

Amendment No. 438

Senate Amendment to Senate Bill No. 247

(BDR 32-680)

Proposed by: Committee on Taxation**Amendment Box:****Resolves Conflicts with:** N/A**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

| ASSEMBLY ACTION | Initial and Date | SENATE ACTION | Initial and Date |
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| Adopted <input type="checkbox"/> Lost <input type="checkbox"/> | _____ | Adopted <input type="checkbox"/> Lost <input type="checkbox"/> | _____ |
| Concurred In <input type="checkbox"/> Not <input type="checkbox"/> | _____ | Concurred In <input type="checkbox"/> Not <input type="checkbox"/> | _____ |
| Receded <input type="checkbox"/> Not <input type="checkbox"/> | _____ | Receded <input type="checkbox"/> Not <input type="checkbox"/> | _____ |

Amend the bill as a whole by deleting sections 1 through 43 and the leadlines of repealed sections and adding new sections designated sections 1 through 60 and the text of repealed sections, following the enacting clause, to read as follows:

“Section 1. Chapter 368A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 32, inclusive, of this act.

Sec. 2. *As used in sections 2 to 32, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Admission charge” means the total amount, expressed in terms of money, of consideration paid for the right or privilege to have access to a facility where live adult entertainment is provided.*

SJC/BJE

Date: 4/18/2005

S.B. No. 247—Revises provisions governing tax on live entertainment.



Sec. 4. *“Business” means any activity engaged in or caused to be engaged in by a business entity with the object of gain, benefit or advantage, either direct or indirect, to any person or governmental entity.*

Sec. 5. 1. *“Business entity” includes:*

(a) A corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust and their equivalents organized under the laws of this State or another jurisdiction and any other type of entity that engages in business.

(b) A natural person engaging in a business if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, or a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, for the business.

2. The term does not include a governmental entity.

Sec. 6. 1. *“Facility” means, except as otherwise provided in subsection 2, any area or premises where live adult entertainment is provided and for which consideration is collected for the right or privilege of entering that area or those premises.*

2. The term does not include any portion of:

(a) A licensed gaming establishment; or

(b) A house of prostitution.

Sec. 7. *“Licensed gaming establishment” has the meaning ascribed to it in NRS 368A.080.*

Sec. 8. *“Live adult entertainment” means any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose which includes the exposure of one or*

more personal anatomical features by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present.

Sec. 9. *“Personal anatomical feature” means any portion of the:*

- 1. Genitals, pubic region, anus or perineum of any human person; or*
- 2. Areola of any female human breast or of any male human breast which has been surgically altered to appear as a female human breast.*

Sec. 10. *“Taxpayer” means:*

- 1. Except as otherwise provided in subsection 2, the owner or operator of the facility where the live adult entertainment is provided.*
- 2. If live adult entertainment that is taxable under sections 2 to 32, inclusive, of this act is provided at a publicly owned facility or on public land, the person who collects the taxable receipts.*

Sec. 11. *1. There is hereby imposed an excise tax on admission to any facility in this State where live adult entertainment is provided at the rate of 10 percent of any admission charge to the facility plus 10 percent of any amounts paid for food, refreshments, alcoholic beverages and merchandise purchased at the facility.*

2. Amounts paid for gratuities directly or indirectly remitted to persons employed at a facility where live adult entertainment is provided or for service charges, including those imposed in connection with the use of credit cards or debit cards, which are collected and retained by persons other than the taxpayer are not taxable pursuant to this section.

3. A business entity that collects any amount that is taxable pursuant to subsection 1 is liable for the tax imposed, but is entitled to collect reimbursement from any person paying that amount.

4. Any ticket for live adult entertainment must state whether the tax imposed by this section is included in the price of the ticket. If the ticket does not include such a statement, the taxpayer shall pay the tax based on the face amount of the ticket.

Sec. 12. A taxpayer shall hold the amount of all taxes for which he is liable pursuant to sections 2 to 32, inclusive, of this act in a separate account in trust for the State.

