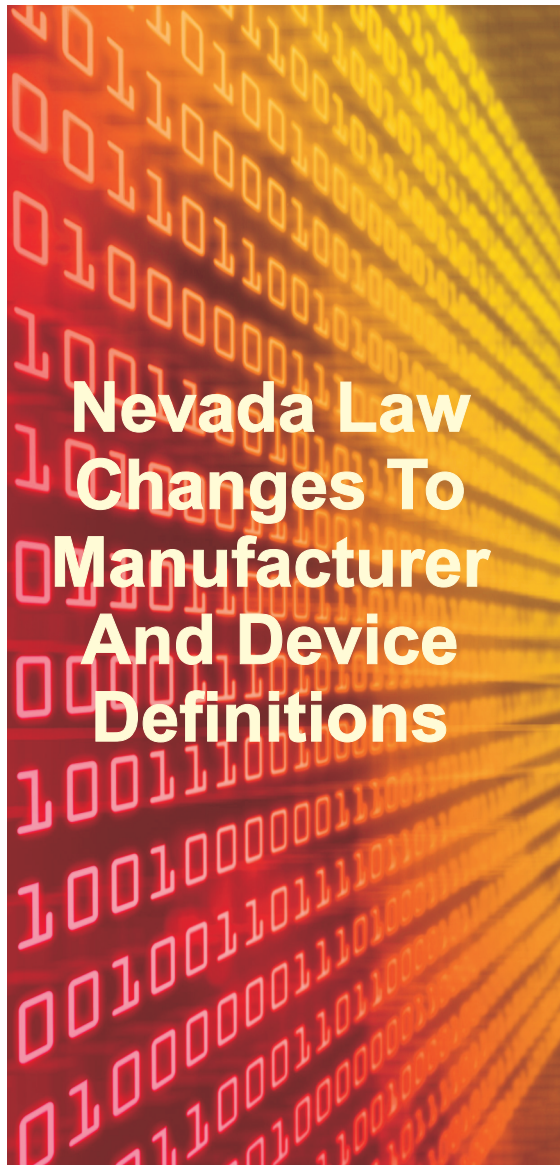


that capacity, he represented clients before the Nevada State Gaming Control Board and the Nevada Gaming Commission. Frank also served as the first chairman of the American Bar Association's (ABA) Committee on Gaming Law and was a founding trustee of the International Association of Gaming Attorneys. For many years, he was a member of the board of trustees for the National Judicial College, an ABA-sponsored judicial education center for federal and state judges. Frank has also served as chairman of the Legal Policy Advisory Board of The Washington Legal Foundation, a member of the Nevada State Board of Bar Examiners, president of the Washoe County Bar Association and vice president of the Nevada Trial Lawyers Association.

Frank currently sits on the board of directors for five New York Stock Exchange public companies: Gabelli

Equity Trust, Inc., Gabelli Utility Trust, Gabelli Global Multimedia Trust, Gabelli Dividend and Income Trust, and Gabelli Gold and Natural Resources. His civic involvement includes service as chairman of the board of governors of the City Club of Washington, member of the board of trustees of the E.L. Weigand Foundation, The Economic Club of Washington and the Federal City Council, as well as trustee of the Culinary Institute of America and member of the Advisory Board of the Ladies Professional Golf Association (LPGA). **NGL**



### By Mark A. Lipparelli, Member Nevada State Gaming Control Board

During the 2009 Nevada legislative session material changes to the statutory definitions of a gaming device and a manufacturer were enacted. The changes also included the addition of a new definition for independent contractor. These changes will have a meaningful impact on the Nevada regulatory licensing and evaluation of parties in Nevada and elsewhere who develop gaming devices and gaming device content for casino operators. A key framework in most gaming law and regulation in Nevada and throughout the world is the protection of the reputation of the industry and its patrons. Gaming operators, manufacturers and regulators have, for a long period of time, developed a tradition of valuable trust with casino patrons that the products offered for play are fair and, with very few exceptions, not subject to dishonesty and manipulation. The laws and regulations requiring licensing and review of this technology have played a key role in bolstering that trust.

A short review of the historical timeline of the definitions of a manufacturer and a gaming device will assist in putting the current changes in context. During the 1989 Nevada legislative session material changes to NRS 463.650 were enacted. Prior to this change, technology developers in Nevada could make gaming devices without a state gaming license, provided it was their intent to sell their products in jurisdictions outside Nevada. Licensing, at the time, was, however, required by those who wished to sell gaming devices for operation within Nevada casinos. The adoption of the 1989 amendments to NRS 463.650 mandated a manufacturer's license, regardless of the final destination of a device, if the manufacturer was based in Nevada. One of the primary justifications for requirement of licensing was borne out of a concern that a Nevada based developer could create an impression, in expanding gaming markets, that their Nevada address implied state suitability or

licensing.

