



2013 NEVADA GAMING LEGISLATION

By Scott Scherer

Introduction

The gaming law changes emanating from the 2013 Legislative Session focus primarily on (1) technology; (2) the spread of gaming; and (3) how technology is enabling the spread of gaming. Most of the attention and controversy focused on the fight between the “big guys” and the “little guys” over whether kiosks facilitating account wagering on sports would be allowed in bars and taverns holding restricted gaming licenses, as well as requirements that a bar or tavern must meet to obtain a restricted gaming license. A number of other bills addressed Internet gaming (or “interactive gaming” as it’s called in the Nevada Gaming Control Act) and the ability to enter into compacts to permit cross-jurisdictional Internet gaming.

This article will examine the various gaming bills passed by the 2013 Legislature and approved by the Governor, with a focus on how they will alter existing gaming practice.

Senate Bill 416¹

The primary “big guys” versus “little guys”² bill was Senate Bill 416. The argument in favor of SB 416 consisted primarily of the claim that restricted licensees with minimal capital investment requirements were competing unfairly with nonrestricted licensees who are required to make substantial capital investments to obtain such licenses.

Opponents countered that account wagering using various forms of associated equipment had been allowed for decades and SB 416 sought to “turn back the clock” on advances in technology. With regard to the additional requirements that bars, saloons and taverns have to satisfy in order to obtain restricted licenses, they argued that the Nevada Gaming Commission (the “Commission”) had already imposed additional requirements on such licensees when it amended Commission Regulation 3.015.

Kiosks

As for the kiosk issue, SB 416 provides that the operation of certain functions related to race and sports account wagering constitutes the operation of a race book or sports pool. Under the Nevada Gaming Control Act (the “Act”), the operation of a race book or sports pool requires a nonrestricted license. The definitions of both “race book” and “sports pool,” however, include only those persons in the business of **accepting wagers** on races or sporting events.³ Nev. Rev. Stat. §§ 463.01855 and 463.0193 (emphasis added). The kiosks were operated by books holding nonrestricted licenses who accepted the wagers transmitted through the kiosks, just as such licensees have accepted account wagers transmitted through telephones, computers, Blackberries, Androids and iPhones for more than thirty years. An earlier version of sports wagering kiosk had been permitted in bars and taverns since 2004.

Taking advantage of a change in Commission Regulation 22.140, the newer versions of the kiosks also allowed the creation of accounts at the restricted location, deposits to accounts and withdrawals from accounts, in addition to transmission of wagers. These “full-service” kiosks were more popular with customers and triggered greater concern by competitors with respect to this particular form of account wagering technology.

Creation of accounts off the premises of the licensed book was enabled by changes to Commission Regulation 22.140 proposed by the Nevada Pari-mutuel Association in 2010 (and officially adopted by the Commission in January of 2011) to try and capture customers who did not want to go down to the book to open an account and had, instead, chosen the convenience of online bookmakers. This was a worthy goal, as it would have brought in wagers that were unregulated and untaxed and for which jobs were being created overseas rather than in Nevada.

Certain race book and sports pool operators, however, did not appreciate the use of the amended regulation to expand the capabilities of kiosks. The language of SB 416, therefore, sought to close any “loopholes” that might allow the operation of account wagering kiosks in bars and taverns.⁴ It does this by providing that any establishment allowing the creation of new wagering accounts, accepting wagers, allowing patrons to place wagers, paying winning wagers and allowing withdrawals from accounts is a race book or sports pool.

It is not clear what constitutes allowing the creation of new wagering accounts or allowing patrons to place wagers. Does SB 416 effectively overrule the changes to Commission Regulation 22.140

and prohibit a licensed book from entering into agreements with bar owners to have employees of the book meet patrons at the bar to establish wagering accounts?

