiture proceedings in connection with the board's seizure of gaming machines and property connected with gaming, unlicensed gaming machines under Section 60-2E-13(D) of the Act, and gambling devices under Article 19 of the Criminal Code.
[15.1.22.6 NMAC – N, 3/15/99]

15.1.22.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

- A. "Act"** means the New Mexico Gaming Control Act.
- B. "amusement device"** means any mechanical, electromechanical or electronic contrivance or device designed and manufactured for bona fide amusement or entertainment purposes which, by application of some skill, only entitles the player to replay the game.
- C. "Criminal Code"** mean the New Mexico Criminal Code, Sections 30-1-1 through 30-51-5 NMSA 1978.
- D. "gaming machine"** means:
 - (1)** 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; or
 - (2)** a contrivance, other than an antique gambling device, that is not licensed for use pursuant to the Act and that, for a consideration, affords the player an opportunity to obtain anything of value, the award of which is determined by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the device; or
 - (3)** an illegal gaming machine.
- E. "illegal gaming machine"** means any unlicensed gaming machine or any mechanical, electromechanical or electronic contrivance or device that is designed and manufactured for operation as a gaming machine, whether or not the contrivance or device is in working order as designed or its use has been adjusted or modified; "illegal gaming machine" does not include an amusement device.
- F. "property"** means gaming machines, gaming devices, and other property connected with gaming.
- G. "this title"** means Title 15 of the New Mexico Administrative Code.

[15.1.22.7 NMAC – N, 3/15/99]

15.1.22.8 AMUSEMENT DEVICES; IDENTIFYING FEATURES:

- A. Features used to identify an amusement device include, but are not limited to, the following:
 - (1)** average player—an ordinary person can, with reasonable application to the problem, learn to score and win games consistently;**

- (2) control by player—the device gives the player the opportunity to exert continuous, effective control the entire duration of the game;
 - (3) time of play—the game is not operated on a timed cycle, and the player can, depending on skill level, affect the time of play of the game;
 - (4) single coin feature—the denomination of coins used to activate the machine cannot be varied by the owner;
 - (5) conversion of machine—the device cannot be easily converted into an actual payout machine;
 - (6) no accumulation of credits—the device has no credit meter or other means to accumulate credits;
- and
- (7) no knock-off switch or other means to remove credits earned.

B. Any device incorporating the features described in Subsection A of 15.1.22.8 NMAC will be presumed to be an amusement device and will not be subject to seizure and forfeiture as an illegal gaming machine. [15.1.22.8 NMAC – N, 3/15/99; A, 1/31/02]

15.1.22.9 FORFEITURE PROCEEDINGS:

A. Property subject to forfeiture and disposal under the Act and the Criminal Code may be seized by an agent of the board upon an order issued by the district court having jurisdiction or as otherwise provided in this rule.

B. Seizure without such an order may be made if:

- (1) the property is seized from a person who has made application for a license under the Act or is already licensed by the board;
- (2) the seizure is incident to an arrest or search warrant;
- (3) the property subject to seizure has been the subject of a prior judgment in favor of the state in an injunction or forfeiture proceeding based upon the Act or Criminal Code;
- (4) the agent has probable cause to believe that the property is directly or indirectly dangerous to public health or safety; or
- (5) the agent has probable cause to believe that the property was used or is intended to be used in violation of the Act.

C. Forfeiture proceedings must commence within 30 days of the seizure.

D. The board may initiate forfeiture proceedings in its own name when the property is seized under the Act. In the case of property seized under the Criminal Code, the board may notify the District Attorney of the relevant district of the seizure. In the event the District Attorney fails or declines to initiate forfeiture proceedings, the board may seek the assistance of the Attorney General to initiate such proceedings.

E. Property taken or detained is deemed to be in the custody of the law enforcement agency seizing it, subject only to the orders and decrees of the district court. When property is seized, the board's agents may:

- (1) place the property under seal;
- (2) remove the property to a place designated by the board;
- (3) remove the property to an appropriate location for disposition in accordance with the law; or
- (4) take other action as directed by the board in accordance with the law or this title.

[15.1.22.9 NMAC– N, 3/15/99; A, 3/31/00]

HISTORY OF 15.1.22 NMAC: [RESERVED]