



Senate Bill 9 Comes to Life: **The (Slot) Future Is Now**

By A.C. Ansani

This article (i) explores the groundbreaking 2015 legislation that changed Nevada gaming laws as applicable to slot machines; (ii) provides practice pointers for gaming practitioners; and (iii) considers business opportunities for clients in the gaming operator and gaming manufacturing sectors.

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SEA CHANGE

May 21, 2016, marked the one year anniversary of Nevada Governor Brian Sandoval announcing that he signed Senate Bill 9 (SB 9) originated during the 78th Regular Session of the Nevada State Legislature into law. Specifically, SB 9 amends Chapter 463 of the Nevada Revised Statutes by requiring the Nevada Gaming Commission, with advice and assistance from the Nevada Gaming Control Board, to “adopt regulations which encourage manufacturers to develop and deploy gaming devices, associated equipment and various gaming support systems that incorporate innovative, alternative and advanced technology.”¹ These regulations may include, without limitation, technical standards for the manufacture of gaming devices, associated equipment, and gaming support systems that:

- (a) Define and differentiate between the requirements for and the outcomes of a game of skill, a game of chance and a hybrid game;
- (b) Allow flexibility in payout percentages or the outcome of a game as determined on the basis of nondiscriminatory identifiers;
- (c) Support integration of social networking technologies;
- (d) Facilitate among enrolled players the interaction and concurrent play of games supported by networked server computers;

- (e) Accommodate secure account wagering and transactions using electronic commerce; and
- (f) Require, when applicable, appropriate information to be disclosed to a player explaining the outcome of a game will be affected by skill or identifiers.²

While SB 9 can be applicable to any form of game found in a Nevada casino, whether a card game, dice game, or a roulette wheel, this legislation is expected to drastically change the type of slot machines that can be deployed in the state. Considering that existing state laws and regulations regulating gaming devices evolved from legislation enacted in 1931,³ the question arises as to why is there now a need for such impactful changes to gaming laws and regulations in Nevada. The answers are found both in the text of SB 9 itself and in the factual circumstances of current operations of Nevada casinos. Like any good piece of legislation, SB 9 provides a well-founded basis justifying such changes in Section 1 (b):

“The continued growth and success of the gaming industry in the State of Nevada depend on the fostering of a business and regulatory environment that promotes continued advances in the use of technology in gaming, which improves the entertainment experience, encourages innovation and supports expansion of the domestic technology section of the economy of this State.”⁴
(Emphasis added).

With gaming markets rapidly expanding around the world, the Nevada legislature wisely sought to change current laws in order to allow gaming manufacturers and casino operators to keep Nevada at the forefront of the gaming experience.

From a factual perspective, an analysis of Nevada gaming revenues at nonrestricted casino locations from 2000 to 2015 provides compelling data that would lead to a conclusion that



additional legislative action would be beneficial to further the state's interest in remaining the world's leading gaming destination. From 2000 to 2015, overall total win amount (total amount won from gamblers) year over year has increased by 14.75%.⁵ In 2000, overall state gaming win amount was approximately \$9.6 billion. In 2015, overall win amount was a little over \$11.1 billion.⁶ Slot machine win amount in comparison, increased by 8.98% for this same time period. Overall slot machine win amount in 2000 was almost \$6.2 billion.⁷ In 2015, however, this value only increased to \$7 billion,⁸ which does not keep pace with the increase in overall state win amounts determined from overall gaming positions.

the increasing popularity of table games and poker to the fact that the win per day per machine has increased from \$87.72 in 2000 to \$128.46 in 2015,¹⁰ which would allow a casino operator to maintain its slot machine revenue levels while decreasing game counts.

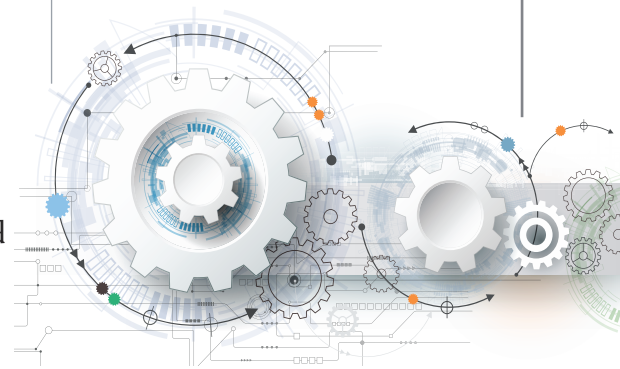
A comprehensive analysis of gaming revenue trends and slot machine performance in Nevada is outside of the scope of this article, because there are numerous factors that impact gaming revenues. Casino patrons have ever increasing forms of non-gaming options available to them that compete with gaming activities available. For instance, the top ten nightclubs in the country earned a combined \$550 million in revenues in 2015. Seven of these clubs are located in Las Vegas.¹¹

