

Nevada State Legislature Continues Gentle Evolution of Nevada Gaming Law in 1993

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Bill Curran, Chairman of the Nevada Gaming Commission, has stated that the one factor that sets Nevada apart from other gaming jurisdictions as an attraction to new investment is the stability of its gaming regulatory system. Chairman Curran has observed that gaming law has followed a gentle evolution in Nevada, with no abrupt jumps or changes.

The 1993 session of the Nevada State Legislature supports Chairman Curran's view. Although more than one dozen bills affecting the gaming industry were signed into law, none was an abrupt departure from the past and each either added more certainty to the law, made for a fairer regulatory process, or added to the attraction of the industry for investment.

For the most part, the gaming bills were free of controversy and most had the joint endorsement of the gaming industry and the Nevada State Gaming Control Board.

Regulation of "Foreign" Gaming

Possibly the most celebrated gaming law amendments in 1993 were those embodied in Assembly Bill 470¹ to streamline and strengthen the foreign gaming statutes.²

This legislation streamlined the law by eliminating the requirement for prior Nevada regulatory approval of involvement in gaming outside the state³ and strengthened the law by making it illegal under Nevada law for a Nevada licensee to "[v]iolate any foreign, federal, tribal, state, county, city or township law, regulation, ordinance or rule, or any equivalent thereof, concerning the conduct of gaming."⁴

Substituted for the prior approval requirement was the necessity for a Nevada licensee to file comprehensive reports about the foreign operation with the Nevada State Gaming Control Board.⁵ Another change was the requirement for a Nevada licensee to post a revolving investigative fund of \$10,000 within thirty days after executing a definitive agreement or filing an application pertaining to the foreign gaming involvement.⁶

Subsequent to the enacting of the law on May 26, 1993, William A. Bible, Chairman of the Nevada State Gaming Control Board, notified licensees in a memorandum dated July 1, 1993, that adoption of Assembly Bill 470 had rendered all pending applications for foreign gaming approvals moot.

The enactment of Assembly Bill 470 marked the last step in an easing of the barrier to involvement in foreign gaming that was erected by the Nevada Legislature in 1977.⁷ The 1977 law required Nevada to approve any involvement in gaming outside the state. The approval process included consideration of whether the foreign jurisdiction was governed by "a comprehensive, effective government regulatory system."⁸ In 1977, it is doubtful that many other jurisdictions would have met the Nevada standard of "comprehensive" and "effective," which greatly limited the investment opportunities for Nevada licensees. For example, no cruise ship gaming operation would have qualified.⁹

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The evolutionary process that transformed the rigid approach of 1977 into the realistic approach of 1993 began in 1985, when the Legislature granted the Nevada Gaming Commission the discretion to waive any provision of the foreign gaming statutes.¹⁰

In 1987, the Legislature heard a recommendation to eliminate the factor of “a comprehensive, effective government regulatory system” from such respected industry leaders as William C. Lebo, Jr., senior vice president and general counsel of Hilton Hotels Corporation, who warned: “As the industry seeks to move into less developed countries, it will be difficult — if not impossible — to satisfy this factor.”¹¹ The Legislature responded by eliminating this factor from the foreign gaming approval process.¹²

In 1991, the gentle evolution continued. The Nevada Gaming Commission took notice that Nevada licensees were engaged in competition for the award of foreign gaming projects and licenses and that, in some cases, the requirement of prior Nevada approval was an uncertainty that put those licensees at a disadvantage.¹³ Therefore, the Nevada Gaming Commission adopted Regulation 4.705, which authorized what was termed a “continuous approval” to participate in foreign gaming. Nevada licensees who satisfied the criteria were given advance approval for any foreign gaming involvement over the next two-year period, provided they met certain conditions and made comprehensive reports.

Assembly Bill 470 built on the experience of NGC Regulation 4.705 that Nevada’s gaming interests were not compromised by the absence of advance approval for each specific involvement in foreign gaming.

