

ASSEMBLY BILL NO. 669—COMMITTEE ON TAXATION

MARCH 22, 1999

Referred to Committee on Taxation

SUMMARY—Revises provisions relating to casino entertainment tax. (BDR 41-1655)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to gaming; revising the provisions governing the imposition of the casino entertainment tax on certain service charges; prohibiting certain persons from entering into contracts or agreements with a licensee; authorizing a rehearing on a claim for a refund of gaming license fees or taxes; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 463 of NRS is hereby amended by adding thereto a
2 new section to read as follows:
3 ***1. A person who has:***
4 ***(a) Been denied a license by the commission;***
5 ***(b) Been found unsuitable by the commission; or***
6 ***(c) Had a license or finding of suitability revoked by the commission,***
7 ***shall not enter or attempt to enter into any contract or agreement with a***
8 ***licensee, either directly or indirectly, through any business organization***
9 ***under such a person's control, that involves the operations of a licensee***
10 ***without the prior approval of the commission. This provision does not***
11 ***prohibit any person from purchasing any goods or services for personal***
12 ***use from a licensee at retail prices that are available to the general***
13 ***public.***
14 ***2. Every contract or agreement with a person that is subject to the***
15 ***provisions of subsection 1 shall be deemed to include a provision for its***
16 ***termination without liability on the part of the licensee. Failure to***
17 ***expressly include that condition in the contract or agreement is not a***

1 *defense in any action brought pursuant to this section to terminate the*
2 *agreement.*

3 *3. Any person, contract or agreement subject to the provisions of*
4 *subsection 1 is subject to being enjoined pursuant to and in accordance*
5 *with the provisions of NRS 463.346.*

6 **Sec. 2.** NRS 463.165 is hereby amended to read as follows:

7 463.165 1. Except for persons associated with licensed corporations,
8 limited partnerships or limited-liability companies and required to be
9 licensed pursuant to NRS 463.530, 463.569 or 463.5735, each employee,
10 agent, guardian, personal representative, lender or holder of indebtedness
11 of a gaming licensee who, in the opinion of the commission, has the power
12 to exercise a significant influence over the licensee's operation of a gaming
13 establishment may be required to apply for a license.

14 2. A person required to be licensed pursuant to subsection 1 shall apply
15 for a license within 30 days after the commission requests that he do so.

16 3. If an employee required to be licensed under subsection 1:

17 (a) Does not apply for a license within 30 days after being requested to
18 do so by the commission, and the commission makes a finding of
19 unsuitability for that reason;

20 (b) Is denied a license; or

21 (c) Has his license revoked by the commission,
22 the licensee by whom he is employed shall terminate his employment in any
23 capacity in which he is required to be licensed and shall not permit him to
24 exercise a significant influence over the operation of the gaming
25 establishment upon being notified by registered or certified mail of that
26 action.

27 4. A gaming licensee or an affiliate of the licensee shall not pay to a
28 person whose employment has been terminated pursuant to subsection 3
29 any remuneration for any service performed in any capacity in which he is
30 required to be licensed, except for amounts due for services rendered
31 before the date of receipt of notice of the action by the commission. Any
32 contract or agreement for personal services or for the conduct of any
33 activity at the licensed gaming establishment between a gaming licensee or
34 an affiliate of the licensee and a person terminated pursuant to subsection 3
35 is subject to termination. Every such agreement shall be deemed to include
36 a provision for its termination without liability on the part of the licensee or
37 ~~registered holding company~~ *affiliate* upon a finding by the commission
38 that the person is unsuitable to be associated with a gaming enterprise.
39 Failure expressly to include that condition in the agreement is not a defense
40 in any action brought pursuant to this section to terminate the agreement.

41 5. A gaming licensee or an affiliate of the licensee shall not, without
42 the prior approval of the commission, enter into any contract or agreement
43 with a person who is found unsuitable or who is denied a license or whose

1 license is revoked by the commission , *and whose name has been placed*
2 *on the list maintained pursuant to subsection 8*, or with any business
3 enterprise *that the licensee knows or under the circumstances reasonably*
4 *should know is* under the control of that person after the date of receipt of
5 notice of the action by the commission. Every contract or agreement for
6 personal services to a gaming licensee or an affiliate or for the conduct of
7 any activity at a licensed gaming establishment shall be deemed to include
8 a provision for its termination without liability on the part of the licensee or
9 ~~registered holding company~~ *affiliate* upon a finding by the commission
10 that the person is unsuitable to be associated with a gaming enterprise.
11 Failure expressly to include such a condition in the agreement is not a
12 defense in any action brought pursuant to this section to terminate the
13 agreement.

