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2009 NEVADA GAMING LEGISLATION

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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

those two bills, the one which was more controversial and definitely received more publicity, at least on a statewide basis was **S.B. 372** which would have amended NRS 202.2483, the *Nevada Clean Indoor Air Act*. As it was approved by the general public and subsequently went into effect in early December 2006, NRS 202.2483 prohibits smoking in most indoor places of employment, including most restricted gaming locations, such as drug stores, grocery stores, convenience stores and bars/taverns that *serve food*. Shortly after the institution of the smoking ban, whether as a result of the ban or the general downturn in Nevada's economy, the economic fortunes of restricted gaming licensees and licensed slot route operators began to suffer². As a result, these gaming operators sought to modify the smoking ban with the introduction of S.B. 372. Had that bill become law as passed out of the Senate, it would have relaxed the smoking ban to, once again, permit smoking in, among other places, bars and taverns which *serve food* so long as they possessed a gaming license (restricted) and limited access to persons 21 and older³.

With respect to the other failed gaming bill that was also somewhat controversial and received a significant amount of media attention in Southern Nevada, **A.B. 476** proposed to amend NRS 463.3076 to expand the



boundary lines of the Las Vegas Boulevard gaming corridor to include several parcels of land near, but outside of, that statutorily-prescribed corridor. This, in turn, would have made those locations eligible for designation as gaming enterprise districts by the appropriate local governmental agency which is required before the Nevada Gaming Commission (Commission) may issue a nonrestricted license for a gaming establishment in a county with a population of 400,000 or more⁴. However, since A.B. 476 was not enacted, the parcels that were the subject of that bill

continue to remain ineligible for designation as gaming enterprise districts because, unlike parcels *within* the Las Vegas Boulevard gaming corridor, parcels *outside* of that corridor cannot be designated as gaming enterprise districts if their boundary lines are within 1,500 feet of the boundary lines of any church or school⁵.

Lastly, the other gaming bill that failed to obtain the approval of the Nevada Legislature this past session was **A.B. 388**. Specifically, that bill did not pass out of the Senate Judiciary Committee before the May 15, 2009 deadline for passage out of the Second House. However, unlike the other three gaming bills that died, except for the proposed amendment to NRS 463.4073 which, as passed out of the Assembly, would have reduced the minimum wager for slot machines in



gaming salons from \$500 to \$50 and restricted the number of slot machines in salons to no more than 5, the other statutory changes set forth therein were resurrected in A.B. 218.

II. New Gaming Legislation A.B. 218 and S.B. 83:

A.B. 218:

As introduced on behalf of the Boyd School of Law's *Advanced Advocacy: Legislative Policy and Gaming Law* class, A.B. 218 proposed to add a new section to the Act providing the Commission with the explicit authority to require governmental entities which become involved in gaming in Nevada to file whatever gaming applications the Commission deems necessary⁶. Clearly, the Commission already has this authority as demonstrated by its November 2008 finding of suitability of Dubai World as a shareholder

of MGM Mirage pursuant to NRS 463.643. Thus, as introduced, A.B. 218 simply proposed to legislatively affirm the general discretion that the Commission already possesses.

Thereafter, as previously mentioned, after A.B. 388 failed to pass out of the Senate Judiciary Committee, most of the provisions in that bill were



incorporated into A.B. 218. Hence, when A.B. 218 was approved by the Governor and went into effect on June 3, 2009, in addition to the enactment of the new section pertaining to governmental entities, it also incorporated the following statutory changes to the Act and NRS Chapters 464 and 466:

- Amended the definition of “sports pool” set forth in NRS 463.0193 to include the term “other events” to make it consistent with the definition of “sports pool” in Regulation 22;

- Amended NRS 464.005 and 466.095 to authorize off-track pari-mutuel wagering on dog races; and

- Amended NRS 464.020 to require that any agreement negotiated by the Off-Track Pari-Mutuel Wagering Committee with a track relating to off-track pari-mutuel wagering must not set a different rate for intrastate wagers placed at a licensed race book and wagers placed through the use of communications technology, i.e., telephone.

However, with respect to the statutory change to the definition of “sports pool,” it should be noted that there may very well be a delay in the approval of sports pool wagering on “other events,” such as poker and billiard tournament participants, until the Commission, by regulation, either (1) provides the Chairman of the State Gaming Control Board (Board) with the authority to refer a proposal for wagering on a new type of event to the full Board and Commission for approval, or (2) delineates the types of events which constitute “other events” upon which wagers may be accepted.

S.B. 83:

Finally, the Board also introduced its own bill, S.B. 83, which, similar to other omnibus bills it has introduced in prior sessions, addresses a variety of regulatory matters that had come to the Board's attention over the course of the last biennium and also brings clarity to several sections of the Act. Accordingly, as approved by the Governor on May 18, 2009, it resulted in numerous amendments to the Act which are briefly summarized below and, except as otherwise indicated in an endnote, went into effect on July 1, 2009.

