

# GAMING LEGALNEWS

## NEW NEVADA LICENSING SCHEME IN THE WORKS FOR ASSOCIATED EQUIPMENT MANUFACTURERS

by Jennifer Gaynor, Kate Lowenhar-Fisher, Greg Gemignani and Jeff Silver

Associated equipment manufacturers ("AEMs") who do business in Nevada are soon going to be subject to a whole new level of gaming licensure requirements. Thanks to the recent passage of Nevada Senate Bill 38, the Nevada Gaming Control Board (the "Board") has been granted expanded power to regulate and license AEMs.

Most gaming jurisdictions lump all gaming equipment manufacturers into a single "manufacturer" licensing category. Nevada is an exception; it classifies manufacturers into two groups, gaming device manufacturers and AEMs.

In Nevada, gaming devices, which include slot machines, are defined as those devices or objects used in connection with gaming that affect the result of a wager by determining win or loss. Associated gaming equipment is anything other than a gaming device that is tangential to the gaming operation. Examples include dice, cards, items that report revenue, and equipment used for counting money.

Under the current Nevada regulatory scheme, gaming device manufacturers are required to go through the full gaming licensure process with the Board and the Nevada Gaming Commission (the "Commission"). AEMs, on the other hand, are not required to have a Nevada gaming license but are subject to generally much less rigorous discretionary licensing approvals.

Now, with SB38, the licensing for AEMs will move from discretionary to mandatory. This does not mean that every AEM will need to undergo the full licensing process like a gaming device manufacturer. What the Board envisions is a tiered system for AEM licensure and approvals, which will consist of different classes of regulatory approvals or licensure depending on where on the scale an AEM falls, from full gaming licensure to nothing at all.

This change is also intended to shift the burden for the cost of any licensing investigations from the Board to the AEM applicant. This is because in Nevada the gaming applicant is required to pay the cost of the licensing investigation in cases of mandatory licensure, but the Board must bear the cost of investigation when it calls forward an entity or person who is subject only to licensure on a discretionary basis. Therefore, those AEMs that will be required to undergo the mandatory full licensing process will also be required to pay the substantial costs of that licensing investigation. The rate currently charged by the Board's investigative staff is \$135 per hour, and the gaming laboratory agents, who are charged with deciding into which classification or tier an AEM will fall, are now billing their time at \$155 per hour.



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Finally, the employees of an AEM are now deemed to be “gaming employees” and subject to regulation as such.

What this will mean for AEMs will be dependent on the type of equipment they manufacture and where that type of equipment may fall within the tiered structure that the Board and Commission will be crafting. The Board will be hosting workshops where members of the AEM industry will have the opportunity to provide input. Our gaming attorneys will be monitoring and participating in this process. For more information on the Board’s regulatory process or other questions about SB38, please contact Greg Gemignani (ggemignani@dickinsonwright.com), Kate Lowenhar-Fisher (KLowenhar-Fisher@dickinsonwright.com), Jeff Silver (jsilver@dickinsonwright.com) or Jennifer Gaynor (jgaynor@dickinsonwright.com).

## UPDATES TO NEVADA’S GAMING LAWS – 2015 LEGISLATIVE SESSION

*by Jennifer Gaynor, Kate Lowenhar-Fisher and Greg Gemignani*

Now that the dust has settled on the 2015 Nevada legislative session, we find the gaming landscape has been altered in some pretty interesting ways. There are a few bills that will allow Nevada gaming licensees to explore a diverse new world of gaming technologies and offerings, other bills that serve to extend the reach of Nevada’s gaming regulators to new entities and activities, and yet others that clarify administrative issues and procedures.

### Exploring New Worlds of Gaming: SB9, SB443 and SB445

#### SB9

This bill gives Nevada’s gaming regulators a policy directive and enhanced rulemaking authority to develop technical standards for “hybrid” games – games that are a blend of skill and chance, where the outcome will be determined by both as well as external factors including frequency of play, use of other casino services, and use in combination with other technologies. The idea is to ensure Nevada’s leadership in the next generation of gaming, and to attract a new generation of customers who relate to electronic skill-based game play and would be drawn to features such as bonus rounds that reward the skill of a player, integration of the games with their social media accounts, interactive networked game play, and the use of electronic commerce transactions. The first public regulation workshop on SB9 was already held by the Nevada Gaming Control Board (the “Board”) on June 24, 2015, with the next to be held sometime this summer.

#### SB443

Senate Bill 443 is the “entity wagering” bill. It allows the formation of business entities to place race and sports pool wagers, where out-of-state investors can join business entities and share the profits and losses from wagers at Nevada gambling establishments.

#### SB445

Senate Bill 445 permits licensed race and sports book operators to provide centralized management to race and sports book operations in Nevada and other jurisdictions where such bets are legal.

### Extending the Reach of Nevada’s Gaming Regulation: SB38, SB40 and SB409

#### SB38

Senate Bill 38 extends the reach of the Board to a new category of licensees, to nightclubs and day clubs that are located on the premises of a Nevada licensed casino resort. Senate Bill 38 essentially treats club operators in a manner similar to gaming licensees. If required by the Board or the Nevada Gaming Commission, the employees of such clubs shall be subject to a background investigation similar to those conducted for gaming employees.

