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NEVADA GAMING LEGISLATION UPDATE – MARCH 2019

by Jennifer Gaynor, Kate Lowenhar-Fisher and Greg Gemignani

It has been a rollercoaster of a year for Nevada gaming regulators, with multiple changes at the Nevada Gaming Control Board (“Board”) and Nevada Gaming Commission (“Commission”), including the appointment of a new Chair of the Board, Sandra Douglass Morgan, in January by new Nevada Governor Steve Sisolak. Chair Morgan had been a member of the Commission since April of 2018. Governor Sisolak has yet to appoint a replacement for Chair Morgan’s now-vacated seat on the Commission or for Shawn Reid, who retired from the three-member Board when his term expired at the end of January, leaving both the Board and Commission short a member for the time being.

Despite the turnover, Chair Morgan and the other remaining members of the Board and Commission are facing head-on the task of working with Nevada’s legislators to update Nevada’s gaming laws in the 2019 Nevada legislative session, which runs February-June of this year.

Here is a summary of the key gaming bills currently pending in the Nevada legislature:

Senate Bill 72

Introduced by the Senate Judiciary Committee on behalf of the Board, this bill is something of a catch-all for gaming law updates.

Sports wagering ticket brokers and table games – changes on hold

Initially, this bill was intended to introduce enabling legislation for the Commission to promulgate regulations for sports wagering ticket brokers. Per Member Terry Johnson, however, after continued research and discussion the Board has decided that further study is necessary to determine the correct regulatory structure for sports wagering ticket brokers. According to Member Johnson, the Board has also pulled the proposed definition of the term “table game” from this bill because “with many licensees offering hybrid options among table games and card games, the Board wants to continue to study this issue before defining the term in statute.”

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Changes impacting gaming employees

Several sections of this bill deal with gaming employee issues. One section authorizes the Board to temporarily suspend the registration of a gaming employee upon his or her arrest by an agent of the Board and requires the Commission to adopt regulations relating to such temporary registration suspensions. As explained by Member Johnson, the purpose of the bill is to address the situation where a gaming employee works at multiple establishments. So, if an employee is arrested at one establishment, the Board wants to make sure the employee is removed from any other gaming establishments at which (s)he is concurrently employed. Although the Board does have an existing process for summary revocation of gaming registrations, this bill will allow the Board to act more nimbly.

Another section of the bill requires notification to be provided to the Board if a security guard employed by a gaming licensee switches from an unarmed to an armed position. This change will provide the Board the opportunity to review those individuals and their qualifications with a higher level of scrutiny.

Under existing law, gaming licensees must mail or deliver their employees' completed applications for registration or renewal of registration as a gaming employee or a change of employment to the Board within 5 days of their receiving the completed application from the employee. This bill removes the 5-business day deadline and, instead simply requires submittal of these registrations or renewals to the Board before the employee may commence or continue to work as a gaming employee. This change reflects the fact that registration is now all done online and happens virtually instantaneously. Similarly, because fingerprints are processed electronically, the Board no longer needs two sets of fingerprints from gaming employee applicants. However, the bill allows for the Board to collect the actual cost incurred by the Board as the fee for processing the application (up to \$75). Finally, the bill also amends NRS 463.337 to clarify that theft may be a basis for revocation of a gaming employee registration or Board objection to such registration.

Changes regarding approvals

Senate Bill 72 addresses approval processes, clarifying that once a licensee has an approval from the Commission or the Board, that approval is revocable and no rights vest with the licensee. Current statutes make this clear regarding

Commission approvals, but because the Board also grants certain administrative approvals, it is important to clarify that the same provisions apply to approvals by the Board.

Another section of this bill would remove the dual system of approval for new games. Presently, new games undergo an investigation by the Board and then must obtain Commission approval. The intent of this section is to administratively streamline this process. Per testimony by Member Johnson, the Board is still hammering out the details on this section to see if they will want to go forward with this change at this time.

Live Entertainment Tax issues

A couple of sections of this bill deal with the Live Entertainment Tax ("LET") in Nevada. This is a tax collected on receipts for admissions to live entertainment events. This tax is collected by the Board for events conducted on the premises of gaming licensees (and by the Department of Taxation for events conducted elsewhere). Previously, the Board required licensees to record and report certain sales in an area subject to the LET tax. With a recent transition to an admissions-based LET, however, the Board no longer needs to evaluate those sales. This change is intended to provide some regulatory relief and will provide more consistency with how the Nevada Department of Taxation collects LET.