Additionally, there is debate over exactly who the target player is or should be and whether the focus of slot machine developers should be directed toward the Millennial generation (those ages 18-34 in 2015),¹² or the current, older slot

player demographic, or a combination of both. Furthermore, over the last decade, gaming markets have been expanding worldwide, ranging from the massive gaming enclaves arising in Macau and Singapore to domestic expansion of casino gaming such as the four new statewide casino gaming facility licenses issued in New York.

Clearly, the legislature was well informed in formulating and

drafting SB 9, in order to best address the concerns of the gaming constituency in Nevada. Based on the last several years of analysis and research, SB 9 should open the door for Nevada casinos to offer slot machines that can appeal to the next generation of players, while also preserving status quo for the current generation of slot machines on casino floors and allow Nevada casinos to lead the worldwide competition for the casino gaming experience.



WHEELS IN MOTION

There is great anticipation and excitement as to how SB 9 will change the way slot machines are played and what kind of games the manufacturing industry will produce. Slot machine game developers are now able to create games that incorporate a skill element, either as a main game or as a bonus feature.¹³ New games designed with the provisions of SB 9 in mind may also exploit a platform that provides a broad range of popular video games that may be incorporated into slot machines used for communal gaming, such as first-person shooter games or skilled word-assembly games common in social media.¹⁴ Additionally, SB 9 will allow rules extending social networking capacities onto the casino floor that can “personalize” the player experience while playing slots and socializing the experience.¹⁵

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An additional factor related to slot machine performance that provides a more granular method of analysis is the total count of slot machines in the state. In 2000, 192,844 slot machine units were reported throughout all nonrestricted casinos in Nevada. However, the state only reported 149,364 slot machines in 2015 throughout all nonrestricted casinos.⁹ Numerous influences impact these decreased machine count statistics, ranging from

It is widely hoped that the “new” slot machines that will be produced will invigorate interest in gambling machines and indeed the entire structure of modern casinos floors, all in order to better address the perceived needs of the next generation of gamblers.



As a gaming law practitioner, the question thus arises as to how to best counsel a manufacturing client that would like to either produce a “new” slot machine or a gaming operator client looking to offer “new” slot machines on their floor. Unsurprisingly, the Nevada Gaming Control Board and staff, along with the Nevada Gaming Commission, have been hard at work since SB 9 became effective. Starting in May 2015, the Board has conducted several public

workshops to discuss the impact of SB 9 on current Nevada gaming regulations in order to received commentary from the gaming industry and formulate effective regulatory amendments to Nevada gaming regulations and technical standards. While SB 9 is intended to spawn

creativity in game design, it must not be lost that Nevada will always have a primary state interest in gaming to protect the public by maintaining the highest standards of integrity in gaming products deployed in the state. While regulators continue to balance all of these factors in introducing regulations for the new games, several amendments to the Nevada regulations and technical standards have followed.

In providing counsel to a

gaming client, a practitioner would direct the client to the following regulations for review in the embodiment of SB 9. It should be noted that the Board and Commission are still continuing their work on amending regulations and technical standards that will be appropriate to accommodate SB 9. As of the publishing submission date, SB 9 has not been codified into Nevada Revised Statutes and can be found in its entirety in the Statutes of Nevada, Chapter

108, pages 396-97, 78th Regular Session (2015).