Or, if a patron is placing wagers on his or her iPhone while watching a game at a sports bar, is there some obligation on the operator of the sports bar to prohibit such activity? What if the business is not a licensed gaming establishment? Is a restaurant that does not have gaming obligated to prohibit patrons from placing account wagers through communications technology? Is an office obligated to ensure its computers and telephones cannot be used by employees to place account wagers?⁵

Day	Team	Odds
TUESDAY OCTOBER 3	101 SO MISS	-6
TUESDAY OCTOBER 3	102 TULSA	-6
WEDNESDAY OCTOBER 4	103 C FLORIDA	-3.5
WEDNESDAY OCTOBER 4	104 MARSHALL	-3.5
THURSDAY OCTOBER 5	105 FLA ST	-11
THURSDAY OCTOBER 5	106 NC ST	-1
THURSDAY OCTOBER 5	107 TCU	-1
THURSDAY OCTOBER 5	108 UTAH	-1
FRIDAY OCTOBER 8	109 LOUISVILLE	-33
FRIDAY OCTOBER 8	110 MD TN ST*	-33
SATURDAY OCTOBER 7	111 N*WESTERN	-20.5
SATURDAY OCTOBER 7	112 WISCONSIN	-20.5
SATURDAY OCTOBER 7	113 PURDUE	-20.5
SATURDAY OCTOBER 7	114 IOWA	-11
SATURDAY OCTOBER 7	115 PITTSBURG	-6.5
SATURDAY OCTOBER 7	116 SYRACUSE	-6.5
TUESDAY OCTOBER 3	123 GA TECH	-13.5
TUESDAY OCTOBER 3	124 BAL GREEN	-34.5
TUESDAY OCTOBER 3	125 OHIO ST*	-24.5
TUESDAY OCTOBER 3	126 KENT ST*	-24.5
TUESDAY OCTOBER 3	127 TEMPLE*	-5.5
TUESDAY OCTOBER 3	128 BALL ST	-5.5
TUESDAY OCTOBER 3	129 BUFFALO	-5.5
TUESDAY OCTOBER 3	130 ARKANSAS	-16
TUESDAY OCTOBER 3	131 AUBURN	-16
TUESDAY OCTOBER 3	132 DUKE*	-16
TUESDAY OCTOBER 3	133 ALABAMA*	-28
TUESDAY OCTOBER 3	134 OKLA ST	-3
TUESDAY OCTOBER 3	135 KANSAS ST	-1.5
TUESDAY OCTOBER 3	136 TEXAS A&M	-1.5
TUESDAY OCTOBER 3	137 KANSAS	-27
TUESDAY OCTOBER 3	138 S DIEGO S	-27
TUESDAY OCTOBER 3	139 BYU	-27
TUESDAY OCTOBER 3	140 RICE	-2
TUESDAY OCTOBER 3	141 TULANE	-3
TUESDAY OCTOBER 3	142 NAVY	-3
TUESDAY OCTOBER 3	143 AIR FORCE	-3
TUESDAY OCTOBER 3	144 STANFORD	-32
TUESDAY OCTOBER 3	145 NTR DAME	-32
TUESDAY OCTOBER 3	146 W VIRGINI	-28
TUESDAY OCTOBER 3	147 MISS ST	-3
TUESDAY OCTOBER 3	157 OKLAHOMA	-6
TUESDAY OCTOBER 3	158 TEXAS	-2
TUESDAY OCTOBER 3	159 PENN ST	-2
TUESDAY OCTOBER 3	160 MINNESOTA	-1
TUESDAY OCTOBER 3	161 MICH ST	-1
TUESDAY OCTOBER 3	162 MICHIGAN	-1
TUESDAY OCTOBER 3	163 UNLV	-1
TUESDAY OCTOBER 3	164 COL ST	-1
TUESDAY OCTOBER 3	165 N MEX ST	-1
TUESDAY OCTOBER 3	166 IDAHO	-8
TUESDAY OCTOBER 3	167 VIRGINIA	-8
TUESDAY OCTOBER 3	168 E CAROLINA	-8
TUESDAY OCTOBER 3	169 AKRON	-8
TUESDAY OCTOBER 3	170 CINCINNATI	-8
TUESDAY OCTOBER 3	171 S CAR	-8
TUESDAY OCTOBER 3	172 KENTUCKY	-8
TUESDAY OCTOBER 3	173 BAYLOR	-8
TUESDAY OCTOBER 3	174 COLORADO	-5
TUESDAY OCTOBER 3	175 NEBRASKA	-8
TUESDAY OCTOBER 3	176 IOWA ST	-8
TUESDAY OCTOBER 3	177 MEMPHIS	-8
TUESDAY OCTOBER 3	178 ALA-BIRM	-8
TUESDAY OCTOBER 3	179 MISSOURI	-8
TUESDAY OCTOBER 3	180 TEX TECH	-3