14 6. A gaming licensee or an affiliate of the licensee shall not , *without*
15 *the prior approval of the commission*, employ any person in a capacity for
16 which he is required to be licensed, if he has been found unsuitable or
17 denied a license, or whose license has been revoked by the commission,
18 *and whose name has been placed on the list maintained pursuant to*
19 *subsection 8*, after the date of receipt of notice of the action by the
20 commission . ~~without prior approval of the commission.~~ *Every contract*
21 *or agreement for employment with a gaming licensee or an affiliate shall*
22 *be deemed to include a provision for its termination without liability on*
23 *the part of the licensee or affiliate upon a finding by the commission that*
24 *the person is unsuitable to be associated with a gaming enterprise.*
25 *Failure to expressly include such a condition in the agreement is not a*
26 *defense in any action brought pursuant to this section to terminate the*
27 *agreement.*

28 7. As used in this section, “affiliate” means a person who, directly or
29 indirectly through one or more intermediaries, controls, is controlled by or
30 is under common control with a licensee.

31 8. *The board shall maintain and make available to every licensee a*
32 *complete and current list containing the names of every person the*
33 *commission has denied a license, who has been found unsuitable or who*
34 *has had a license or finding of suitability revoked. The list must also*
35 *contain the names of any business organization under the control of any*
36 *such person known to the board.*

37 **Sec. 3.** NRS 463.167 is hereby amended to read as follows:

38 463.167 1. The commission may determine the suitability, or may
39 require the licensing, of any person who furnishes services or property to a
40 state gaming licensee under any arrangement pursuant to which the person
41 receives payments based on earnings, profits or receipts from gaming. The
42 commission may require any such person to comply with the requirements
43 of this chapter and with the regulations of the commission. If the

1 commission determines that any such person is unsuitable, it may require
2 the arrangement to be terminated.

3 2. If the premises of a licensed gaming establishment are directly or
4 indirectly owned or under the control of the licensee therein, or of any
5 person controlling, controlled by, or under common control with the
6 licensee, the commission may, upon recommendation of the board, require
7 the application of any person for a determination of suitability to be
8 associated with a gaming enterprise if the person:

9 (a) Does business on the premises of the licensed gaming establishment;

10 (b) Is an independent agent or does business with a licensed gaming
11 establishment as a ticket purveyor, a tour operator, the operator of a bus
12 program, or as the operator of any other type of casino travel program or
13 promotion; or

14 (c) Provides any goods or services to the licensed gaming establishment
15 for a compensation which the board finds to be grossly disproportionate to
16 the value of the goods or services.

17 3. If the commission determines that the person is unsuitable to be
18 associated with a gaming enterprise, the association must be terminated.
19 Any agreement which entitles a business other than gaming to be conducted
20 on the premises, or entitles a person other than gaming to conduct business
21 with the licensed gaming establishment as set forth in paragraph (b) or (c)
22 of subsection 2, is subject to termination upon a finding of unsuitability of
23 the person associated therewith. Every such agreement must be deemed to
24 include a provision for its termination without liability on the part of the
25 licensee upon a finding by the commission that the person associated
26 therewith is unsuitable to be associated with a gaming enterprise. Failure
27 expressly to include that condition in the agreement is not a defense in any
28 action brought pursuant to this section to terminate the agreement. If the
29 application is not presented to the board within 30 days following demand
30 or the unsuitable association is not terminated, the commission may pursue
31 any remedy or combination of remedies provided in this chapter.

32 ***4. The name of any person determined to be unsuitable pursuant to***
33 ***this section must be included on the list required pursuant to subsection 8***
34 ***of NRS 463.165.***

35 **Sec. 4.** NRS 463.387 is hereby amended to read as follows:

36 463.387 1. State gaming license fees or taxes paid in excess of the
37 amount required to be reported and paid may be refunded, upon the
38 approval of the commission, as other claims against the state are paid.

39 2. Within 90 days after the mailing of the notice of the commission's
40 action upon a claim for refund filed pursuant to this chapter, the claimant
41 may bring an action against the commission on the grounds set forth in the
42 claim in any court of competent jurisdiction for the recovery of the whole

1 or any part of the amount with respect to which the claim has been
2 disallowed.

3 3. Failure to bring an action within the time specified in subsection 2
4 constitutes a waiver of any demand against the state on account of alleged
5 overpayments.

6 4. *Within 20 days after the mailing of the notice of the commission's*
7 *action upon a claim for refund filed pursuant to this chapter, the*
8 *claimant may file a motion for rehearing with the commission. The*
9 *commission must take action on the motion for rehearing within 50 days*
10 *after it has been filed with the commission. If the motion for rehearing is*
11 *granted, the commission's earlier action upon the claim for refund is*
12 *rescinded and the 90-day period specified in subsection 2 does not begin*
13 *until the commission mails notice of its action upon the claim following*
14 *the rehearing.*

15 5. If the commission fails to mail its notice of action on a claim within
16 6 months after the claim is filed ~~H~~ *or reheard*, the claimant may consider
17 the claim disallowed and bring an action against the commission on the
18 grounds set forth in the claim for the recovery of the whole or any part of
19 the amount claimed as an overpayment.

20 ~~5.1~~ 6. In any case where a refund is granted, interest must be allowed
21 at the rate prescribed in NRS 17.130 upon the amount found to have been
22 erroneously paid from the first day of the first month following the date of
23 overpayment until paid. The commission may in its discretion deny or limit
24 the payment of interest if it finds that the claimant has failed to file a claim
25 for a refund within 90 days after receiving written notification of
26 overpayment from the board or has impeded the board's ability to process
27 the claim in a timely manner.