On September 17, 2015, the Commission enacted comprehensive amendments to Regulations 4.030, 6.110 and 14 in order to effectuate SB 9. One of the more notable amendments to Regulation 14 is the addition of the definition of a “Game of Skill” under Regulation 14.010(10). For the first time in the history of the state, a casino game is permitted to be played “in which the skill of the player, rather than chance, is the dominant factor in affecting the outcome of the game as determined over a period of continuous play.”¹⁶ The Commission further approved a new definition of a “Hybrid Game,” which means a “game in which a combination of the skill of a player and chance affects the outcome of the game as determined over a period of continuous play.”¹⁷ Maybe the most interesting addition to Regulation 14 is the addition of the definition of an “Identifier.” An Identifier means “any specific and verifiable fact concerning a player or group of players which is based upon objective criteria relating to the player or group of players, including without limitation:

- (a) The frequency, value or extent of predefined commercial activity;
- (b) The subscription or enrollment in particular services;
- (c) The use of a particular technology concurrently with the play of a gaming device;
- (d) The skill of the player;

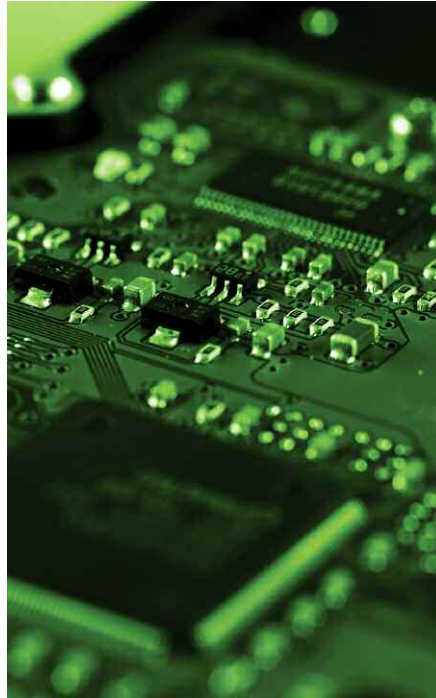
(e) The skill of the player relative to the skill of any other player participating in the same game;

(f) The degree of skill required by the game; or

Any combination of (a) to (f), inclusive.”¹⁸ Identifiers are later permitted under Regulation 14 to be used to determine which games are presented to or available for selection by a player.¹⁹ This regulatory change will allow manufacturers and casino licensees to “facilitate among enrolled players, the interaction and concurrent play of games” using identifiers for players or groups of players. For example, in concept, a game or group of games with a skill-based bonus round may identify particular players that have shown particular expertise on that skill bonus. If some of these “highly skilled” players happen to be in a casino at the same time, the games could simultaneously trigger a skill-based bonus round, allowing this group of players to have a competitive video game while in the traditional casino setting.

Additionally, the Board is also currently considering amendments to Regulation 5.220, 5.240, as well as a new Regulation 5.225 and Regulation 5A.020, in order to incorporate changes in wagering accounts in order to accommodate in-game commerce such as buying game enhancements.²⁰ This is again further indication of the work done by the Board and staff to maximize the intended effects of SB 9 (and SB 38) while still maintaining the integrity of gaming machine regulations in Nevada.

When counseling a client that intends to produce “new” gaming equipment for Nevada licensees as a result of SB 9, it is not enough to simply direct that client to Regulation 14.



The Board and staff labored intensely over the latter part of 2015 and through January 2016 to change the Technical Standards as needed to effectuate changes in gaming equipment. Amendments to Nevada Technical Standards 0, 1, and 2 became effective on February 15, 2016.²¹ These standards will become the blueprint for producing a compliant game that has the expanded capacities intended under SB 9 and the amended regulations. For example, Technical Standard 1 was amended to include Section 1.200, providing for “Logging Requirements for the use of Identifiers,” along with Section 1.30, providing for technical standards for “Gaming Devices that Incorporate Skill,” and amendments adding Section 1.400, which defines the

“Random Selection Process and Random Number Generator.” These amendments alone added about four pages of text to Technical Standard 1. What is important to note is the depth of the amendments to the technical standards in order to allow counsel to work with manufacturers of both games and associated equipment in walking through the regulatory and technical criteria needed to produce the widely anticipated SB 9 games.