SB 416 also limits the types of nonrestricted licensees that may operate race books or sports pools at an establishment. NRS 463.245 previously allowed a “nonrestricted licensee,” with the permission of the Commission, to establish a race book or sports pool on the premises of the establishment. Nev. Rev. Stat. § 463.245(2) (2011). Section 4 of SB 416, limits the types of nonrestricted licensees that may establish a race book or sports pool on the premises of the establishment, by excluding slot route operators and operators of inter-casino linked systems. At the request of Cantor Gaming, a license to operate a mobile gaming system was not excluded. *Minutes of the Senate Committee on Judiciary* (April 3, 2013), p. 22.

Finally, SB 416 amends the definition of “restricted license” to expressly exclude the operation of a race book or sports pool and prohibits revenue sharing related to the placement of a kiosk or similar device. SB 416, §§ 1 and 4(4) (2013). It does not, however, prevent an operator of a race book or sports pool from entering into an agreement “for the provision of shared services relating to advertising or marketing.” *Id.*

Additional Requirements for Restricted Licenses at Bars and Taverns

In Clark and Washoe Counties, the bill also imposes additional requirements upon bars, saloons and taverns seeking restricted gaming licenses, over and above the requirements of Commission Regulation 3.015. SB 416, § 3. In particular, the bill requires 2,500 square feet of space available to the public, a permanent physical bar and a restaurant. *Id.* The restaurant must have seating for 25 within the dining area itself (not counting seats in the bar) and a kitchen that is open at least 12 hours per day. *Id.*

These provisions effectively mirror the Clark County Code and require Washoe County and the cities of Las Vegas, North Las Vegas, Mesquite, Reno, and Sparks to conform to the same

requirements. While it is likely that Commission Regulation 3.015 will be amended by the Commission in light of the enactment of SB 416, the provisions of Commission Regulation 3.015 are likely to apply in the remainder of the state. Those provisions require only 2,000 square feet of public space and only 20 seats, which may include seats in the bar, as long as they are not associated with gaming positions. Nev. Gaming Comm'n Reg. 3.015 (2)(h) (2011). Moreover, an establishment that does not meet the public space and seating requirements may be licensed for up to four slot machines. *Id.*

It is important to note that the effective dates for the provisions of SB 416 were amended by Sections 13 and 14 of Assembly Bill 360, which are discussed further below.

Assembly Bill 114

Assembly Bill 114 ("AB 114") was passed quickly, early in the session, to authorize the Governor to enter into interstate compacts to allow Internet gaming sites licensed in other states to accept players from Nevada and to allow licensed interactive gaming sites in Nevada to accept players from those other states. The bill was introduced on February 13, 2013, and was

declared an emergency measure on February 21, 2013, and passed by both the Assembly and Senate and approved by the Governor that same day.

At this point, of course, Nevada only permits Internet poker, whereas New Jersey and Delaware allow a full range of gambling games. One question, therefore, with regard to whether AB 114 will be effective, is whether Nevada will have to broaden its interactive gaming offerings in order to enter into compacts with either New Jersey or Delaware.

AB 114 only pertains to interstate compacts and not international compacts. Section 10 of Assembly Bill 360, however, specifically changed this provision to include compacts with "governments" of other "jurisdictions" and not just other "states," potentially allowing compacts with international jurisdictions that have legalized and regulate Internet gaming.