28 ~~16.1~~ 7. Notwithstanding the provisions of NRS 353.115, any claim for
29 refund of state gaming license fees or taxes paid in excess of the amount
30 required to be reported and paid, must be filed with the commission within
31 5 years after the date of overpayment and not thereafter.

32 ~~17.1~~ 8. The provisions of this chapter must not be construed to permit
33 the proration of state gaming taxes or license fees for purposes of a refund.

34 **Sec. 5.** NRS 463.401 is hereby amended to read as follows:

35 463.401 1. In addition to any other license fees and taxes imposed by
36 this chapter, a casino entertainment tax equivalent to 10 percent of all
37 amounts paid for admission, food, refreshments and merchandise is hereby
38 levied, except as provided in subsection 2, upon each licensed gaming
39 establishment in this state where music and dancing privileges or any other
40 entertainment is provided to the patrons in a cabaret, nightclub, cocktail
41 lounge or casino showroom in connection with the serving or selling of
42 food or refreshments or the selling of any merchandise. Amounts paid for
43 gratuities directly or indirectly remitted to employees of the licensee or for

1 service charges , *including those imposed in connection with use of credit*
2 *cards or debit cards, that are* collected and retained by persons other than
3 the licensee are not taxable pursuant to this section.

4 2. A licensed gaming establishment is not subject to tax pursuant to
5 this section if:

6 (a) The establishment is licensed for less than 51 slot machines, less
7 than six games, or any combination of slot machines and games within
8 those respective limits;

9 (b) The entertainment is presented in a facility that would not have been
10 subject to taxation pursuant to 26 U.S.C. § 4231(6) as that provision
11 existed in 1965;

12 (c) The entertainment is presented in a facility that would have been
13 subject to taxation pursuant to 26 U.S.C. § 4231(1), (2), (3), (4) or (5) as
14 those provisions existed in 1965; or

15 (d) In other cases, if:

16 (1) No distilled spirits, wine or beer is served or permitted to be
17 consumed;

18 (2) Only light refreshments are served;

19 (3) Where space is provided for dancing, no charge is made for
20 dancing; and

21 (4) Where music is provided or permitted, the music is provided
22 without any charge to the owner, lessee or operator of the establishment or
23 to any concessionaire.

24 3. The tax imposed by this section does not apply to merchandise sold
25 outside the facility in which the entertainment is presented, unless the
26 purchase of the merchandise entitles the purchaser to admission to the
27 entertainment.

28 4. The tax imposed by this section must be paid by the licensee of the
29 establishment.

30 **Sec. 6.** NRS 463.645 is hereby amended to read as follows:

31 463.645 **1.** If any person who is required by or pursuant to this
32 chapter to be licensed or found suitable because of his connection with a
33 corporation, partnership, limited partnership, limited-liability company or
34 other business organization holding a license, or a holding company or
35 intermediary company, including a publicly traded corporation, fails to
36 apply for a license or a finding of suitability after being requested to do so
37 by the commission or is denied a license or a finding of suitability, or if his
38 license or finding of suitability is revoked, *and his name has been placed*
39 *on the list maintained pursuant to subsection 8 of NRS 463.165,* the
40 corporation, partnership, limited partnership, limited-liability company,
41 business organization, holding company, intermediary company or any
42 person who directly or indirectly controls, is controlled by or is under
43 common control with the corporation, partnership, limited partnership,

1 limited-liability company, business organization, holding company or
2 intermediary company shall not, after receipt of written notice from the
3 commission:

4 ~~11.1~~ (a) Pay him any remuneration for any service relating to the
5 activities of a licensee, except for amounts due for services rendered before
6 the date of receipt of notice of such action by the commission. Any contract
7 or agreement for personal services or the conduct of any activity at a
8 licensed gaming establishment between a former employee whose
9 employment was terminated because of failure to apply for a license or a
10 finding of suitability, denial of a license or finding of suitability, or
11 revocation of a license or a finding of suitability, or any business enterprise
12 under the control of that employee and the licensee, holding or
13 intermediary company or registered publicly traded corporation is subject
14 to termination. Every such agreement shall be deemed to include a
15 provision for its termination without liability on the part of the licensee
16 upon a finding by the commission that the business or any person
17 associated therewith is unsuitable to be associated with a gaming enterprise.
18 Failure expressly to include such a condition in the agreement is not a
19 defense in any action brought pursuant to this section to terminate the
20 agreement.

21 ~~12.1~~ (b) Enter into any contract or agreement with him or with a
22 business organization *that the licensee knows or under the circumstances*
23 *reasonably should know is* under his control which involves the operations
24 of a licensee, without the prior approval of the commission.

25 ~~13.1~~ (c) Employ him in any position involving the activities of a licensee
26 without prior approval of the commission.

27 *2. The name of any person who has been denied a license, been*
28 *found unsuitable or had a license or finding of suitability revoked*
29 *pursuant to subsection 1 must be included on the list required pursuant*
30 *to subsection 8 of NRS 463.165.*

31 **Sec. 7.** This act becomes effective upon passage and approval.