



GAMING LAW CHANGES

ENACTED BY THE 2023 NEVADA LEGISLATURE

By Scott Scherer

The 82nd Regular Session of the Nevada Legislature began on Monday, February 6, 2023, and concluded on June 5, 2023. That session was immediately followed by two special sessions. No gaming bills were enacted during the special sessions, but the bill paving the way for construction of a new stadium for the Oakland A's to move to Las Vegas was passed during the second special session of 2023 and will have an impact on the gaming industry. During the Regular Session, it was a slow year for gaming bills with only two gaming bills enacted, but those bills each included some changes of interest to gaming law practitioners. In addition, we will discuss a bill seeking to extend the Live Entertainment Tax ("LET") to resellers, which failed and how that failure impacts the gaming industry in Nevada.

The two gaming law bills enacted were Senate Bills ("SB") 14 and 266. SB 444 was the LET bill that failed. We will discuss the gaming law changes of greatest interest to practitioners in each of these bills in turn.

SB14

Administrative Approval of Personal Representatives, Guardians and Next of Kin

SB 14 authorizes the Chair of the Nevada Gaming Control Board (“Board”) to grant an administrative approval to the spouse, next of kin, personal representative, guardian or heir of a licensee. Current law requires an heir, personal representative or guardian to file an application for a temporary license and receive a recommendation from the Board and approval of the Nevada Gaming Commission (“Commission”). *See* NRS §§463.160 and 463.650; *see also* Nevada Gaming Commission Regulation (“Regulation”) 9.020.

This change should save estates time and money and leave more available to creditors and heirs. Especially with relatively small licensed gaming operations, this change could be significant.



Definition of “Gaming Employee”

Section 1.5 of SB 14 revises the definition of “gaming employee.” For the most part, the changes merely reorganize the definition and group gaming employees into more general categories, allowing more flexibility as titles and job duties evolve. For example, “Boxpersons, Floorpersons and Dealers are now all included in the general category “Table Games Personnel.” Additionally, the former definition included “Employees of a licensee who have local access and provide management, support, security or disaster recovery services for any hardware or software

that is regulated” pursuant to the Nevada Gaming Control Act (the “Act”) and the Regulations. The new definition includes the more general “Information technology personnel who have operational or supervisory control over information technology systems associated with any of the matters related to gaming described in this subsection.”

One new category added to the definition in the Act by SB 14 is “Club venue employees.” Club venue employees have been required to register pursuant to Regulation 5.320. SB 14 specifically includes them in the statutory definition.

Ability to Limit the Scope of Regulation for Hosting Centers and Service Providers

Sections 2.5, 9.1, and, 9.3 of SB 14 give the Board and Commission the authority to recommend and adopt regulations that limit their authority with regard to the business premises of hosting centers and certain service providers. Certain large companies providing hosting services, cloud computing services, and information technology services expressed concern about the breadth of the power granted to the Board and Commission in NRS § 463.140, especially the power to inspect the premises and summarily seize and remove “any equipment, supplies, documents, or records” NRS § 463.140(2). SB 14 amends NRS § 463.140, NRS § 463.673 (relating to hosting centers) and NRS § 463.677 (relating to service providers) to allow the Board and Commission to limit their authority “based on the type and function” of a hosting center or service provider. Once these new regulations are adopted, the gaming industry in Nevada should have some new service providers registered and available as options to licensees.



SB266

SB 266 addresses two topics that may be of regular interest to gaming practitioners. It creates exemptions from the definition of gross revenue for certain contest and tournament entry fees that are not retained by the licensee and it changes the foreign gaming reporting requirements. The bill also contains an amendment to the provisions of the Act governing additions of land to a gaming enterprise district in Clark County, but the conditions to obtain such exemptions are very narrow [at least 20 acres, separated by an interstate highway from residential areas, schools and churches, and partially within the Las Vegas Boulevard gaming corridor] and not likely applicable to most Clark County property owners.

Contest and Tournament Entry Fees

Section 1 of SB 266 amends the definition of “gross revenue” in the Act (NRS § 463.0161) to exempt entry fees for contests and tournaments held in person at a licensed gaming establishment to the extent the entry fees are designated for and paid (1) to employees in addition to their regular compensation, (2) to nonprofit, charitable or fraternal organizations, or (3) as prizes for the present or future contests or tournaments. While SB 266 only applies these changes to in-person contests and tournaments at licensed gaming establishments, the Commission may adopt regulations to apply similar standards to contests and tournaments conducted online.

The advocates for SB 266 argued that in contests or tournaments using non-cash chips, employees were less likely to receive tips of any value, so many licensees include gratuities in the tournament entry fees. In other cases, licensees designate a portion of the entry fees for a charity and the licensee acts as merely a pass-through for those charitable contributions. Finally, it is common in poker rooms for a certain portion of entry fees to be used to fund promotional prizes such as “bad beat” jackpots. As long as that portion of the entry fee is ultimately paid to players, SB 266 exempts it from gross revenue, although such amounts are not later deductible from gross revenue when paid out to players.