Casino Entertainment Tax

Nevada law imposes a 10 percent casino entertainment tax on proceeds of nonrestricted licensees from admission, food, refreshments, and merchandise sold or served in connection with entertainment.¹⁴ This casino entertainment tax, adopted in 1965, has been subject to a number of disagreements about its scope.¹⁵

The question had arisen in 1993 as to whether the changes in casino entertainment since 1965 provided a basis for extending the coverage of the tax beyond the traditional showrooms and lounges that were in operation in 1965. The Legislature adopted Assembly Bill 233, which clarified that the casino entertainment tax does not apply to any “facility that would not have been subject to taxation pursuant to 26 U.S.C. § 4231(6) as that provision existed in 1965.”¹⁶ The cited federal statute imposed the former “federal cabaret tax,” which was repealed in 1965. The casino entertainment tax was adopted to replace the federal cabaret tax.

Gaming industry attorneys interpret the 1993 clarification to mean that only casino facilities that are equivalent to traditional showrooms and lounges will be subject to the tax. If there are any differences in interpretation remaining, they are expected to be answered in 1994 in the course of adoption of amendments to Nevada Gaming Commission Regulation 13, which governs application of the tax.

Post-Closing Taxation of Casinos

Gaming on credit is big business in Nevada. It is estimated that in some instances it can account for more than 50 percent of a casino’s gross revenue from games. In many cases, the debt is paid immediately upon conclusion of play; in many others, the debt is not paid for weeks or months. Therefore, when a casino operation closes, either because of sale to another person or otherwise, it may have a great amount of gaming debt on its books, which is collected later.

Until 1989, a licensee had no obligation to pay a gross revenue license fee on gaming debts collected after closure of his casino. In 1989, the Legislature extended the gross revenue license fee to money collected in payment of gaming credit instruments, commonly called “markers,” after a casino goes out of business.¹⁷

After the adoption of that law, a dispute arose over the computation of the gross revenue fee. The gaming authorities and the gaming industry agreed on a formula, which was set forth

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in a Nevada Gaming Commission regulation.¹⁸ That formula assesses the fee in the same manner as if the licensee had stayed in business.

In 1993, the Legislature ratified the regulation with the adoption of Assembly Bill 51.¹⁹ Assembly Bill 51 confirmed the Nevada Gaming Commission's interpretation that the state must be paid a percentage of every net dollar won by a casino at gaming, whether it is collected during or after operations.

Employment of Regulators

Further restrictions on persons employed in the regulation of gaming were adopted in Assembly Bill 90.²⁰ This bill amended section 281.236 of the Nevada Revised Statutes to provide that a gaming licensee or its holding company may not employ any former employee of the State Gaming Control Board or Nevada Gaming Commission for one year after termination of government service, if:

- (a) His principal duties included the formulation of policy contained in the regulations governing . . . the industry;
- (b) During the immediately preceding year he directly performed activities, or controlled or influenced an audit, decision, investigation or other action, which significantly affected the . . . industry . . . ; or
- (c) As a result of his governmental service or employment, he possesses knowledge of the trade secrets of a direct business competitor.²¹

The prohibition previously applied only to members of the State Gaming Control Board and the Nevada Gaming Commission. The restrictions of Assembly Bill 90 do not apply to persons employed with the gaming regulatory agencies as of July 12, 1993.²²

Taxation of Baccarat Commissions

A question as to whether casinos are required to pay a gross revenue license fee on baccarat commissions they do not receive was clarified with the adoption of Assembly Bill 230.²³ This bill amended the definition of "gross revenue"²⁴ to provide that the term does not include "[u]ncollected baccarat commissions."

Baccarat commissions were defined in the bill as:

- (a) A fee assessed by a licensee on cash paid out as a loss to a patron at baccarat to modify the odds of the game; or
- (b) A rate or fee charged by a licensee for the right to participate in a baccarat game.