Gaming Employees NRS 463.0157 and 463.335

The definition of “gaming employee” set forth in NRS 463.0157 has been amended to require some additional employees of nonrestricted licensees to register as gaming employees in accordance with the provisions in NRS 463.335 and to further clarify that “barbacks” are not subject to the gaming employee registration process. Specifically, with the enactment of S.B. 83, the following employees are now required to register as gaming employees:



- Employees of operators of call centers who receive and transmit wagering instructions or supervise this activity;

- Temporary or contract employees hired by a licensee to perform a gaming-related function;

- Employees of affiliates of licensed disseminators; and

Employees who are directly involved in the sale of gaming devices, cashless wagering systems, mobile gaming systems, interactive gaming systems and the associated equipment for mobile and

interactive gaming systems.⁷

Additionally, NRS 463.335 was also amended to not only clarify that the deadline for a registered gaming employee to file a change of employment notice with the Board is “10 calendar days,” instead of “10 days” after having become employed in that capacity at another nonrestricted gaming establishment, but, also, to authorize the Board to begin to charge a fee to process such notices limited to the actual investigative and administrative costs associated with processing the notices.

Patron Disputes NRS 463.362

As gaming devices have become more sophisticated

party engineers by licensed manufacturers. Recognizing the increasing use of these independent contractors in the gaming device manufacturing process, pursuant to S.B. 83, the Board has amended the definitions of “gaming device” and “manufacturer” set forth in NRS 463.0155 and NRS 463.0172, respectively, defined the term “manufacture,” and amended NRS 463.650⁸. Collectively, the purpose for these amendments is to provide the Board and Commission with the appropriate level of regulatory oversight over these third party developers, with the extent of such oversight dependant upon their involvement, if any, in the development of any software, source language or executable code which affects the results of a gaming device wager by



and complex, more and more often it has been necessary for the Board to confiscate a gaming device which is the subject of a patron dispute so that it can be analyzed by the Board's Lab. This has made it increasingly more difficult for the Board to conduct the necessary investigation and issue a decision resolving the dispute within the 30-day period that had been prescribed in NRS 463.362. Accordingly, NRS 463.362 has been amended to provide the Board with an additional 15 days (45 days, instead of 30 day) to resolve patron disputes.

Regulatory Oversight of Third-Party Gaming Device Developers NRS 463.0155, 463.0172, and 463.650 and a new section defining “manufacture”

Similarly, the continuing migration from electromechanical-functioning to PC-based gaming devices has also lead to the increasing use of third-

determining of win or loss. A more detailed discussion of these amendments can be found in the article entitled “Nevada Law Changes to Manufacturer and Device Definitions” on page 3.

Work Product of Board Confidential and Absolutely Privileged NRS 463.120

Recently, there was a civil matter in which the court held “in camera:” proceedings and applied the four-prong test developed in *Laxalt v. McClatchy*, 116 F.R.D. 455 (D. Nev. 1987) to determine if a licensee's gaming applications and the investigative report prepared by the Board's staff with respect to the applications should be released pursuant to a court order. The Board objected to release of any portion of the applications and the investigative summary, arguing that they are both confidential under NRS 463.120 and absolutely privileged under

NRS 463.3407. However, over the Board's objection, the court issued an order for the release



of redacted portions of the licensee's applications. This decision caused both the Board and Commission to pause and reassess the effectiveness of NRS 463.120 and 463.3407. Ultimately, the Board sought and, as reflected in S.B. 83, had NRS 463.120 amended to make the investigative reports, or "work product," prepared by its investigative staff, which have always been deemed confidential under that statute, also deemed absolutely privileged, thus, continuing to ensure that the communications between staff and members of the Board and Commission that are critical for the effective regulation of gaming are not compromised.

Other Amendments to the Act

Additionally, S.B. 83 resulted in a number of other amendments to the Act. Those amendments can be briefly summarized as follows:

- *NRS 463.100* - With respect to the internal operations of the Board, NRS 463.100 was amended to provide the Chairman of the Board with the authority to negotiate and enter into the leases relative to all of the Board's offices, except its main office in Carson City. The granting of this authority is particularly critical with respect to the facilities utilized by the Enforcement Division which must be equipped with weapon storage facilities and evidence lockers and the Technology Division which, for obvious reasons, is required to be highly secured.

- *NRS 463.125(1)* Since, as of July 1, 2007, Nevada no longer has an exemption from the U.S. Department of Treasury's cash transaction recordkeeping and reporting requirements, subsection 1 of NRS 463.125 was amended to delete the reference to that exemption⁹.

