

A Step Forward for Gaming

By Greg Brower

Introduction

The 2015 regular session of the Nevada State Legislature was remarkable for many reasons, including the sheer volume of legislation considered and passed, as well as the relatively fast pace with which these bills were processed. The session was also notable for the groundbreaking education policy reforms that were passed and, not without some controversy, the new tax revenue that was approved to fund necessary government functions including public education. When it came to gaming legislation, however, controversy was virtually non-existent as compared to past sessions that saw battles pitting one segment of the gaming industry against another. This article will provide a brief overview of several bills that will have an impact on the gaming industry in our state.¹



GAMING BILLS THAT BECAME LAW

SB 9 - The New Frontier

At the urging of the Association of Gaming Equipment Manufacturers (“AGEM”) and with the blessing of the Nevada gaming regulators, SB 9 was introduced to address what appears to be an increasing demand for skill-based casino games. The bill essentially requires the Nevada Gaming Commission (“NGC” or “Commission”), with the advice and assistance of the Nevada Gaming Control Board (“GCB” or “Board”), to adopt regulations that encourage manufacturers to develop and deploy gaming devices, associated

equipment, and various gaming support systems that incorporate an element of player skill.

The idea of skill-based gaming was the impetus behind a legislatively-sponsored committee that was tasked with conducting an interim study concerning the impact of technology upon gaming. That committee met throughout 2014 and ultimately recommended the concept that became SB 9. It is generally thought that this new concept will present an important opportunity for the gaming industry to make slots more closely resemble the video games that millennials have grown up playing. This new idea is also likely to include the concept of variable payback

percentages that could allow skilled players to increase a game’s payback if the player is especially skilled. The Board has already commenced the rule-making process and games that incorporate this new technology are likely to make it to the casino floor by the beginning of 2016.

SB 443 and SB 445 - Increasing the Handle and Managing the Risk

Together, these bills changed Nevada gaming law in a way that presents significant new opportunities for race and sports books in our state. SB 443 will allow Nevada business entities to

be formed for the purpose of betting at legal sports books. The new law will essentially allow for legal sports betting investment funds that are registered and managed in Nevada. The registration will be with the Nevada Secretary of State's office and the business entity will be required to maintain an account with a bank or other financial institution in Nevada. Anyone entitled to profits from the entity's wagers must be at least 21 years of age and must provide certain information to ensure accurate identity and age verification. Of course, sports books will not be required to accept such bets and each will have to evaluate its own appetite for this new type of risk. SB 445 requires the Commission to adopt regulations relating to global risk management of sports wagering among various jurisdictions where sports betting is legal. The new law essentially clarifies that licensed bookmakers in Nevada can manage sports books in other legal jurisdictions around the world subject to regulations that will address minimum internal and operational control standards.

104 MARSHALL -9.5	131 ARKANSAS
THURSDAY OCTOBER 5	132 AUBURN
105 FLA ST -11	133 DUKE*
106 NC ST	134 ALABAMA*
107 TCU -1	135 OKLA ST
108 UTAH	136 KANSAS ST
	137 TEXAS A&M
FRIDAY OCTOBER 6	138 KANSAS
9 LOUISVILLE -33	139 S DIEGO S
10 MD TN ST*	140 BYU
	141 RICE
SATURDAY OCTOBER 7	142 TULANE
N*WESTERN	143 NAVY
WISCONSIN -20.5	144 AIR FORCE
PURDUE	145 STANFORD
IOWA -11	146 NTR DAME
PITTSBURG -6.5	147 M VIRGINI
SYRACUSE	148 MISS ST
INDIANA	149 LSU
ILLINOIS -7	150 FLORIDA
LEMSON -16	151 WASH ST
FOREST	152 OREGON ST

These bills are intended to have the effect of both preserving Nevada's global position when it comes to legal sports betting and sports betting management, and increasing the "handle" or amount

wagered in our state. Similar concepts already exist under the laws of other jurisdictions around the world, and the bills' proponents clearly intended to allow Nevada to be the most robust, competitive, and transparent legal sports betting market in the world.

SB 38 - Associated Equipment and Charitable Lotteries

This bill was introduced at the request of the GCB and was intended to simply revise the definitions of the terms "gaming employee" and "manufacture" for the purposes of the statutory provisions governing the licensing of manufacturers of associated equipment. The final language of the bill removed the licensing requirement for persons who provide certain intellectual property or information via a database or customer list. The bill also authorized the Commission to provide by regulation governing associated equipment, including prescribing the requirements for registration and the fees for the application for and issuance and renewal of a registration to manufacture and distribute associated equipment.

Before final passage, SB 38 was amended to incorporate a separate concept suggested by a group of students from a gaming law course at Boyd Law School. The Boyd students' amendment was intended to clarify that certain alumni organizations and state or local bar organizations are authorized under NRS 462 to operate charitable lotteries and to make certain technical changes governing the same.