The background of the matter, as explained to the Legislature by industry representatives,²⁵ was as follows: Baccarat is played with eight decks of cards, which are dealt from a box known as a "shoe." No matter how many players there are, only two hands are dealt. They are termed the "player hand" and the "bank hand." These designations have only historical significance, as any player or all players may wager on either hand. Each player is always wagering against the casino.

The hand whose cards come closest to totalling nine wins. If the player hand wins, those who bet on it are paid off at even money. A win on the bank hand is handled differently, because the natural odds of the game favor the bank hand winning more often. Therefore, if the bank hand is the winner, those who bet on it are paid off at even money, but the player is obligated to pay a "commission" to the casino, which is a certain percentage of the money won by the player. There is no Nevada statute requiring that a casino charge a commission or that a commission be any certain percentage. However, most casinos charge a 5 percent commission on winning bank hands. Pursuant to traditional procedures, the baccarat commissions are not collected until after the eight decks of cards in the shoe have all been dealt. The commissions generally are collected while the eight decks of cards are being reshuffled. This procedure prevents the collection of commissions from interfering with the orderly flow of this fast-paced game.

During play, the commissions owed by a player are indicated by small buttons, termed "lammers," which are placed on the player's position at the table.

It is estimated the gaming industry has collected 99 percent of the money assessed against baccarat players as commissions. However, there are occasions on which the commission is forgiven or, in the terminology of the industry, "locked-up." A common reason is that the player has lost all his money and is unable or unwilling to pay. On such occasions, baccarat supervisors, in the exercise of their business judgment, are authorized to consider the merits of the refusal to pay, including the amount of the player's losses and the prospect for his continued patronage, and to waive collection of the commissions. This is accomplished by merely removing the lammers from the patron's betting position on the baccarat table.

With the adoption of Assembly Bill 230, casinos now may exercise their business judgment regarding waiver of baccarat commissions without concern that they may be taxed on money they did not receive.

Expanded Protection for Documents and Communications

Prior to 1993, section 463.3407 of the Nevada Gaming Control Act provided that communications made and documents transmitted to the Nevada gaming authorities as required by law or a subpoena are absolutely privileged and do not impose liability for defamation or constitute a ground for recovery in a lawsuit. The gaming industry suggested this protection was inadequate because it did not cover information important to the gaming control function that is voluntarily provided by licensees to the State Gaming Control Board or the Nevada Gaming Commission. An example would be an internal investigation conducted by a licensee.

Assembly Bill 293²⁶ extended the protection of the statute to communications or documents voluntarily provided by a licensee or applicant to assist the Board and Commission in the performance of their duties.

Gaming Licenses for Public Companies

Assembly Bill 297²⁷ was adopted to make the Nevada gaming control system more receptive to public company investment. Earlier, the only role in the Nevada gaming industry that was practicable for a public corporation was to own stock in a subsidiary licensed for gaming.

Although Nevada gaming statutes did not prohibit a public company from holding a gaming license, there were general requirements governing all licensee corporations with which a public company could not comply. One example was section 463.510 of the Nevada Gaming Control Act, which required advance Nevada Gaming Commission approval for the transfer of any stock.

Assembly Bill 297 exempts a public corporation from those barriers and allows it to hold a gaming license directly. At the same time, there is no loss of control over the public company, as it will be subject to the same operational standards as private corporations.

Pari-Mutuel Sports Wagering

Assembly Bill 611²⁸ amended section 464.005 of the Nevada Revised Statutes to authorize a pari-mutuel system for wagering on sports events in the same fashion as wagering on racing events. A pari-mutuel system of betting assures revenue to the casino as it collects a percentage of each bet, whether it is won or lost. In straight betting, the casino's bankroll is at risk.

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Addition of Race Books and Sports Pools

Assembly Bill 614²⁹ amended section 463.1605 of the Nevada Revised Statutes to clarify that the prohibition against issuance of nonrestricted gaming licenses in Clark and Washoe Counties to other than "resort hotels" does not prevent a race book or sports pool from being added by an operation licensed for both slot machines and games.