The Federal Wire Act, 18 U.S.C. § 1084, contains a specific exemption for transmission of wagering information "from a State or **foreign country** where betting on that sporting event or contest is legal into a State or **foreign country** in which such betting is legal." (Emphasis added.) Therefore, nothing in the Wire Act itself would prohibit the State of Nevada from entering into agreements with other countries to pool liquidity for Internet poker.

Assembly Bill 360

In its original form, Assembly Bill 360 ("AB 360") would have required bars and taverns to have 2,500 square feet of space available to the public, a permanent, physical bar, and a restaurant to qualify for

a restricted gaming license. Since these concepts were ultimately included in Senate Bill 416, AB 360 became somewhat of an "omnibus" gaming bill that was used to address numerous issues that arose during the legislative session.

Section 1 of AB 360 authorizes the Commission to adopt regulations allowing a licensed operator of interactive gaming to conduct a promotional activity that includes a raffle, drawing or other similar lottery-style game of chance "in direct association with a licensed interactive gaming activity, contest or tournament." AB 360, § 1 (2013). NRS 462.105 currently provides that a lottery does not include "a promotional scheme conducted by a licensed gaming establishment in direct association with a licensed gaming activity, contest or tournament." Nev. Rev. Stat. § 462.105(2) (2011). AB 360 simply clarifies that the same exemption applies to interactive gaming sites as well as land-based gaming establishments.

AB 360 also corrects or clarifies several issues addressed in other bills during the 2013 Session. As noted above, it specifically authorizes Internet gaming compacts with "governments" of other "jurisdictions" and not just "states." AB 360, § 12. It also removes AB 114's requirement for the Commission to adopt regulations authorizing the Governor to enter into compacts. Instead, AB 360 authorizes the Governor to enter into compacts "[u]pon the recommendation of the Commission . . ." *Id.* The Commission may still enact regulations "[u]pon recommendation of the Board" and the bill sets forth certain topics for those regulations, including provisions relating to taxes, sharing of revenues, patron disputes, provision of information and hearing procedures. *Id.* Finally, the Governor may not enter into a compact unless it includes provisions for revenue sharing, effective regulation, and licensing. *Id.*

Sections 2, 3, 4 and 5 of AB 360 amend certain definitions in the Act. Section 2 includes systems that determine and monitor the value and validity of "wagering credits" as well as "wagering instruments" in the definition of "cashless wagering system" AB 360, § 2. Section 3 expands the definition of "gaming employee" to include employees with "local access" who provide "management, support, security or disaster recovery services" for regulated hardware or software. AB 360, § 3. Section 4 expands the definition of "gross revenue" to include compensation received for operating contests or tournaments "in conjunction with interactive gaming." AB 360, § 4. Section 5 amends the definition of "wagering credit" to include their use in race books and sports pools. AB 360, § 5. Along with the amendment to the definition of "cashless wagering system," this change will result in certain race and sports systems more clearly being classified as "cashless wagering systems."

Section 6 of AB 360 allows the Board to automatically increase the thresholds for Group 1 licensees. This avoids the need for the Commission to formally adopt amendments to Regulation 6 raising the threshold by the amount of the Consumer Price Index each year.

Sections 7 and 8 require a person seeking to hold an interest of up to five percent in a limited partnership or limited liability company to register prior to obtaining the interest. Under the prior statute, the person holding such an interest had thirty days after acquiring the interest to apply for registration. See Nev. Rev. Stat. §§ 463.569 and 463.5735 (2011).

Section 9 significantly expands the authority of the Commission and the Board over independent testing laboratories and, in particular, the owners, operators and those with significant involvement in independent testing laboratories.

Section 10 was originally proposed by the gaming law students at the Boyd School of Law as part of Senate Bill 409 (“SB 409”). See *Minutes of the Senate Committee on Judiciary* (April 8, 2013), pp. 2-3. SB 409 clarified that wagers made across state lines pursuant to approved compacts do not violate NRS 465.092 and 465.093. Section 10 of AB 360 broadened the exemption to include compacts with other “jurisdictions” and not just “states.” AB 360, § 10.