Sec. 13. 1. The Department shall:

(a) Collect the tax imposed by section 11 of this act; and

(b) Adopt such regulations as are necessary to carry out the provisions of paragraph (a), including, without limitation, regulations providing for a more detailed definition of “live adult entertainment” consistent with the general definition set forth in section 8 of this act for use in determining whether an activity is a taxable activity under the provisions of sections 2 to 32, inclusive, of this act.

2. For the purposes of subsection 1, the provisions of chapter 360 of NRS relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the taxes imposed by sections 2 to 32, inclusive, of this act to the extent that the provisions of chapter 360 of NRS do not conflict with the provisions of sections 2 to 32, inclusive, of this act.

Sec. 14. 1. Except as otherwise provided in this section, each taxpayer shall file with the Department, on or before the last day of each month, a report showing the amount of all taxable receipts for the preceding month. The report must be in a form prescribed by the Department.

2. The Department, if it deems it necessary to ensure payment to or facilitate the collection by the State of the tax imposed by section 11 of this act, may require reports to be filed not later than 10 days after the end of each calendar quarter.

3. Each report required to be filed by this section must be accompanied by the amount of the tax that is due for the period covered by the report.

4. The Department shall deposit all taxes, interest and penalties it receives pursuant to sections 2 to 32, inclusive, of this act in the State Treasury for credit to the State General Fund.

Sec. 15. Upon written application made before the date on which payment must be made, the Department may, for good cause, extend by 30 days the time within which a taxpayer is required to pay the tax imposed by section 11 of this act. If the tax is paid during the period of extension, no penalty or late charge may be imposed for failure to pay at the time required, but the taxpayer shall pay interest at the rate of 1 percent per month from the date on which the amount would have been due without the extension until the date of payment, unless otherwise provided in NRS 360.232 or 360.320.

Sec. 16. 1. Each person responsible for maintaining the records of a taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of sections 2 to 32, inclusive, of this act;

(b) Preserve those records for at least 4 years or until any litigation or prosecution pursuant to sections 2 to 32, inclusive, of this act is finally determined, whichever is longer; and

(c) Make the records available for inspection by the Department upon demand at reasonable times during regular business hours.

2. *The Department may by regulation specify the types of records which must be kept to determine the amount of the liability of a taxpayer.*

3. *Any agreement that is entered into, modified or extended after July 1, 2005, for the lease, assignment or transfer of any premises upon which any activity subject to the tax imposed by section 11 of this act is, or thereafter may be, conducted shall be deemed to include a provision that the taxpayer who is required to pay the tax must be allowed access to, upon demand, all books, records and financial papers held by the lessee, assignee or transferee which must be kept pursuant to this section. Any person conducting activities subject to the tax imposed by section 11 of this act who fails to maintain or disclose his records pursuant to this subsection is liable to the taxpayer for any penalty paid by the taxpayer for the late payment or nonpayment of the tax caused by the failure to maintain or disclose records.*

4. *A person who violates any provision of this section is guilty of a misdemeanor.*

Sec. 17. 1. *To verify the accuracy of any report filed or, if no report is filed by a taxpayer, to determine the amount of tax required to be paid, the Department, or any person authorized in writing by the Department, may examine the books, papers and records of any person who may be liable for the tax imposed by section 11 of this act.*

2. *Any person who may be liable for the tax imposed by section 11 of this act and who keeps outside of this State any books, papers and records relating thereto shall pay to the Department an amount equal to the allowance provided for state officers and employees generally while traveling outside of the State for each day or fraction thereof during which an employee of the Department is engaged in examining those documents, plus any other actual expenses incurred by the employee while he is absent from his regular place of employment to examine those documents.*