A certain degree of enforcement complexity emerged following this change in law relating to the new requirement that manufacturers be licensed (regardless of the ultimate destination of product) and the specific definition of a gaming device.



Prior to the 1993 legislative session, a gaming device was anything that determined win or loss when a wager had been committed. The key questions for the industry and regulators was what actions resulted in the “manufacture” of a gaming device and what, in fact, could be demonstrated to be a “gaming device” under the state’s definitions. The increasing pace of technological change and the emergence of new technology providers with new methodologies made this effort even more complex in the face of what had been a fairly static industry environment.

During the 1993 Nevada legislative session two bills were introduced, SB242 and AB626, to bring more specific language into law regarding gaming device manufacturing. SB242 sought to tackle the question of defining more specifically what constituted the assembly of a gaming device while balancing, appropriately so, actions by parties that did *not* have obvious regulatory implications. The 1993 amendments added the “two or more” standard for defining the manufacture of a gaming devices. This regulatory flexibility: 1) maintained certain historical bright line definitions; 2) avoided licensing requirements of specific component level vendors (who performed work on behalf of manufacturer licensees); and 3) provided added clarity to how much integration could be performed before triggering a licensing requirement.

Also enacted in 1993 was AB626. This new law expanded the definition of a manufacturer to include those parties who manufactured a “cashless wagering system.” The emerging market acceptance of coinless gaming devices created a challenge for regulators in Nevada and elsewhere. The accounting of a gaming device utilizing ticket

instruments instead of coin needed to be addressed. The complexity and size of the program code to enable cashless gaming and the growing sophistication of the gaming device itself, was making complete reviews by regulators more daunting. As the size and complexity of computer code increased, the concerns by regulators over ways to defraud the licensee, the public or foil audit trails also were magnified. AB626 created the licensing mandate and oversight of such developers.

Throughout the 1990s, technology in the gaming industry began to change at a pace not seen in prior decades. Questions began to arise within the industry of what development could be performed by people other than employees of licensed manufacturers and, if so, what methods would have to be followed to ensure such work could be appropriately reviewed and approved by regulators. In response, during the 2001 Nevada legislative session, Nevada gaming law was enacted to add the term “assumes responsibility for the design of” to the definition of a manufacturer. This addition confirmed that manufacturers were allowed to acquire a work product from an unlicensed

developer as long as the manufacturer could demonstrate that it, “assumed responsibility for the design of, controls the design of, or maintains a copyright over the design of” the underlying work.

In almost every case the broad interpretation of “assumes responsibility” stemmed from a changing development world where licensed manufacturers

began to recognize the benefit of utilizing non-employee/third party developers. The new law established, under limitations and conditions, that it was acceptable for manufacturer/licensees to “assume the responsibility” for code developed by a non-employee/third party. Nevada regulators, despite the change in law, maintained its policy that the manufacturer itself would continue to be held accountable for its submissions regardless of the relationships that brought about the product.

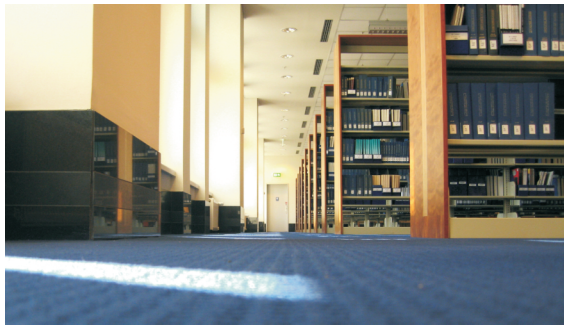
As non-employee/third party source code became clarified in law, addition steps were taken in 2005 to further define the work deemed critical to regulatory oversight in the area of technology. A proposed definition for a “control program” was enacted in





the Technical Standards for gaming devices. Importantly, the definition specifically exempted basic graphics and sound packages as items that could be created by an unlicensed developer. However, these changes did not address completely the degree to which third parties could develop control programs before they may require licensing.

The expansion of gaming worldwide, the challenge of attracting and retaining engineers and developers, and general acceptance among



technology developers in other industries of the use of third party developers continued to drive the gaming industry to seek greater use of non-employee experts. With the 2009 Nevada legislative session approaching, efforts by Nevada regulators, in cooperation with industry representatives, were taken to recognize in law the importance of independent contractors to gaming device manufacturers. Without the creation of a framework that would allow independent contractors to work with licensee/manufacturers more freely, the industry would continue to face undesired disadvantages. Contained in SB83, the concept of an independent contractor was created. This 2009 change in law seeks to allow greater flexibility in the use of non-employees, in a clarified manner, and resolved the concern of the Nevada regulators in maintaining oversight over those who may become developers of key programs historically developed by a manufacturer/licensee.