Sections 13 and 14 of AB 360 amend the effective date of SB 416. The net effect of the amendments is to postpone the effective date of Section 3 of SB 416 (dealing with requirements for bars and taverns that apply for restricted licenses) from July 1, 2013 to January 1, 2014. AB 360, § 13. This allows for approval of applications that were already in the pipeline prior to enactment of SB 416. Those applications, however, will still be required to comply with Commission Regulation 3.015.

Any bar or tavern in Clark or Washoe County holding a restricted license will be required to come into compliance with the requirement to have a “permanent physical bar” as defined in SB 416 by July 1, 2015, or upon transfer of fifty percent or more of the business, whichever first occurs, unless the license was granted before December 22, 1990. *Id.* The public space and seating requirements of SB 416 do not apply to a location licensed before January 1, 2014, unless the establishment ceases gaming operations for 18 or more consecutive months. *Id.* The kiosk provisions of SB 416 went into effect on July 1, 2013. AB 360, §§ 13 and 14.

Assembly Bill 127

This bill authorizes the Commission, with the assistance of the Board to adopt a seal to authenticate licensed interactive gaming operators, manufacturers and service providers. The purpose is to make it clear to consumers when a site and its operators have been licensed by the Commission and to give the Board and Commission another tool for going after operators who falsely claim to have been approved by the Commission.

Improper use of the seal is a strict liability gross misdemeanor. It also subjects the violator to a civil penalty of \$5,000. However, where the specific elements (including intent) are charged and proved under NRS § 205.175, which pertains to counterfeit and fraudulent use of seals generally, the violator is guilty of a Category D Felony.

Senate Bill 9

Senate Bill 9 was the precursor of many of the provisions of AB 360, including the revisions to various definitions, the changes to the registration process for the holders of five percent or less of licensed limited liability companies and limited partnerships and provisions relating to independent testing laboratories. In some cases, AB 360 expressly repealed certain provisions of SB 9. See AB 360, § 14.5. In most other cases, the changes are identical. Where they are not identical, there may be a brief period between June 3, 2013, when SB 9 was approved by the Governor and June 11, 2013, when most of the provisions of AB 360 became effective, where there will be slight differences in the applicable law. For example, Section 8 of SB 9 and Section 9 of AB 360 both amend NRS 463.670. There is a slight difference in the amendment that SB 9 makes to subsection 3(b) of NRS 463.670. How these differences are ultimately reconciled after June 11, 2013 will be subject to the normal rules of statutory construction.

The other reason for mentioning SB 9 despite the fact that it is almost wholly superseded by AB 360 is that the minutes of the hearings on SB 9 describe the reasons for the changes to the Act. In researching the legislative history of AB 360, therefore, it may be useful to review the minutes of the hearings on SB 9.



Assembly Bill 7

Assembly Bill 7 (“AB 7”) amends the definition of “resort hotel,” as applicable to Washoe County only, to require at least 300 hotel rooms. Prior law required only 200 hotel rooms, although it allowed for stricter local requirements. Nev. Rev. Stat. §§ 463.01865 and 463.1605(2). While some local jurisdictions in Clark County already require 300 rooms, the Act’s definition of “resort hotel” will now require 300 rooms in Washoe County, but only 200 rooms in Clark County (subject to the stricter local requirements, where applicable).

AB 7 also adds a member to the Gaming Policy Committee, specifically a “representative of academia who possesses knowledge of matters related to gaming.” AB 7, § 1.5. It then authorizes the creation of an “advisory committee on gaming education” to study gaming-related educational entities in the state and determine how to align such entities with the needs of the gaming industry. *Id.*

Other Bills

Senate Bill 17 revises the filing date for returns and payments required under NRS 463.369 (unredeemed slot machine vouchers), 463.370 (gross revenue fees) and 368A.220 (Live Entertainment Tax) from the 24th day of the month to the 15th day of the month.

Senate Bill 21 (“SB 21”) requires a “licensing agency” to inquire whether the applicant for a license (or renewal of an existing license) has a state business license. It also prohibits issuance or renewal of a license if the applicant owes a debt to the state.