The regulatory changes did not stop with addressing only the technical capacity and capability of games. Counsel must also provide guidance to appropriately direct gaming industry clients to the proper license required for that client’s intended business in Nevada. On November 19, 2015, the Commission adopted regulatory changes to Regulations 14.020, 14.302, and 14.305. These changes require that manufacturers or distributors of associated equipment in Nevada must register with the Commission if such associated equipment:

- (a) Is used directly in gaming;
- (b) Has the ability to add or subtract cash, cash equivalents or wagering credits to a game, gaming device or cashless wagering system;
- (c) Interfaces with and affects the operation of a game, gaming device, cashless wagering system or other associated equipment;

- (d) Is used directly or indirectly in the reporting of gross revenue;
- (e) Records sales for use in an area subject to the tax imposed by NRS 368A.200; or
- (f) Is otherwise determined by the commission to create a risk to the integrity of gaming and protection of the public if not inspected.²²

These changes also provide for a \$1,000 fee for such registration and allow a registration to be effective for three calendar years from the date of the registration or renewal.²³ A registered associated equipment manufacturer must notify the Board within 30 days of a change in ownership, officers, or directors of the entity and the Commission may, upon recommendation from the Board, call the associated equipment manufacturer or distributor forward for a finding of suitability to be a manufacturer or distributor.²⁴ At a minimum, any client new to the licensed gaming manufacturer space in Nevada should be advised of their licensing requirements depending on the product manufactured and the potential costs and ramifications of possibly being called forward by the Board

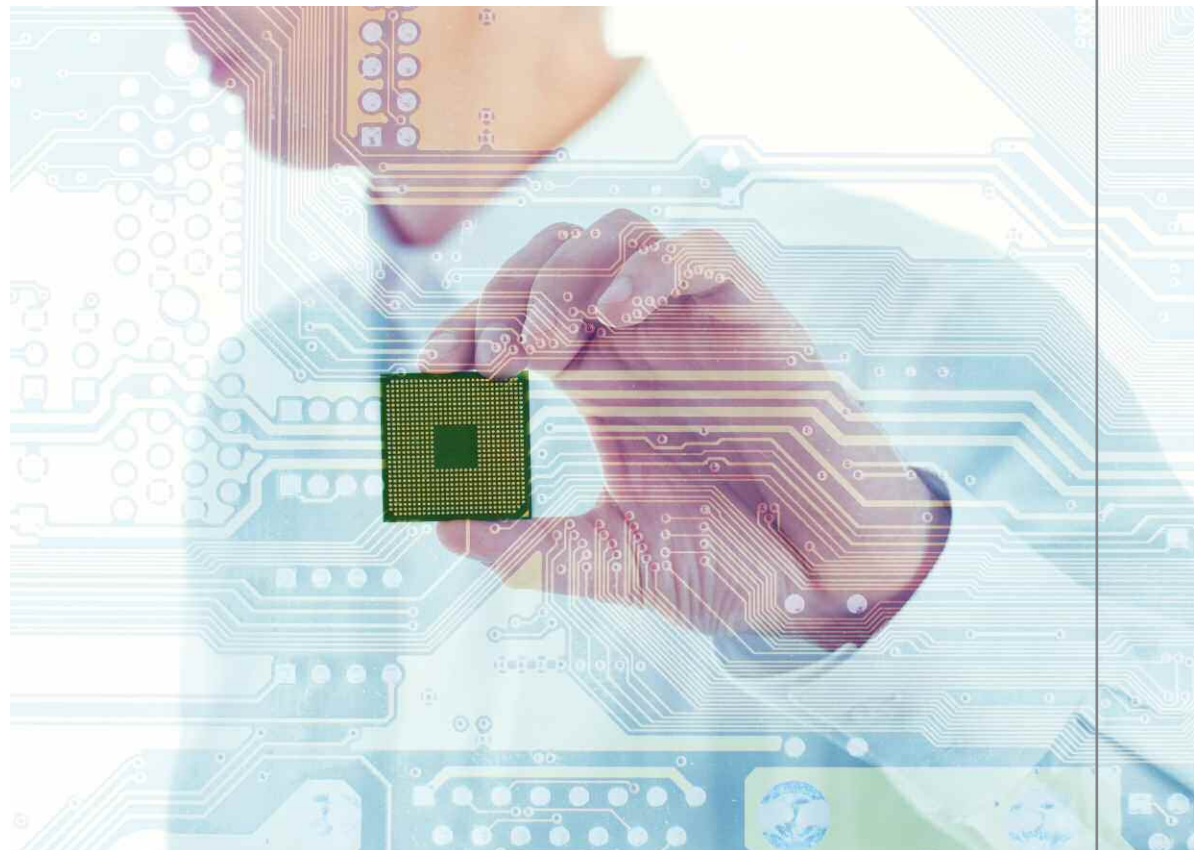
and Commission to be found suitable as a licensed manufacturer.

FIRST STEPS...