SB 40 - Illegal Bookmaking

This was another GCB "clean-up" bill and was intended to clarify that it is unlawful for an unlicensed person to accept or facilitate a wager on a race or sporting event, or to receive any compensation for accepting or facilitating such a wager. In other words, SB 40 was intended to codify the crime of "illegal bookmaking." Prior to the enactment of this bill, bookmaking activities conducted without a license were illegal under NRS 463.160. However, no specific illegal bookmaking statute was on the books. Testimony suggested that this new law would assist state authorities in prosecuting illegal bookmaking operations whether sophisticated offshore operations or local street bookies.



SB 124 - Transfer of a Gaming License Under Special Circumstances

Prompted by the continuing expansion of the Creech Air Force Base just north of Las Vegas, this bill was intended to allow for the transfer of a gaming license under certain circumstances not contemplated by then existing law. While NRS 463.302 had long allowed the Board to allow a licensee to move the location of its establishment and, in connection therewith, transfer its restricted or

nonrestricted license to the new location, the expansion of a military installation by the federal government onto the location of the establishment was not one such circumstance. SB 124 added this additional circumstance to the list of those allowing the Board to approve a transfer.

SB 409 - Credit Reporting Transparency

This bill changed the state law that prohibited a credit reporting agency from disclosing in the credit report of a person certain information related to a bankruptcy filing that is more than ten years old and certain other negative credit information that is more than seven years old. With the enactment of SB 409, state law now includes an exception for a credit report prepared for a gaming licensee in connection with the employment of an individual whose salary will be greater than \$75,000. The bill also removed the statutory prohibition against disclosing a record of conviction of a crime which is more than seven years old, thus removing any limitation of time for such disclosures under state law.



SB 266 - Live Entertainment Tax Fix

After many attempts over several sessions, a Live Entertainment Tax ("LET") reform bill was finally passed. In what turned about to be

an almost universally agreed to approach, SB 266 clarifies what is and what is not "live entertainment" and will simplify the tax for both payors and collectors. Basically, the bill creates a nine percent tax on tickets to events featuring live entertainment in venues with more than 200 seats. Of course, there are exceptions for certain events sponsored by non-profits, high schools, universities, etc., but the confusion over what constitutes "live entertainment" that was so vexing to casinos and tax collectors alike should largely disappear because of this bill.

AB 40 - GCB: Open Meeting Law and New Name

At the request of the GCB, this bill clarified that the provisions of the Nevada Open Meeting Law do not apply to any action or proceeding by the Board that is related to investigations of applicants or licensees. AB 40 also officially changed the name of the State Gaming Control Board to the "Nevada Gaming Control Board."

GAMING BILLS THAT DIDN'T QUITE MAKE IT TO THE GOVERNOR

SB 450 - The Strip vs. DirecTV

In light of a then on-going dispute between many of the Strip's sports books and DirecTV which provides the popular "Sunday Ticket" NFL broadcast, some sports book operators suggested the creation a "Sports Pool Telecast Access Committee," which would have had the exclusive right to



negotiate with any cable operator or provider of direct broadcast satellite service an agreement for the telecast of a package of sporting events for which sports books in Nevada accept wagers. The concept was introduced in the form of SB 450 amidst negotiations between the principal antagonists. Ultimately, a deal was reached between the negotiating parties and the bill died without a hearing.



AB 414 - Interactive Gaming or Internet Poker?

In the context of the ongoing national debate about internet gaming, AB 414 was introduced and would have codified in statute

that interstate agreements entered into by Nevada with other states would allow for patrons in the signatory states to participate in Internet poker only. The bill passed the Assembly, but with opposition from most of the gaming industry and little interest on the part of Nevada's gaming regulators, this bill died in the Senate without a hearing.

OTHER BILLS OF INTEREST



SB 160 - Trespasser Liability for Property Owners

This bill essentially codified the common law approach that limits the duty owed by owners/occupiers of property to trespassers who are injured on the premises.

SB 193 - Employee Overtime

After many unsuccessful attempts in past sessions, this bill to remove the existing provisions under Nevada law that require payment of overtime for hours worked in excess of eight hours in any workday, while retaining the provisions that require payment of

overtime for hours worked in excess of 40 hours in any work week, was passed and signed by the Governor.

SB 329 - Partnership by Estoppel

Under existing law, a person or company who is not an actual partner of a partnership may nevertheless be held liable as a partner under circumstances as a result of the words or conduct of the person, including certain words used in the marketing or advertising context. This bill clarifies that this exception does not apply to a person or company who announces an association for the sole purpose of a business development so long as the business development is undertaken by one or more corporations or limited-liability companies.



