

## **GAMING LAW CHANGES ENACTED BY THE 2019 NEVADA LEGISLATURE**

By Scott Scherer

The 80th Regular Session of the Nevada Legislature began on February 4, 2019 and concluded on June 3, 2019. During those 120 days, only a few gaming bills were enacted, but three of the bills each included multiple changes of interest to gaming law practitioners.

The three primary gaming law bills enacted were Senate Bills (“SB”) 46, 72 and 73. In addition, Assembly Bill (“AB”) 221 made an important change allowing persons under 21 years of age to become gaming employees in certain circumstances and AB 117 made changes with regard to approvals for charitable gaming that may be of interest to some practitioners.

## SB 46

Senate Bill 46 was introduced by the Senate Judiciary Committee on behalf of the Nevada Gaming Control Board (“NGCB”). Sections 1 and 2 of SB 46, which would have changed requirements for sports information or “tout” services and required the adoption of regulations further defining the requirement for casinos to be open to the general public, were deleted from the bill by amendment. Chairwoman Morgan expressed a desire to further study and discuss the sports information service issue with stakeholders and her view that the current authority of the Nevada Gaming Commission (the “Commission”) to adopt regulations was sufficient to address the requirement for casinos to be open to the public.<sup>1</sup>

### *Inclusion of Contest and Tournament Entry Fees in “Gross Revenue”*

Section 3 of the bill includes cash received as entry fees for contests and tournaments in the definition of “gross revenue.” It also revises the definition of “gross revenue” in NRS 463.0161 to provide for the deduction of cash and noncash prizes paid out in contests and tournaments, up to the amount of the entry fees received by the licensee.<sup>2</sup>

### *Requiring Most Service Providers to Be Registered Rather than Licensed*

Sections 5 through 7 of the bill change the requirement for most service providers from licensing to registration. The exception is for interactive gaming service providers who still must be licensed.<sup>3</sup> This is an important clarification for most service providers. By designating them as “licensees,” the Act made them subject to the requirements for licensees.

Clarifying that they are registered rather than licensed will make it easier for a service provider to determine its ongoing regulatory requirements. For example, licensed service providers were required to file key employee reports under Regulation 3.100 and transaction reports under Regulation 8.130. Some registered service providers are major companies for which gaming is only a small part of their business. Filing reports on all of their key executives who had no responsibilities related to gaming or on all of the loans and leases of the business regardless of whether they related to the gaming business, imposed unnecessary burdens on those service providers and on the staff of the NGCB. As registered, rather than licensed, service providers, they will no longer have those obligations unless the Commission chooses to impose such obligations upon them by condition in a specific case or generally by regulation.

With so many more persons being registered rather than licensed, including service providers (as discussed above), hosting centers, associated equipment manufacturers and small shareholders of private companies, section 4 of SB 46 amends NRS 463.160 to provide not only that it is unlawful to engage in various gaming activities without obtaining the required licenses, but that it is also unlawful to engage in activities requiring registration without obtaining the required registrations.<sup>4</sup>

Finally, section 8 of SB 46 broadens the potential criminal activities for which a judge may grant an order authorizing a wiretap to include engaging in gaming activities without the required licenses under NRS 463.160 or engaging in illegal bookmaking in violation of NRS 465.086.<sup>5</sup>

## SB 73

SB 73 makes a couple of significant changes to the Nevada Gaming Control Act (the “Act”). First, it includes “mobile gaming” in the definition of “gaming device” and deletes the provisions of the Act pertaining to mobile gaming licenses. Existing mobile gaming operators and manufacturers are, however, “grandfathered” and will not be required to obtain new or different licenses. Second, and perhaps most important to the industry, it imposes certain requirements on investors who seek to engage in “proscribed activity.”

### *Elimination of Separate Mobile Gaming Licenses*

At the request of the NGCB, SB 73 amends NRS 463.0155 to include “mobile gaming” in the definition of “gaming device.”<sup>6</sup> The current definition of “mobile gaming” is moved from NRS 463.0176, which is repealed, to NRS 463.0155 (9)(b). The definition of “mobile gaming” is not changed and still requires that



a location offering mobile gaming have at least 100 gaming devices and one other game.

Section 6 of SB 73 amends NRS 463.160 to remove references to being licensed to offer mobile gaming, since mobile gaming will be treated as a “gaming device” for licensing purposes with the limitations discussed above. Since mobile gaming licenses will no longer exist under the definition of “nonrestricted license” in NRS 463.0177,<sup>7</sup> section 8 of SB 73 removes a mobile gaming license from the licenses that may serve as a “predicate license” for purposes of offering satellite race book and sports pool operations.

