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Gaming & Hospitality

GAMING & HOSPITALITY LEGAL NEWS

CHANGES TO NEVADA GAMING LAW BY THE 2019 STATE LEGISLATURE

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

Now that the 2019 Nevada legislative session has come and gone we get a chance to reflect on the changes made to gaming law in Nevada. This article updates the mid-session review we posted in [March 2019](#).

Changes to the Nevada Gaming Control Board and Gaming Commission

Some of the biggest changes during the last few months were to the Nevada Gaming Control Board (“Board”) and Nevada Gaming Commission (“Commission”). As we addressed a couple of months ago, this includes the appointment of a new Chair of the Board, Sandra Douglass Morgan, in January.

Other changes since our last report: Governor Steve Sisolak appointed litigation attorney and former Boyd Gaming management team member, Rosa Solis-Rainey, and trial attorney Steve Cohen to the Commission. The governor also appointed former Board agent and experienced gaming executive Phil Katsaros to the Board.

Cannabis Bills – Impact on the Gaming Industry

Two bills of note that are not specific to gaming, but could have a real impact on the gaming and hospitality industry in Nevada, are Assembly Bill 533, which creates the Cannabis Compliance Board, and Assembly Bill 132, which makes Nevada the first state to ban employers from refusing to hire job applicants who test positive for marijuana during the hiring process.

These bills are important to Nevada’s gaming industry because, since the introduction of legal medical cannabis establishments in 2015 and legal recreational cannabis sales in 2017, gaming operators in Nevada have been caught in the middle between Nevada’s legal cannabis industry and the gaming industry (for example, read our Gaming and Cannabis article: [Gaming & Hospitality Legal News: Volume 11 Number 3](#)). By assembling a regulatory body focused on the cannabis industry, the state hopes to provide the nascent industry with the same gold standard of regulation that the Board and Commission provide for the gaming industry. This will help lessen fears that

July 18, 2019 | Volume 12, Number 4

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cannabis activity in the state will foster criminal activity or bring unwanted federal attention that could harm the reputation of Nevada’s gaming industry. In addition, AB 132 provides clarity for gaming operators trying to balance their drug-testing policies with legal cannabis use by employees.

Senate Bill 72

Changes impacting gaming employees

Senate Bill 72 authorizes the Board to temporarily suspend the registration of a gaming employee upon his or her arrest by an agent of the Board. Although the Board does have an existing process for summary revocation of gaming registrations, this bill will allow the Board to act more nimbly. 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.

Another section of the bill requires notification to be provided to the Board if a gaming employee who is not a security guard becomes employed as a security guard, or if a security guard employed by a gaming license switches from an unarmed to an armed position.

This bill also changes the deadlines for submittal of employee registrations or renewals to the Board from five days after an employer receives them from the employee to simply requiring submission 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).

Changes regarding gaming approvals

Senate Bill 72 clarifies that once a licensee has an approval from the Board, that approval is revocable and no rights vest with the licensee. Current statutes already made this clear regarding Commission approvals, but because the Board also grants certain administrative approvals, it was important to make it clear that the same provisions apply to approvals by the Board.

Live Entertainment Tax issues

This bill also addresses changes to the Live Entertainment Tax (“LET”) in Nevada. The LET is a tax collected by the Board on receipts for admissions to live entertainment events held on the premises of gaming licensees. 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. Therefore, this bill changes the definition of “associated equipment” to remove the definition of equipment meant to track such sales.

Allowing certain equipment to be moved off-premises

This bill eliminates the requirement that cashless wagering systems be operated and maintained in-house by a gaming licensee. Similarly, this bill also authorizes the Commission to adopt regulations that will allow associated equipment to be located at a hosting center.

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 require some discretion. This bill provides that the OML does not apply to an action or proceeding by the Board that is related to an interpretation of provisions of state law or regulations (as found in Title 41 of NRS, which provides the laws regarding actions and proceedings against the State of Nevada, its agencies and political subdivisions), the applicability of any federal or state law or regulation to such provisions, or to a determination by the Board as to whether it will issue an industry notice regarding such an interpretation.

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 were scheduled to expire by limitation on May 30, 2019. This bill removed that expiration date, thereby extending indefinitely the exemption from the Open Meeting Law for such actions or proceedings of the Board.