"Cashless Wagering Systems"

Assembly Bill 626³⁰ made various amendments to the Nevada Gaming Control Act to give gaming authorities jurisdiction over "cashless wagering systems," a new development in slot machines. These machines operate on a voucher or card purchased in advance rather than on cash.

Restricted License Fees

Assembly Bill 786³¹ amended section 463.373 of the Nevada Gaming Control Act to increase the quarterly state license fee for restricted licensees (which permit the operation of up to fifteen slot machines). As of July 1, 1993, the license fee was increased from \$45 to \$61 per machine for the first five machines operated and from \$90 to \$106 for each machine in excess of five.

Interim Study of Taxation

The Legislature directed the Legislative Commission to conduct an interim study of taxation, including "[a] review of the manner in which the gaming industry is taxed in this state, considering particularly the absence of gaming tax on activities such as family-oriented entertainment and theme parks which are offered by gaming licensees."³² Results of the study are to be reported to the 1995 session of the Legislature.

"Omnibus Bill"

Senate Bill 242³³ was an "omnibus" bill requested by the State Gaming Control Board. Among other things, it:

- (1) Authorizes findings of suitability for persons providing services in connection with the live transmission of live race broadcasts;³⁴
- (2) Expands the definition of "gaming device";³⁵
- (3) Expands the definition of "gaming employee" to include those employed by a slot route operator, a pari-mutuel system operator, or a manufacturer, distributor or disseminator;³⁶
- (4) Changes the definition of "independent agents";³⁷
- (5) Provides that the voluntary surrender of a license does not become effective until accepted in the manner provided by Nevada Gaming Commission regulation;³⁸
- (6) Provides that if a licensee's gross revenue in any month is less than zero, he may offset the loss against gross revenue against any license fee due in succeeding months;³⁹
- (7) Removes the limit on the number of gaming "special events" that the State Gaming Control Board may authorize a licensee to hold;⁴⁰ and
- (8) Provides that a corporation must report to the State Gaming Control Board changes in officers and directors within thirty days.⁴¹

Gaming Policy Committee

Senate Bill 243⁴² reconstituted the Gaming Policy Committee. The Committee membership was increased from eight members to ten. Of the new membership positions, one must be

filled by an enrolled member of a Nevada Indian tribe appointed by the Inter-Tribal Council of Nevada, Inc., and one must be a restricted gaming licensee.

The Gaming Policy Committee was created in 1959 to advise the state gaming agencies on policy.

Licensing of Limited Liability Companies

Senate Bill 268⁴³ provided for licensure and regulation of limited liability companies. The bill puts them on a par with corporations and other business entities in gaming licensing and regulation.

Modification of Work Permit Decisions

Senate Bill 393⁴⁴ authorizes the Nevada Gaming Commission to modify, upon appeal, a decision of the State Gaming Control Board concerning a gaming employee work permit.

Transfer of Authority for Animal Racing

Senate Bill 475⁴⁵ eliminated the Nevada Racing Commission and transferred to the state gaming authorities the responsibility for the licensing and regulation of certain events involving horse racing or greyhound racing.

Conclusion

When the ultimate history of the Nevada Gaming Control Act is written, the 1993 legislative amendments probably will not merit mention as major policy shifts or new approaches to regulation. However, those amendments should be applauded for strengthening and clarifying the gaming laws. A major share of the credit for the climate of cooperation that made the 1993 gaming law amendments possible must be given to the months of work preceding the legislative session by the Legislative Commission's Subcommittee to Study Gaming, which was headed by Senator Dina Titus.

If Chairman Curran is right in his evaluation of the value of a stable regulatory system, 1993 legislative actions should be viewed as enhancing that value.

References

¹Enacted as Act of May 26, 1993, ch. 175, 1993 Nev. Stat. 302.

²NEVADA REVISED STATUTES §§ 463.680 - .720 (1993).

³Act of May 26, 1993, ch. 175, § 2, 1993 Nev. Stat. 302.