Section 4 of SB 21 provides a general requirement for licensing agencies. Sections 31, 32 and 33 provide specific requirements applicable to gaming employees, licensed disseminators, and manufacturers or distributors of gaming devices and mobile gaming systems. While the definitions of “license” and “licensing agency” in Section 4 may arguably be broad enough to include any licenses issued by the Commission,⁶ it is unclear why there are specific provisions addressing gaming employees, disseminators, manufacturers and distributors, but not other licensees.

Assembly Bill 10 broadens the types of devices that are unlawful cheating devices pursuant to NRS § 465.075 by specifically including “any software or hardware or any combination thereof.” The purpose of this bill was to allow the law to keep up with modern cheating methods that tend to focus more on software and firmware instead of older cheating devices, such as kickstands and light wands.

Conclusion

It was a strange session for gaming legislation. Certain bills were rushed through, while others were passed without sufficient input or opportunity for amendment by experienced gaming practitioners.⁷ The result was more questions than answers, more confusion than clarification. Some of the problems were addressed in subsequent bills in the late hours of the session. While this is better than ignoring the problems, it is far from a perfect process.

The answers and the clarification will fall into the laps of the Board and Commission. This author is confident that they will achieve reasonable results where possible, but expects that many of the topics addressed in 2013 will need to be revisited in 2015.



Scott Scherer is a partner in the law firm of Holland & Hart, practicing primarily in the area of regulatory and administrative law with special emphasis on gaming regulatory matters and legislative affairs. Scott's career highlights include serving as a Supervising Deputy Attorney General in the Gaming Division of the Nevada Attorney General's Office, as General Counsel and Chief of Staff to the Governor, as a two-term Nevada Assemblyman, and as a member of the Nevada Commission on Ethics. Also, at the request of the Mississippi Attorney General, Scott assisted the Mississippi Legislature in drafting the original Mississippi Gaming Control Act. Scott also served four years as a member of the Nevada State Gaming Control Board. Scott's corporate experience includes serving as Associate General Counsel and Executive Director of Corporate Development for International Game Technology (IGT) and Acting Managing Director of IGT Africa. A native of Las Vegas, Scott received his undergraduate degree from The Johns Hopkins University (1981) and his law degree from the University of Washington School of Law (1984).

¹ In the interest of full disclosure, the author assisted William Hill in opposition to SB 416.

² The proponents of SB 416 did not accept the characterization of the opponents of SB 416 as "little guys," arguing that at least one of the opponents, William Hill, was a major international race and sports book operator.

³ Nothing in SB 416 changes these definitions directly. Rather, the bill adds new provisions specifying functions that will constitute the operation of a race book or sports pool. Unfortunately, this approach creates more confusion and may lead to unintended consequences.

⁴ While proponents of SB 416 argued that race and sports kiosks could be placed anywhere, the associated equipment approvals that originally permitted the placement of the kiosks were limited to bars and taverns.

⁵ It is doubtful that the Nevada Legislature intended to require businesses to go to such absurd lengths to comply with the law. Nevertheless, SB 416 creates confusion and potential for unintended consequences.

⁶ The Section 4 definitions, however, apply specifically to licenses to engage in "professions and occupations," which arguably means that only licenses granted pursuant to Title 54 of the Nevada Revised Statutes, entitled "Professions, Occupations and Businesses" are included.

⁷ This author cannot help but think that the process suffered from the absence of Bob Faiss' knowledge, experience, credibility and temperament, and hope that either (1) he is well enough and willing to participate in the 2015 Legislative Session, or (2) someone who is involved in the 2015 Session will be able to approach his unique combination of institutional history, gaming law knowledge, credibility, professionalism, and statesmanship. While many others are knowledgeable and well meaning, there are few, if any, who possess all of the qualities that he brings to the process.

EXPECT MORE.

\$200,000,000

IN ANNUAL R&D EXPENDITURES

5,000

TOTAL EMPLOYEES

2,000,000

GAMES SHIPPED

300

GAME DESIGNERS

1,300

INTERNATIONAL
EMPLOYEES

65

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