Conclusion

All in all, the consensus seems to be that it was a pretty good session for gaming. A couple of major concepts were put into law. A few other minor "clean up" bills were

passed. One big problem was fixed. An unnecessary fight was avoided. And, a potential bullet was dodged. In addition, several other bills that will generally be good for all businesses, including those in the gaming industry, were also enacted. Overall, gaming more or less came together and focused its collective energy and influence on advocating for the adoption of policies aimed at preserving and enhancing our state's most important industry.



Greg Brower represents Washoe County in the Nevada State Senate where he serves as Chair of the Senate Judiciary Committee, which has jurisdiction over gaming law. He is also a partner in the law firm of Snell & Wilmer, practicing primarily in the areas of regulatory and administrative law and civil and white collar criminal litigation. He is a member of the board of trustees of the International Association of Gaming Advisors. He also serves an adjunct professor at UNLV's Boyd Law School and is a member of its Gaming Law Advisory Board. He received his undergraduate degree from the University of California, Berkeley in 1986 and served as an officer in the U.S. Navy before receiving his law degree from the George Washington University Law School in 1992.

¹ Unless otherwise noted, each of the bills discussed in this article became effective upon approval by the Governor.



Hot Topics in Gaming: a **Chairman's** and **Physician's Perspective**

By Tony Alamo, M.D., Chairman, Nevada Gaming Commission

It is both an honor and ironic that I have been given the privilege of writing in this law periodical. It is rare for a physician to be asked and not be addressing legal malpractice issues. At first glance one might wonder how a physician comes to be the Chairman of the Nevada Gaming Commission, thus making it the second non-lawyer ever in the history of Nevada (and the only one in the last 50 years) to serve as Chairman. To answer that you must know my background. I will also address some of the "hot ticket" items which I believe will have the most impact now and in the coming few years.

CHAIRMAN'S HISTORY:

I grew up in the gaming industry to a father who worked in the industry for 45 years. He started working in the cage and moved up through the industry to finish his career as a senior executive to the third largest gaming company at that time (2005): Mandalay Resorts Group. I recall all the issues, problems and adjustments that he would go through as the industry changed and matured to what it is today. As a young man, I would wear a hard hat as my father showed me the hotel casinos that he was building from foundation to finished product. He kept me very close and involved in his career.

My Nevada regulatory experience started with an appointment to the Nevada Athletic Commission for

seven years and finishing as its Chairman. We were responsible for the regulatory oversight and the health and safety of the fighters.

My six years as a gaming commissioner was an invaluable tenure prior to becoming Chair. During that time, Las Vegas suffered its worst economic downturn in its history. I have been part of 17 different non-restricted properties bankruptcies, reorganizations, debt to equity swaps, and other types of financial adjustments and permutations that were done in an effort to right an economically troubled industry. Those actions needed regulatory oversight and approval and it has been a privilege to help the industry through those times.



MEDICAL DEGREE FINDING ITS WAY INTO GAMING REGULATORY OVERSIGHT, THE MARIJUANA INDUSTRY:

The recent state legalization of medical marijuana put me front and center again; this time as a physician and regulator. Let me start by saying I believe there is a need for medical marijuana. The need is small but the want is large. Unfortunately, I am disappointed in the way that medical marijuana has propagated through the country, including Nevada. It did so without the cooperation and supervision of our medical boards and current medical standard of care. The FDA and traditional tertiary care research and medical schools have not been the guiding force in the propagation of its current use. Medical marijuana needs to go down the same path of all our other great medications that have been discovered, used, changed and/or removed from our medicines we use today to treat disease and illness.

Now, let's bookmark my physician hat and put my regulator hat on: bottom line: marijuana is illegal in the eyes of the federal government!

It is a schedule 1 drug that the federal government has stated has addictive potential and made it illegal to possess, distribute, manufacture, cultivate and prescribe.

To maintain the integrity of gaming in the state we cannot allow our gaming licensees to participate in a federal illegal action. It stands to bring federal scrutiny into our state over an industry that we have proven our knowledge and regulatory experience is above reproach.

We are not saying that people cannot participate in the marijuana industry or that they cannot participate in the gaming industry; they just can't do both. They have to make a business decision and pick one or the other.

Unless the federal government changes their direction, the Board and Commission has made that policy clear.

STATUS AND FUTURE OF ONLINE GAMING:

The legislature, Board and Commission responded to the industries wishes of moving forward with online gaming. The federal government was moving in that direction, looking to remove the interstate ban and thus allow all states to participate. The Board and Commission with Herculean effort and the help of the industry, our Technology Division and many others, put in place, tested platforms, found licensees suitable and made ourselves prepared for the federal government to turn the key. It never happened. Three companies went forward with operational platforms and nearly 12 others have stopped the process and are now in the waiver provision status (NGC Regulation 4.080).

Things are so pessimistic that one of the three internet operational companies closed their doors (Ultimate Gaming), leaving only 888 and Southpoint to continue operation for now.