Allowing certain equipment to be moved off-premises

This bill eliminates the requirement that cashless wagering systems be physically located and operated in-house by a gaming licensee. This change is in recognition of the fact that there is an increase in non-licensees providing these services to the gaming industry. It is important to note that the Board will still have full access to inspect and access those records. Similarly, this bill also authorizes the Commission to adopt regulations that will allow associated equipment to be located at a hosting center (again, this will not limit the Board's right to inspect and access this equipment).

Open Meeting Law issues

Although the Board is a public body, subject to Nevada's Open Meeting Law statute ("OML"), it also has certain investigative, law enforcement and other regulatory responsibilities that may require some discretion. This bill provides that the OML does



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not apply to an interpretation by the Board of any provision of Title 41 of NRS or any regulations promulgated thereunder or to the applicability of any federal or state law or regulation to any provision of title 41 of NRS or any regulations promulgated thereunder.

This bill also clarifies that the OML does not apply to a determination by the Board to issue an industry notice concerning such interpretations. This will enhance communications between the Board and the industry it regulates by allowing the Board to provide information and guidance more expeditiously without fear it will run afoul of the OML.

Finally, existing law provides that the OML does not apply to any action or proceeding of the Board that is related to making a determination as to whether: (1) certain violations have occurred; or (2) to file certain complaints with the Commission. Such provisions are scheduled to expire by limitation on May 30, 2019. This bill removes that expiration date, thereby extending indefinitely the exemption from the Open Meeting Law for such actions or proceedings of the Board.

Senate Bill 73

Introduced by the Senate Judiciary Committee on behalf of the Board, this bill will move the definition of “mobile gaming” from inclusion as a category for nonrestricted gaming licenses into the current definition of “gaming device”. In Nevada, “mobile gaming” is when customers use a mobile device to gamble within a licensed gaming establishment (not internet gaming).

This bill will make mobile gaming subject to the same regulation and control as other gaming devices. Per Chair Morgan’s testimony, there are currently about 4-5 licensees with this mobile gaming license who may be impacted by this change. At least one of these is working with the Board on amendments, with the likely goal to clarify its ability to keep its nonrestricted gaming license (which is required as a predicate to its sports pool licenses in Nevada) when mobile gaming is no longer a separate category of nonrestricted gaming license.

Senate Bill 46

Regulation of Tout Providers, “public access” definition change, and registration of Interactive Gaming Service Providers – on hold

Senate Bill 46, as introduced, would require the Board to regulate “tout” services in Nevada. This section, however, has been proposed to be removed to allow for “further study.” Similarly, another section, which would require the Commission to adopt regulations interpreting the terms “open to the general public” and “access of the general public to gaming activities” has also been proposed to be removed from the bill to allow for further discussion and study. Finally, the Board was considering changing the requirements for interactive gaming service providers from full licensure to a more streamlined registration process, but that change has been proposed to be removed as well.

“Gross revenue” redefined

This bill also proposes to revise the definition of “gross revenue” in NRS 463.0161 to include cash received as entry fees for all contests or tournaments.

Authorization to intercept certain communications

Finally, this bill would amend NRS 179.460 to authorize the attorney general or district attorney of any county to apply for a court order to intercept communications during an investigation involving certain offenses relating to gaming (violations of NRS 463.160 or 465.086).

Assembly Bill 221

Assembly Bill 221 would allow adults who are 18-21 years of age to be employed as gaming employees by gaming manufacturers and distributors. This bill is supported by the industry as well as Nevada educational institutions, because it will allow these adults, who graduate from technical training programs and trade schools, to be hired in the technology sector of the gaming industry, as well as allow manufacturers and distributors to introduce internships and part-time work opportunities to these younger workers. Already, workers under the age of 21 are allowed to work in count rooms or to hold certain food and beverage positions that are not involved in conducting a gambling game or interacting with gaming patrons.

Assembly Bill 117

Existing Nevada law establishes provisions governing lotteries, including charitable lotteries. (Chapter 462 of NRS). Existing law also establishes provisions governing charitable games,



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including games operated by charitable or educational organizations and charitable bingo games operated by qualified organizations. (NRS 463.409-463.40965). This bill proposes to incorporate charitable games into the provisions of law governing charitable lotteries for the purpose of treating all charitable gaming in the same manner.