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Senate Bill 73

Mobile gaming

In Nevada, “mobile gaming” is when customers use a mobile device to gamble within a licensed gaming establishment (not internet gaming). Senate Bill 73 removes the definition of “mobile gaming” from inclusion as a category for a nonrestricted gaming license, and instead includes “mobile gaming” as a category of “gaming device.”

Review of certain beneficial owners of publicly traded gaming companies

Senate Bill 73 also makes several changes regarding the review of certain beneficial owners in publicly traded gaming licensees. The bill requires the Commission to adopt regulations for the review of beneficial owners holding any amount of any class of voting securities of a publicly traded corporation, whether held directly or indirectly, individually or in association with others, which also includes each plan sponsor of a pension or employee benefit plan, if such persons are engaged in certain “proscribed activities” involving the publicly traded corporation.

“Proscribed activities” are defined as activities which influence or affect the affairs of a corporation and include: any activity that necessitates a change or amendment to the corporate charter, bylaws, management policies and operation of a publicly traded corporation, or any activity that materially influences or affects the affairs of the entity. The regulation would require such persons to file an application for a finding of suitability and pay an investigative fee. Provided however (except as otherwise required by the Commission), a person who has a beneficial ownership of less than 10% of each class of voting securities of a publicly traded corporation, which is acquired or held through a pension or employee benefit plan, need not notify the Commission, pay a fee or apply for a finding of suitability.

Senate Bill 46

Streamlined registrations vs. full licensure for service providers

Senate Bill 46 retains a requirement for interactive gaming (a.k.a. online gaming through a player account) service providers to obtain a service provider’s license while replacing such a

requirement with a registration requirement for other service providers.

Service provider licensing requirements were introduced into the gaming regulatory statutes in 2011 in recognition of the fact that interactive gaming was fundamentally different from land-based gaming and required multiple areas of technical expertise to provide safe, secure, reliable, compliant and compelling online gaming products. Since 2011, the broad language of these regulations captured other service providers, such as information technology companies that have no material measure of control over land-based or online gaming operations and thus present little regulatory risk. Senate Bill 46 is a part of Nevada’s efforts to “right-size” its gaming regulation by maintaining the high regulatory licensing requirements for activities that present the most regulatory risk while reducing regulatory overhead for less risky activities.

“Gross revenue” redefined to include entry fees for contests and tournaments

This bill also revises the definition of “gross revenue” in NRS 463.0161 to include cash received as entry fees for all contests or tournaments – with the exception of all cash and the cost of any noncash prizes paid out to participants that does not exceed the total compensation received for the right to participate in the contest(s) or tournament(s).

Prohibition against performing certain acts relating to gaming without proper registrations

This bill adds the term “registrations” to the prohibition in existing law against a person performing certain acts relating to gaming without having first procured all required federal, state, county and municipal gaming licenses, so that it is clear this includes all required federal, state, county and municipal gaming “registrations” as well.

Authorization to intercept certain communications

Senate Bill 46 also amends 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).



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Assembly Bill 221

Assembly Bill 221 allows adults who are 18–21 years of age to be employed as gaming employees by gaming manufacturers and distributors. This bill was 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. This will also allow manufacturers and distributors to introduce internships and part-time work opportunities to these younger workers.

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, 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. This bill also raises the annual maximum prize amount that may be offered by a charitable lottery from \$500,000 to \$2 million if the organization is a qualified professional sports organization (allowing, in particular, the Las Vegas Golden Knights' charitable organization to continue its successful 51/49 raffle at games).

Senate Bill 535

This bill was enacted to increase and stabilize the funding formula for programs for the prevention and treatment of problem gaming. It eliminates the requirement for the Commission to charge and deposit into the Revolving Account to Support Programs for the Prevention and Treatment of Problem Gaming an amount equal to \$2 for each slot machine that is licensed by the Commission. Instead, funding to combat problem gambling will come from monies taken directly from the state's general fund per the new budget.

Senate Bill 512

Finally, we have SB 512, which makes appropriations in the state budget to the Board to modernize its technology system (from a COBOL-based computer system) and replace its security system equipment.