⁴*Id.* § 4.

⁵*Id.* § 3.

⁶*Id.* § 2.

⁷Act of May 16, 1977, ch. 569, §§ 1 - 6, 1977 Nev. Stat. 1419.

⁸*Id.* § 5.

⁹See generally *Hearings on Senate Bill 231 before the Nevada Senate Judiciary Committee* (Apr. 2, 1985); *Hearings on Senate Bill 231 before the Nevada Assembly Judiciary Committee* (May 15, 1985).

¹⁰Act of June 7, 1985, ch. 562, § 2, 1985 Nev. Stat. 1724, 1726.

¹¹*Hearings on A.B. 178 before the Nevada State Senate and Assembly Committees on Judiciary* (Mar. 11, 1987).

¹²Act of Apr. 14, 1987, ch. 78, § 2, 1987 Nev. Stat. 142.

¹³See generally *Hearings on Regulation 4.705* (Nev. Gaming Comm'n 1990).

¹⁴NEV. REV. STAT. § 463.401 (1993).

¹⁵E.g., *Cashman Photo Concessions & Labs, Inc. v. Nevada Gaming Commission*, 91 Nev. 424, 538 P.2d 158 (1975) (casino entertainment tax does not apply to taking of photographs of patrons in showrooms and lounges of gaming establishments); *Nevada Gaming Commission v. Desert Palace, Inc.*, 101 Nev. 173, 697 P.2d 477 (1985) (casino entertainment tax does not apply to amounts paid by patrons as service charges to ticket brokers or for gratuities to employees).

¹⁶Act of July 1, 1993, ch. 363, § 1, 1993 Nev. Stat. 1165, 1165.

¹⁷Act of July 5, 1989, ch. 853, 1989 Nev. Stat. 2058, codified at NEV. REV. STAT. § 463.3857 (1989).

¹⁸Nev. Gaming Comm'n Reg. 6.125 (1993).

¹⁹Act of Mar. 5, 1993, ch. 5, 1993 Nev. Stat. 7.

²⁰Act of July 12, 1993, ch. 597, 1993 Nev. Stat. 2496.

²¹*Id.* § 1.

²²*Id.* § 2.

²³Act of May 26, 1993, ch. 167, 1993 Nev. Stat. 288.

²⁴NEV. REV. STAT. § 463.0161 (1993).

²⁵*Hearing on A.B. 230 before the Assembly Judiciary Committee* (Mar. 31, 1993); *Hearing on A.B. 230 before the Senate Judiciary Committee* (Apr. 26, 1993).

²⁶Act of May 11, 1993, ch. 110, 1993 Nev. Stat. 184.

²⁷Act of May 11, 1993, ch. 111, 1993 Nev. Stat. 185.

²⁸Act of July 9, 1993, ch. 498, 1993 Nev. Stat. 2049.

²⁹Act of July 9, 1993, ch. 497, 1993 Nev. Stat. 2048.

³⁰Act of June 24, 1993, ch. 280, 1993 Nev. Stat. 829.

³¹Act of July 9, 1993, ch. 454, 1993 Nev. Stat. 1444.

³²Assembly Concurrent Resolution 47, 1993 Nev. Stat. 3119.

³³Act of May 26, 1993, ch. 178, 1993 Nev. Stat. 306.

³⁴*Id.* § 1.

³⁵*Id.* § 2.

³⁶*Id.* § 3.

³⁷*Id.* § 4.

³⁸*Id.* § 11.

³⁹*Id.* § 12.

⁴⁰*Id.* § 13.

⁴¹*Id.* § 14.

⁴²Act of July 1, 1993, ch. 362, 1993 Nev. Stat. 1164.

⁴³Act of July 9, 1993, ch. 486, 1993 Nev. Stat. 1993.

⁴⁴Act of June 18, 1993, ch. 262, § 1, 1993 Nev. Stat. 649, 651.

⁴⁵Act of July 12, 1993, ch. 513, 1993 Nev. Stat. 2118.