An amendment offered by the Nevada Resort Association and CG Technology grandfathered mobile gaming licenses issued on or before June 30, 2019.<sup>8</sup> There are currently only four licensed operators of mobile gaming systems: The Mirage, Fortunet, IGT and CG Technology.<sup>9</sup> The latter had a particular interest in the grandfather provision since its mobile gaming license acts as the predicate license for its satellite race book and sports pool operations.



### Requirements for Activist Investors Engaging in Proscribed Activities

As originally introduced, SB 73 did not contain provisions addressing activist investors. The language imposing new requirements for activist investors was added by amendment offered by the NGCB in the Senate Committee on Judiciary.

Under current law, licensing is not required for investors in publicly traded corporations (“PTC”) registered with the Commission until they acquire more than 10% beneficial ownership of the PTC.<sup>10</sup> SB 73 requires that “each person who, individually or in association with others, acquires or holds, directly or indirectly, the beneficial ownership of *any amount* of any class of voting securities ... and who has the intent to engage in any proscribed activity” notify the Chair of the NGCB within two days after possession of such intent, apply for a finding of suitability within 30 days after notifying the Chair, and make a deposit to pay for the cost of the

investigation.<sup>11</sup> The only exception is for pension or employee benefit plans holding beneficial ownership of less than 10%.<sup>12</sup>

SB 73 also requires the Commission to adopt regulations governing investors who engage in “proscribed activities” and determining which corporate activities “influence or affect the corporation in such a way that the Commission would require a person to file an application for a finding of suitability.”<sup>13</sup> Those regulations must include the procedures by which investors who intend to engage in such activities file an application for a finding of suitability.

Pursuant to section 1.5 of SB 73, “proscribed activity” is an activity (1) “that necessitates a change or amendment to the corporate charter, bylaws, management, policies or operation” of a PTC; (2) “materially influences or affects the affairs of” a PTC; or (3) that is “determined by the Commission to be inconsistent with holding voting securities for investment purposes only.”<sup>14</sup> Noticeably missing from this definition is the ability to designate or elect a board member or board observer, unless the Commission determines that such activity “necessitates a change ... to the ... management” of the PTC or is “inconsistent with holding voting securities for investment purposes only.”



In fact, subparagraph (2)(c) of section 10.6 specifically provides that the regulation must include provisions to “ensure that a person is not unduly prohibited from lawfully exercising any of his or her voting rights derived from being a shareholder ...”<sup>15</sup> Pursuant to subparagraph 2(b) of section 10.6, it will be up to the Commission, by regulation, to balance preserving the voting rights of shareholders against those corporate activities that “influence or affect the corporation in such a way that the Commission would require a person to file an application for a finding of suitability.”<sup>16</sup>

As a result of these changes, investors other than pension or employee benefit plans who acquire shares in a PTC for the express purpose of making changes to the

management, policies or operations of a PTC or to materially influence or affect the affairs of the PTC, will be required to file applications for findings of suitability, even if they acquire or hold beneficial ownership of less than 10% of the PTC. These changes could have a material impact on investment in PTCs and it will be up to the Commission, when adopting the regulations required by SB 73 to strike an appropriate balance between strict regulation<sup>17</sup> of investors who may have influence over PTCs and broadening the opportunity for investment in gaming.<sup>18</sup> Both are important public policies set forth by the Nevada Legislature in the Act.

## SB 72

SB 72 deals with gaming employee registrations, associated equipment and the NGCB's exemptions from Nevada's open meeting law.

### Gaming Employee Registrations

Section 3 of SB 72 authorizes the NGCB to temporarily suspend the registration of a gaming employee who is arrested by an agent of the NGCB.<sup>19</sup> While gaming employees who are arrested by NGCB agents are typically terminated or suspended by the location at which they are arrested, testimony indicated that employees with two (or more) gaming employee jobs may continue working at other locations where employers may be unaware of the arrest.<sup>20</sup> In addition to giving the NGCB the authority to temporarily suspend an employee registration following such an arrest, section 3 of SB 72 requires the Commission to adopt regulations establishing the process for such a temporary suspension.<sup>21</sup>