At this point, counsel and the client have now thoroughly reviewed the intent and guidance of SB 9, the gaming market in Nevada, the amended regulations and technical standards, and the potential licensing issues as to whether the client is providing product that requires a manufacturer, distributor or associated equipment manufacturer license. Suppose the potential manufacturer or distributor client is getting ready to launch a slot machine with a skill-based bonus feature that has a variable payback table along with smart device interface capability to allow a player to have a seamless communal social media experience, all the while waiting for the live-action

shooter competition round among the elite video game, player-carded peer group. The question that still remains (and is one that has no amount of legal counsel can answer) is will this newly designed, high-concept game be popular with players and find an audience in Nevada casinos?

As with most aspects of gaming marketing, the answer is, it depends. Regardless of how quickly new gaming machines are deployed under the auspices of SB 9, casinos still need players to fill the seats at existing slot machines. Despite the decrease in overall slot machines counts in Nevada's nonrestricted casinos over the last decade, by all counts the current player base is a pretty good market, worth \$7 billion annually. Some gaming analysts predict that a move by the casino industry toward skill-based slot machines could



re-energize the market and attract younger players, but not for a few years.²⁵ The reality is that the current generation of slot machine players will continue to feed the casino industry in the short term, while long-term strategies are needed to create interest from Millennials in future casino slot machine floors, along with the next generation of players after the Millennials.

Thus, the question that naturally follows is even in consideration of the yeoman efforts of the state legislature, the governor's office, and

Nevada gaming regulators, is it worth the time and resources to develop an SB 9 game for Nevada casinos? The answer is absolutely yes. The Nevada legislature opened up a very wide door by enacting SB 9. The Nevada Gaming Control Board and Nevada Gaming Commission have been doing the heavy lifting necessary to produce regulations and technical standards sufficient to bring SB 9 to life and to also protect the integrity of the Nevada market and players.

The manufacturing industry is very busy creating games to

entertain and draw in players both new and old using the tools provided by the legislators and regulators. The end result will require some time to fully evaluate the results of these collective efforts on the slot machine industry, but it is entirely reasonable to expect imminently more entertaining slot machines in the near future for all demographics, regardless of age.

A.C. Ansani is an Assistant General Counsel for the Gaming Division of Scientific Games Corporation, based in Las Vegas. He also serves as a member of the Executive Committee of the Gaming Law Section of the State Bar of Nevada.



¹ 2015 Nev. Stat.396-97 (Chapter 108, SB 9), § 2.

² *Id.*, § 3(a)-(f).

³ History of Gaming in Nevada 1864-1931 (2016), Nevada Resort Association, <http://www.nevadaresorts.org/about/history/>.

⁴ See *supra* note 1 § 1(b).

⁵ Nevada Gaming Revenue: Long Term Trends at 1 (2016), UNLV Center for Gaming Research, <http://gaming.unlv.edu>.

⁶ *Id.*

⁷ *Id.*, at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ H. McIntyre, *America's 10 Biggest Nightclubs Earned Over \$550 Million in Revenue Last Year*, FORBES MAGAZINE (2016), <http://www.forbes.com/sites/hughmcintyre/2015/05/26/americas-10-biggest-nightclubs-earned-over-550-million-in-revenue-last-year/#235eca827627>.

¹² Millennials Overtake Baby Boomers as America's Largest Generation, Pew Research Center (Apr. 25, 2016). <http://www.pewresearch.org/fact-tank/2016/04/25/millennials-overtake-baby-boomers/>.

¹³ See *supra* note 1 § 3(a).

¹⁴ *Id.* at § 2.

¹⁵ *Id.*

¹⁶ NGC Reg. 14.010(10).

¹⁷ NGC Reg. 14.010(14).

¹⁸ NGC Reg. 14.010(15).

¹⁹ NGC Reg. 14.040(8).

²⁰ NGC Notice 2015 – 11R.

²¹ NGC Tech. Std. 0, 1, 2.

²² NGC Reg. 14.020(4).

²³ NGC Reg. 14.302(3).

²⁴ NGC Reg. 14.305.

²⁵ M. Preston, *Not So Random: Skill Games & the Casino of the Future*, GLOBAL GAMING BUSINESS MAGAZINE (April 2016), <http://ggbmagazine.com/issue/vol-15-no-4-april-2016/article/not-so-random-skill-games-the-casino-of-the-future>