Foreign Gaming Reporting

Current law requires Nevada licensees who engage in gaming activities in other jurisdictions to 1) establish a revolving fund with the Board no later than 30 days after executing a definitive agreement or filing an application for a license to participate in gaming in another jurisdiction; 2) file all documents filed by the licensee or an affiliate with the other jurisdiction as soon as foreign gaming begins, and 3) file annual reports addressing compliance with regulations, procedures for audit and procedures for surveillance in the other jurisdiction. *See* NRS § 463.700 and NRS § 463.710. The Act also requires the filing of quarterly reports addressing changes in ownership or control, changes in officers, directors or key employees, complaints, disputes or other actions against the licensee or its affiliate, arrests of employees related to gaming, and arrests of owners, officers, directors or key employees for any offense that would constitute a gross misdemeanor or felony in Nevada. *Id.*

In lieu of the documents to be filed when participation in foreign gaming begins and the annual reports required under current law, Section 1.5 of SB 266 amends NRS § 463.710 to require notice when participation in foreign gaming begins and notice when it entirely ceases. The quarterly reports, while revised in certain respects, are still required.

These changes should reduce the paperwork burdens on licensees participating in gaming in other jurisdictions. It will also reduce the number of documents Board agents will be required to review. Of course, the Board can always request more information from the licensee if it has any questions or concerns about the foreign gaming operation. *See* NRS § 463.585(2); NRS § 463.635(1)(b)(12); NGC Regulations 5.060 and 5.070.



SB444

A bill that did not pass may also have a significant impact on Nevada's gaming industry. SB 444 sought to impose Nevada's live entertainment tax ("LET") to resellers of tickets, also known as "ticket brokers". See NAC 368A.093. Under current law, where the location of live entertainment is not on the premises of a licensed gaming establishment, the "taxpayer" is the owner or operator of the facility where live entertainment is provided or, where the live entertainment takes place at a publicly owned facility or on public land, the person who collects the taxable receipts. NRS § 368A.110. Where a gaming licensee is acting as a ticket broker and is not the taxpayer, the LET applies at the time of purchase from the taxpayer on the admission price paid to the taxpayer, regardless of whether the gaming licensee will resell the tickets, potentially at a higher price, or include them in packages with rooms, food, beverage or other services.

Under certain circumstances, these provisions may exempt gaming licensees from collecting and remitting LET on resales of tickets or travel packages. For example, licensees may be considered a ticket broker when selling packages for events at the new Tahoe Events Center owned by the Tahoe Douglas Visitors Authority or tickets to the Las Vegas Formula 1 Grand Prix. In each case, the "taxpayer" is likely to be someone other than the gaming licensee.

Even in such cases, the licensee will be required to pay LET to the taxpayer, who will collect it from the licensee and remit it to the Department of Taxation. In many cases, the tickets are given as "comps" to good customers or included in packages only at the cost paid by the licensee, so there may not be any direct financial impact, but the failure of SB 444 during the past legislative session may allow licensees to avoid the burden of collecting and remitting LET to the Board when they are acting as ticket brokers. There are some nuances in the applicable statutes and regulations that will need to be considered based on the particular facts of each case and failing to collect and remit the LET when required can have significant financial impacts to the licensee, so it is advisable to conduct a full analysis before deciding not to collect or remit the LET.





Conclusion

While changes to the Act were fairly limited during the 2023 Session of the Nevada Legislature, some of the changes, in particular the changes related to administrative approvals of personal representatives, hosting centers and service providers, contest and tournament entry fees and foreign gaming reporting, should have positive impacts on Nevada gaming licensees. ■



Gaming law veteran Scott Scherer uses his unique mix of regulatory, business, policy and legal perspectives to help clients achieve their goals.

Scott's more than 30 years of gaming experience includes serving as a member of the Nevada Gaming Control Board, where he had responsibility for the Investigations, Audit and Technology divisions; as a supervising deputy in the Gaming Division of the Nevada Attorney General's Office; and as in-house counsel for a major gaming device manufacturer (where he also served for a time as managing director of an international subsidiary). These experiences inform his representation of clients on state, national and international business, regulatory and compliance matters. Over the course of his career, Scott has worked with clients in Japan, the Philippines, Singapore, Macao and beyond. In addition to his private sector clients, Scott has advised and assisted various governments in drafting gaming laws and regulations. When not working on complex gaming and compliance matters, Scott represents clients with respect to other regulatory issues, including state and local tax, transportation and legislative matters.

Scott has served as chair of the International Association of Gaming Regulators, a member of the Nevada Assembly, General Counsel and Chief of Staff for Nevada Governor Kenny Guinn, one of Nevada's representatives to the Conference of Commissioners on Uniform State Laws, a member of the Nevada Commission on Ethics and a member of the Nevada Gaming Policy Committee.