- *NRS 463.162(5)* Subsection 5 of NRS

463.162 has been amended to provide the Board and Commission with *explicit* authority to call forward (1) an operator of call centers who, as an agent of licensed race book, facilitates the placement of interstate wagers on off-track pari-mutuel horse races by patrons who have established wagering accounts with the book, and (2) any person who has invented, has developed or owns the intellectual property rights to a game for which Commission approval is sought or has already been received. With respect to interstate horse race wagering, Nevada is one of approximately 43 states that permit such wagering pursuant to the federal Interstate Horse Racing Act of 1978.

- *NRS 463.170* Although the Board and Commission have utilized other sections of the Act and regulations of the Commission to bring disciplinary action against a person who has been licensed or found suitable and who does not meet the *applicant* licensing and suitability standards



prescribed in NRS 463.170, that section has been amended to clarify that the standards set forth therein honesty, integrity, etc., must continue to be met after the granting of a license or finding of suitability.

- *NRS 463.422, 463.423, 463.426 and 463.445* Most of the provisions set forth in the Act that address licensed disseminators have not been amended for over 20 years¹⁰. Accordingly, the Board amended these four sections of the Act to reflect its existing practices with respect to disseminators. For example, the amendments to the notification provisions set forth in NRS 463.422 recognize the current practice of the Board to first provide verbal notice and then follow-up with written notice¹¹.

- *NRS 463.563* - In anticipation of the gaming industry's increasing use of a "registered limited-liability partnership," which is a relatively new form of statutorily-recognized business entity, NRS 463.563 has been amended to provide that, to

the extent practicable, the provisions in the Act that apply to limited partnerships shall also apply to registered limited-liability partnerships and foreign registered limited-liability partnerships.

Gaming Interests Subject to Probate New Section in NRS Chapter 148

Finally, in addition to the aforementioned amendments to the Act and ancillary NRS Chapters 464 and 466, S.B. 83 added a new section to NRS Chapter 148 which essentially provides the Commission with a remedy should the beneficiary of a gaming interest that is subject to probate fail or refuse to apply for the necessary gaming approvals to own such interest within one year after the interest becomes subject to probate, or such later period of time as determined by the Board Chairman. Specifically, if a beneficiary does not file the appropriate applications within the one-year time period or such later time prescribed by the Chairman, or the necessary approvals are denied by

bill as well as the associated testimony. **NGL**

¹ An amendment to the Nevada Constitution requires legislative approval in two sessions followed by approval per a vote of the general public.

² As defined in NRS 463.0189, a “restricted license” or “restricted operation” consists of “a state gaming license for, or an operation consisting of, not more than 15 slot machines and no other game or gaming device at an establishment in which the operation of slot machines is incidental to the primary business of the establishment.”

³ The proposed amendment to NRS 202.2483 in S.B. 372 which would have allowed smoking at trade shows put on by the tobacco industry or convenience store associations that are not open to the public and involve the display of tobacco products was amended into A.B. 309 and becomes law on December 9, 2009.

⁴ See NRS 463.308.

⁵ See NRS 463.3084 and 463.3086.

⁶ As defined in the new section a “governmental entity” is “a government or any political subdivision of a government.”

⁷ NRS 463.0157 has also been amended to *clarify* that only those employees *with access to the Board's gaming employee registration database* for the purpose of



the Commission, pursuant to this new section, the gaming entity that issued the interest must purchase it at its appraised value and the failure to purchase the interest can be deemed a voluntary surrender by the entity of any and all gaming licenses or other approvals.

III. **Conclusion:**

As you can see, this article only briefly summarizes the provisions set forth in A.B. 218 and S.B. 83. Further, it does not even address A. B. 102 which, as of October 1, 2009, authorizes a court to establish a treatment program for persons convicted of crimes pertaining to problem gambling. Thus, if you need to obtain additional information or clarification regarding any of the bills discussed in this article, it is suggested that you visit the Nevada Legislature's website at <http://www.leg.state.nv.us> to review the

processing gaming employment registration applications must register as gaming employees.

⁸ Except for the limited purpose of adopting regulations to further define the term “control program” in accordance with subsection 7 of NRS 463.0155 which went into effect on May 18, 2009, the definitional amendments do not go into effect until October 1, 2009.

⁹ Consistent with the revocation of this federal exemption, NGC Regulation 6A was also repealed on July 1, 2007.

¹⁰ “Disseminator” is defined in NRS 463.0147 as “any person who furnishes an operator of a race book, sports pool or gambling game who is licensed in this state with information relating to horse racing or other racing which is used to determine winners of or payoffs on wagers accepted by the operator. The term does not include a person who provides a televised broadcast without charge to any person who receives the broadcast.”

¹¹ The amendments to NRS 463.422 are not effective until October 1, 2009 to allow sufficient time for the adoption of the prescribed regulations, whereas the amendments to the other three sections became law on July 1, 2009.