As noted in this week’s lead article, Senate Bill 38 also expands the powers of the Board to regulate and license associated equipment manufacturers (“AEMs”). Specifically, licensing or findings of suitability for AEMs will move from discretionary to mandatory. This change will also shift the burden for the cost of any licensing investigations from the Board to the AEM applicant. Finally, the employees of an AEM are now deemed to be “gaming employees” and subject to regulation as such.

This bill also removes certain licensure requirements for manufacturers of equipment associated with interactive gaming. The Board determined that there are two categories of interactive gaming service providers with no need for licensure: those who provide certain intellectual property related to identifying interactive gaming systems and those who provide information regarding persons for customer lists and databases. The Board had similarly considered removing licensing requirements for cash access and wagering service providers, and had language to this extent in the initial draft of the bill, but decided to keep those requirements in place.

Finally, SB38 amends Nevada’s charitable lottery laws to expressly list nonprofit alumni organizations and legal bar associations as qualified nonprofit organizations that may offer charitable lotteries and to permit statewide charitable lotteries. It also clarifies language in the statute regarding triggers for charitable lottery registration requirements to be consistent with the Board’s practice.

#### SB40

Filed on behalf of the Board, Senate Bill 40 targets illegal offshore wagering sites and other illegal bookmakers. It prohibits a person from receiving any compensation or reward, or any percentage or share of the money or property played for, in return for facilitating a bet on a future contingent event, unless that person has the required gaming license to do so. The Board brought this bill because Nevada did not have an illegal bookmaking law to use to prosecute this illegal activity. The intent was to make a specific illegal bookmaking statute the Board

can utilize in future prosecutions instead of a licensing statute (NRS 463.160).

## *SB409*

Senate Bill 409 amends Nevada's consumer reporting laws to remove restrictions on what a credit reporting agency may report to gaming operators. Now a credit reporting agency is no longer prohibited from reporting to gaming licensees information about a job applicant regarding bankruptcies older than ten years, other civil judgments older than seven years, and criminal convictions older than seven years. Now there is no limitation on how far back such checks may run.

### **Procedural and Administrative Changes and Clarifications**

#### *AB40*

A key administrative change effected by AB40 is to change the name of the "State Gaming Control Board" to the "Nevada Gaming Control Board."

This bill also serves to clarify that certain actions and proceedings of the Board are not subject to certain provisions of the Nevada Open Meeting Law ("OML"). Specifically, the OML requires all deliberation, actions, and discussions of a public body to take place in a public setting. This bill grants a limited exemption to the Board from the open meeting law related to the Board's investigative activities while inquiring as to whether a violation has occurred and, if so, what actions should be taken in determining if those violations have occurred. The OML still applies to the Board's procedures, including monthly meetings.

### **Updates to Nevada's Live Entertainment Tax (NRS Chapter 368A)**

#### *SB266*

Under existing law, the rate and imposition of the tax depended upon the size of the facility in which the live entertainment is provided, with the break being 7,500 persons or fewer. Those facilities were to charge the patron a 10% tax on admission, food and merchandise. The old law provided a reduced tax rate for facilities above 7,500 persons, where the rate was reduced to 5%. The new tax rate will be a uniform 9% of the admission charge to a facility where live entertainment is provided, however, the tax is not imposed on amounts paid for food, refreshments or merchandise. The value of certain admissions provided to a patron on a complimentary basis is excluded from the tax.

Additionally, under the new law, there is no distinction in the size of the facility or whether live entertainment was provided by licensed vs. non-licensed entities. The prior exclusion for events that were provided outdoors was eliminated. All live entertainment events are taxed uniformly (with certain exemptions for charitable activities where fewer than 7,500 tickets are sold), however NASCAR would be exempt if they give Nevada a second race weekend and professional sports would be exempt if one of the teams playing in the contest is domiciled in Nevada. Combat sports are exempt from the live entertainment tax

but are subject to the levies imposed by other sections of the law that have oversight by the Nevada Athletic Commission. Finally, collegiate sports involving Nevada's schools are exempt, with the exception of the Silver Bowl, which would not be exempted.

The effective date of the law is July 1, 2015, which would be applicable to events that were previously subject to the old law; however, if not previously taxed under the old law, the effective date would be October 1, 2015. For example, the National Finals Rodeo would be covered under the new law, but prepaid tickets sold prior to October 1, 2015, would be exempt.

### **Amendments to Other Areas of Privileged Licensing**

#### *SB22*

This bill moves the local licensing and regulatory power over certain persons and businesses, including importers of liquor, wholesale dealers of beer or wines and liquors, winemakers, instructional wine-making facilities, breweries, brew pubs and craft distilleries, from the board of county commissioners of the county in which the applicant maintains his or her principal place of business to the governing body of the city in which the business is located, if the applicant's principal place of business is located within an incorporated city.