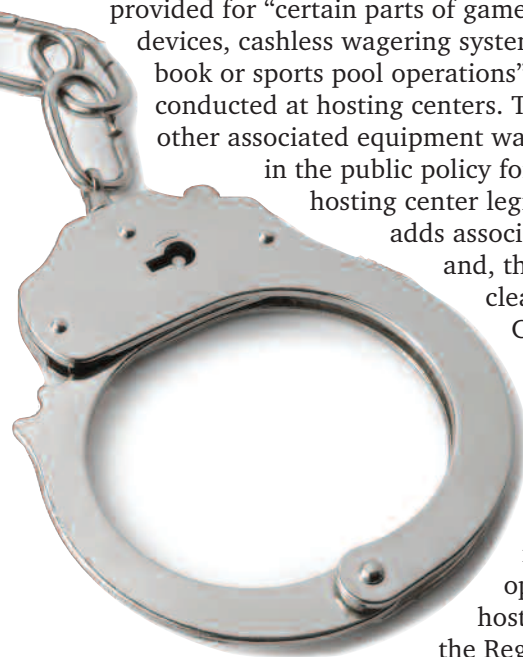
Section 11 of SB 72 amends NRS 463.335 to expand the circumstances under which a change of employment notice must be filed with the NGCB. In particular, when an unarmed security guard becomes an armed security guard or an employee who is not a security guard becomes employed as a security guard, the employee must file a change of employment notice.<sup>22</sup> The change of employment notice is treated as an application for registration and allows the NGCB to take a fresh look at the background of the gaming employee. Finally, section 11 also adds "theft" to the crimes that may be used as a basis for suspending or objecting to a gaming employee registration. Testimony indicated that this was to provide clarification to gaming employees.<sup>23</sup>



### Associated Equipment Changes

Section 13 of SB 72 amends NRS 463.665 to delete the requirement that manufacturers and distributors of systems used to record live entertainment tax be registered with the NGCB. With the simplification of the live entertainment tax to a basic admissions tax in 2015,<sup>24</sup> the NGCB determined that it no longer needed to require registration of manufacturers and distributors of such systems.<sup>25</sup>

Section 14 of SB 72 amends the policy with regard to hosting centers to make clear that associated equipment may be located at a hosting center.<sup>26</sup> The policy already provided for "certain parts of games, gaming devices, cashless wagering systems and race book or sports pool operations" to be conducted at hosting centers. The use of other associated equipment was not included in the public policy for the original hosting center legislation.<sup>27</sup> SB 72 adds associated equipment and, therefore, makes clear that the Commission is authorized to include associated equipment among the systems that may be operated from hosting centers in the Regulations.



### Open Meeting Law Exemptions

In 2015, the Nevada Legislature exempted the NGCB from the Open Meeting Law for purposes of determining whether a violation of the Act or certain ancillary statutes had occurred and whether to file a complaint with the Commission and the contents of such a

complaint. Those exemptions were subject to a four-year “sunset” provision and were set to expire in 2019. Section 15 of SB 72 removes the sunset, allowing the exemptions to continue indefinitely. Section 10 of SB 72 also extends the NGCB’s exemptions from the Open Meeting Law to include interpretations of federal or state statutes and regulations pertaining to gaming in Nevada and whether the NGCB will issue an industry notice concerning any interpretation made.<sup>28</sup>

Prior to the changes in 2015 and the most recent changes, the NGCB members could not meet together to determine whether to take disciplinary action or whether an industry notice should be issued. A deputy attorney general would have to circulate drafts of a proposed complaint or industry notice and solicit comments from each of the members, trying to create a draft that was supported by at least two and preferably all three of the members. These changes will streamline the NGCB’s processes in determining whether to adopt an official interpretation of applicable gaming laws and whether to issue industry notices and allow the NGCB to continue meeting in closed meetings to determine whether violations of applicable law have occurred and whether they warrant disciplinary action.

From the gaming law practitioner’s perspective, where representatives of licensees previously had to work through deputy attorneys general or a single member of the NGCB, or meet with each of the members independently, these changes should allow representatives of licensees to meet with two or three of the members of the NGCB simultaneously to discuss interpretations of applicable laws, whether a violation of applicable laws has occurred, whether disciplinary action should be filed and, to the extent such discussions fall within the exemption for determining whether violations have occurred and the content of a proposed complaint, even potential settlement of a proposed disciplinary action.<sup>29</sup>

## AB 117

AB 117 amends the charitable lottery and charitable gaming statutes to put charitable lotteries and charitable gaming all under chapter 462 of NRS. It limits charitable games to bingo, poker and blackjack.<sup>30</sup> AB 117 further amends the statutes with regard to charitable lotteries and charitable gaming by eliminating the simplified registration for qualified organizations offering total

prizes between \$2,500 and \$25,000 in a calendar year and the exemption for qualified organizations offering prizes of less than \$2,500 in no more than two charitable lotteries per year,<sup>31</sup> requiring additional information to be submitted with an application for registration,<sup>32</sup> providing

that registration of a qualified organization is valid until revoked rather than needing to be renewed each calendar year,<sup>33</sup> authorizing the Commission to establish the fees for registration of a qualified organization,<sup>34</sup> allowing statewide and online sales as long as the ticket purchaser is in the State of Nevada at the time of purchase,<sup>35</sup> and

creating a higher maximum cap (\$2 million instead of \$500,000) for prizes paid out by a qualified organization in a calendar year if the qualified organization is a “qualified professional sports organization.”<sup>36</sup>

These changes will provide a more streamlined process and more flexibility for larger and more sophisticated qualified organizations because they will not be required to constantly renew their registrations, although they will be required to provide additional information as part of the original application for registration.