NRS 463.650(9) now states:

The Commission may provide by regulation for:

- (a) The filing by a manufacturer of reports and information regarding:
  - (1) Any independent contractor; and
  - (2) The business arrangements between the manufacturer and an independent contractor.
- (b) Registration of independent contractors.

(c) Procedures pursuant to which an independent contractor may be required to file an application for a finding of suitability.

(d) Such other regulatory oversight of independent contractors as the Commission determines is necessary and appropriate.

Where independent contractor is defined in NRS 463.650(10)(c) as:

“Independent contractor” means, with respect to a manufacturer, any person who:

- (1) Is not an employee of the manufacturer;

and

- (2) Pursuant to an agreement with the manufacturer, designs, develops, programs, produces or composes a control program used in the manufacture of a gaming device. As used in this subparagraph, “control program” has the meaning ascribed to it in NRS 463.0155.

These enacted changes will now require the creation and development of regulations accommodating the independent contractor concept. The Board is working on proposed regulations that will be released for public comment this summer, and then for consideration for adoption by the Nevada Gaming Commission thereafter.



*Mr. Lipparelli is currently a Board Member of Nevada State Gaming Control Board appointed to the three member panel in January 2009. In addition to his responsibilities as a Board Member, he has the primary responsibility of the agency's Audit and Technology Divisions. From 2007 to 2008 he served as a consultant to the gaming and*

*investment industries and founded Gioco Ventures, LLC a development stage technology company. Previously, Lipparelli served Bally Technologies, Inc. as the Executive Vice President of Bally Systems from 2002 until 2005 and as Executive Vice President of Operations for Bally Technologies, Inc., overseeing manufacturing, intellectual property, strategic planning, product compliance, human resources, and information technology from 2005 until his departure in 2007. Previously, he served as Executive Vice President and then President of Shuffle*

*Master, Inc., the gaming industry's leading table game and automated shuffler company. Prior to joining Shuffle Master, he was Chief Financial Officer of Camco, Inc., a retail chain holding company. From 1998 to 2000, he was Senior Vice President of Entertainment Systems for Bally Gaming and Systems. He also previously served as Vice President of Finance for Casino Data Systems and worked in staff positions for the Nevada State Gaming Control Board from 1988 to 1993. Mr. Lipparelli served on the*

*board of directors of the Gaming Standards Association for four years including the post of Vice Chairman and has been a frequent presenter to the gaming industry and investment community for over 15 years. Mr. Lipparelli holds bachelor's degree in finance and a master's degree in economics from the University of Nevada, Reno. [NGL](#)*



## 2009 NEVADA GAMING LEGISLATION

### By Marc Warren, Esq., Senior Research Specialist Nevada Gaming Commission

During the 2009 Nevada Legislative Session, there were six (6) bills and one (1) Assembly Joint Resolution (A.J.R.) introduced that would have either amended the Nevada Gaming Control Act (Act) or were otherwise gaming-related. The bills consisted of Assembly Bills 218, 388 and 476 and Senate Bills 83, 289 and 372. The lone resolution was A.J.R. 7 which, as in almost every session over the past 20 plus years, proposed to repeal the provision in the Nevada Constitution, § 24 of Article 4, that prohibits lotteries' other than charitable lotteries. However, due to the self-imposed deadlines instituted by the Nevada Legislature in an effort to complete its work within the Constitutionally-mandated 120 days and to avoid the need for a special session, the lottery measure as well as four of the bills - Assembly Bills 388 and 476 and Senate Bills 289 and 372 failed to become law.

#### I. Failed Gaming Bills:

Before summarizing the two bills that were passed and approved by the Governor Assembly Bill (A.B.) 218 and Senate Bill (S.B.) 83, a brief summary of the proposed statutory changes to the other gaming-related bills that were not enacted (A.B. 388, A.B. 476, S.B. 289 and S.B. 372), is warranted since they could very well be reintroduced in a future Session.

Given the current state of the Nevada economy, the Nevada Legislature made quick work of **S.B. 289**. As introduced, that bill would have provided certain businesses, including nonrestricted licensees that pay monthly gaming taxes based on gross gaming revenue pursuant to NRS 463.370 (percentage fees), with a dollar-for-dollar tax credit consisting of the amount of any money donated to qualifying "school tuition organizations" which provide tuition grants to private, charter or empowerment schools.

Conversely, the Nevada Legislature spent a significant amount of time in Committee considering the merits of two of the other bills that did not become law both of which were controversial and highly publicized. Of