NEW FRONTIER SKILL-BASED (HYBRID) GAMES:

There appears to be an appetite in the industry for skill-based gaming. I am 51 years old and my generation and the one behind me have grown up with skill-based games from little sophistication (Pong) to what we see now with Xbox, PlayStation, and Wii, just to name a few. If you want to attract these people to come into the casino, the games need to relate to what they remember. The machines that exist now, short of their displays, still run and pay off on a theory of chance based on a chip with random generator technology that truly has not changed in decades.



This legislative session proved my assumption that an appetite existed. SB 9 (technical standards for hybrid games) was passed and now the daunting task of workshops, hearings and regulation creation are to begin. This is the chance to help the industry bring some of these innovations to the forefront in hopes of attracting and growing a new market of players.



THE ONGOING RISE IN NON-GAMING REVENUE:

Until 1998, gaming revenue always surpassed non-gaming revenue in our gaming establishments. After 1998, the ratio reversed.

At first glance, one might say "whatever, it doesn't make a difference as long as revenues are increased whether it's gaming or non-gaming". The problem is to increase non-gaming revenue, a property must infuse a significant investment, a huge expense. It takes billions of dollars to have the required major amenities, such as luxurious rooms, spas, nightclubs, day clubs, restaurants, shopping, etc., so as to continue to drive revenues. Gaming revenues tended to be a low hanging fruit requiring less investment and higher returns.

The best case scenario would be that we could increase BOTH gaming and non-gaming revenues and the industry is constantly thinking about ways to do that.

Again, the legislature with the creation of SB 38 (nightclub industry), still sees the importance of gaming regulatory oversight on a non-gaming aspect. Nightclubs and other non-gaming elements at licensed establishments still having a significant impact on the integrity of gaming and thus keeping the Gaming Control Board and Commission involved is essential.

ILLEGAL SPORTS WAGERING:

Today there are four states with legal sports betting (Nevada, Delaware, Oregon, and Montana.)

This next Super Bowl is expected to have 3.8 billion dollars worth of illegal bets and only 100 million dollars in legal bets. In other words, the illegal market is 38 times greater than the legal one.

Betting is occurring and making it illegal didn't stop it. Sports betting is part of a direct revenue stream for sports and one must wonder what the viewership would be like if betting wasn't occurring.

There has been a definite change in the direction and attitude of sports betting on professional and amateur athletics.

The NBA's and NFL's past and present leadership is now beginning to get comfortable with the idea of legalizing betting. The International Olympics



Committee has come out and said they would be amenable to legalized betting on Olympic Games. The Board and Commission finalized regulations to allow Olympic bets in Nevada this year.

Illegal, unregulated, and unsupervised sports betting does have the potential to promote growth of organized crime, money laundering, and other nefarious actions. Regulated sports wagering is embraced by all parties. Of course, I may be biased but our State of Nevada is very much prepared and experienced to do the federal and interstate oversight. I am not assured that other entities could do as good a job. As in online gaming, the federal government will have to decide.

MY THOUGHTS ON COMMISSION THUS FAR:

It is an honor and a privilege to have such a position. I do not take it lightly and devote much of my time to it. They call the chairmanship a part-time job, and I can tell you I don't see it as one. I see it as one of my primary responsibilities that I must devote a significant amount of my waking hours' time, effort and study to do my very best for the state of Nevada, the state in which I was born and raised. I see the Commission as a bridge between the regulatory process and the industry, to facilitate innovation, help foster new ideas, help the industry grow, but always under the watchful eye of the Nevada Gaming Control Board and Gaming Commission, so as to maintain the integrity of gaming for our state.



THE VALUED GAMING ATTORNEY:

The key to the entire process is the invaluable help that each and every gaming attorney brings to the table. The gaming attorney is the conduit that the industry uses to speak to the regulators; you help craft regulations with the Board, Commission and Attorney General's Office. Not only do you represent the licensee but you are many times the authority that helps them comply with Nevada gaming laws. A good gaming attorney is a licensee's biggest critic as well as facilitator. I have always been impressed with all those that have come before us. It becomes obvious which gaming attorneys hold high the respect for the integrity of gaming, the entire industry and its people. At the end of the day, we all must take pride in what is the life blood of our State: The Gaming Industry.



Dr. Alamo is the only person in Nevada's history to have served as both Chair of the Athletic and Gaming Commissions. He is a graduate of the University of Nevada, Las Vegas and the University of Southern California School of Medicine. Dr. Alamo founded and currently practices Internal Medicine at The Alamo Medical Clinic (a multi-physician group). He has had a 17-year relationship with the Las Vegas Metropolitan Police Department (LVMPD SWAT-SAR) as a Tactical Physician and is a past recipient of the LVMPD's medal for Valorous Conduct. Dr. Alamo is also a Commercial Pilot and an avid aviator.