## AB 221

AB 221 lowers the minimum age for certain gaming employees, in particular those who work for licensed manufacturers and distributors rather than on the gaming floor, from 21 years of age to “the age of majority,” which, in most cases, is 18 years of age.<sup>37</sup> The Association of Gaming Equipment Manufacturers worked with the Assembly Judiciary Committee and its chairman, Assemblyman Steve Yeager, to present AB 221. The bill makes a relatively simple change but may have a significant impact on manufacturers, technical schools, community colleges, universities and, most importantly, students.

By lowering the minimum age, licensed manufacturers may offer internships to college students and hire graduates right out of technical schools, allowing young people to gain valuable experience in coding, design, assembly and manufacturing.<sup>38</sup> Additionally, with the fast pace of technical change, AB 221 will allow licensed manufacturers to hire young people who are studying or are at the forefront of the latest technologies. As Chairman Yeager described the bill, “[i]t is truly a win for everyone involved.”<sup>39</sup>





## CONCLUSION

While changes to the Act were fairly limited during the 2019 Session of the Nevada Legislature, at least as compared to previous sessions, some of the changes, in particular the changes related to investors in PTCs, will have significant impacts on Nevada gaming law practitioners.



Scott Scherer is a shareholder with the law firm of Brownstein Hyatt Farber Schreck. He is a gaming law veteran with a 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 also 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.

<sup>1</sup> Minutes of the Senate Committee on Judiciary, Feb. 6, 2019, p. 4 and Exhibit F.

<sup>2</sup> SB 46, § 3.

<sup>3</sup> SB 46, §§ 5-7.

<sup>4</sup> SB 46, § 4.

<sup>5</sup> SB 46, § 8.

<sup>6</sup> SB 73, § 2.

<sup>7</sup> SB 73, § 5.

<sup>8</sup> SB 73, § 19.5.

<sup>9</sup> See Nevada Gaming Control Board, *List of Locations: Operator of a Mobile Gaming System* (June 28, 2019), available at <https://gaming.nv.gov/index.aspx?page=298>.

<sup>10</sup> NRS 463.643.

<sup>11</sup> SB 73, §10.8(6) (emphasis added).

<sup>12</sup> SB 73, §10.8(7). The definition of "pension or employee benefit plan" does not include an employee pension or welfare benefit plan established by the PTC, unless the plan is a multi-employer plan under 29 U.S.C. § 1002(37) or § 1301(a)(3) (the Employee Retirement Income Security Act). While I believe the intent of this provision was to generally exempt plans established by the PTC from the requirements applicable to proscribed activities, the way the bill is written arguably means that such plans are required to comply with such requirements even if they hold beneficial ownership of less than 10% in the PTC.

<sup>13</sup> SB 73, § 10.6 (2)(a) and (b).

<sup>14</sup> SB 73, § 1.5.

<sup>15</sup> SB 73, §10.6(2)(c). If the investor changes control of the board of directors or the company as a whole, however, it is still subject to Regulation 16.200 requiring prior approval for a change of control.

<sup>16</sup> SB 73, § 10.6 (2)(b) and (c).

<sup>17</sup> See NRS § 463.0129(1)(c).

<sup>18</sup> See NRS § 463.489(1)(a).

<sup>19</sup> SB 72, § 3(1).

<sup>20</sup> Minutes of the Senate Committee on Judiciary, Feb. 6, 2019, p. 7.

<sup>21</sup> SB 72, § 3(2).

<sup>22</sup> SB 72, § 11.

<sup>23</sup> Minutes of the Senate Committee on Judiciary, Feb. 6, 2019, p.10.

<sup>24</sup> See Senate Bill 266 of the 78th Session of the Nevada Legislature (2015).

<sup>25</sup> Minutes of the Senate Committee on Judiciary, Feb. 6, 2019, p. 8.

<sup>26</sup> SB 72, § 14.

<sup>27</sup> See NRS 463.673.

<sup>28</sup> SB 72, §§ 10 and 15.

<sup>29</sup> Even if settlements may be discussed and agreed with multiple board members simultaneously, final approval of any settlement will still require approval of the Commission in an open meeting.

<sup>30</sup> AB 117, § 3.

<sup>31</sup> AB 117, § 14.

<sup>32</sup> AB 117, § 16.

<sup>33</sup> AB 117, §§ 15 and 16.

<sup>34</sup> AB 117, § 16.

<sup>35</sup> AB 117, § 18.

<sup>36</sup> AB 117, § 14.

<sup>37</sup> AB 221, § 1.

<sup>38</sup> Minutes of the Assembly Committee on Judiciary, Mar. 13, 2019, p. 3.

<sup>39</sup> *Id.*