Sec. 18. 1. *Except as otherwise provided in this section and NRS 360.250, the records and files of the Department concerning the administration of sections 2 to 32, inclusive, of this act are confidential and privileged. The Department and any employee of the Department engaged in the administration of sections 2 to 32, inclusive, of this act or charged with the custody of any such records or files shall not disclose any information obtained from the records or files of the Department or from any examination, investigation or hearing authorized by the provisions of sections 2 to 32, inclusive, of this act. The Department and any employee of the Department may not be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.*

2. *The records and files of the Department concerning the administration of sections 2 to 32, inclusive, of this act are not confidential and privileged in the following cases:*

(a) *Testimony by a member or employee of the Department and production of records, files and information on behalf of the Department or a taxpayer in any action or proceeding pursuant to the provisions of sections 2 to 32, inclusive, of this act if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.*

(b) *Delivery to a taxpayer or his authorized representative of a copy of any report or other document filed by the taxpayer pursuant to sections 2 to 32, inclusive, of this act.*

(c) *Publication of statistics so classified as to prevent the identification of a particular person or document.*

(d) *Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.*

(e) Disclosure in confidence to the Governor or his agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Department in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding pursuant to sections 2 to 32, inclusive, of this act, or to any agency of this or any other state charged with the administration or enforcement of laws relating to taxation.

Sec. 19. 1. *If the Department determines that a taxpayer is taking any action with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by section 11 of this act, the Department shall establish an amount upon which that tax must be based.*

2. *The amount established by the Department pursuant to subsection 1 must be based upon the tax liability of business entities that are deemed comparable by the Department to that of the taxpayer.*

Sec. 20. 1. *If a taxpayer:*

(a) Is unable to collect all or part of an admission charge or charges for food, refreshments, alcoholic beverages and merchandise which were included in the taxable receipts reported for a previous reporting period; and

(b) Has taken a deduction on his federal income tax return pursuant to 26 U.S.C. § 166(a) for the amount which he is unable to collect,

↳ he is entitled to receive a credit for the amount of tax paid on account of that uncollected amount. The credit may be used against the amount of tax that the taxpayer is subsequently required to pay pursuant to sections 2 to 32, inclusive, of this act.

2. If the Internal Revenue Service disallows a deduction described in paragraph (b) of subsection 1 and the taxpayer claimed a credit on a return for a previous reporting period pursuant to subsection 1, the taxpayer shall include the amount of that credit in the amount of taxes reported pursuant to sections 2 to 32, inclusive, of this act in the first return filed with the Department after the deduction is disallowed.

3. If a taxpayer collects all or part of an admission charge or charges for food, refreshments, alcoholic beverages and merchandise for which he claimed a credit on a return for a previous reporting period pursuant to subsection 2, he shall include:

(a) The amount collected in the charges reported pursuant to paragraph (a) of subsection 1; and

*(b) The tax payable on the amount collected in the amount of taxes reported,
↪ in the first return filed with the Department after that collection.*

4. Except as otherwise provided in subsection 5, upon determining that a taxpayer has filed a return which contains one or more violations of the provisions of this section, the Department shall:

(a) For the first return of any taxpayer that contains one or more violations, issue a letter of warning to the taxpayer which provides an explanation of the violation or violations contained in the return.

(b) For the first or second return, other than a return described in paragraph (a), in any calendar year which contains one or more violations, assess a penalty equal to the amount of the tax which was not reported.

(c) For the third and each subsequent return in any calendar year which contains one or more violations, assess a penalty of three times the amount of the tax which was not reported.

5. For the purposes of subsection 4, if the first violation of this section by any taxpayer was determined by the Department through an audit which covered more than one return of the taxpayer, the Department shall treat all returns which were determined through the same audit to contain a violation or violations in the manner provided in paragraph (a) of subsection 4.

Sec. 21. The remedies of the State provided for in sections 2 to 32, inclusive, of this act are cumulative, and no action taken by the Department or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in sections 2 to 32, inclusive, of this act.

Sec. 22. If the Department determines that any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in its records and shall certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must be credited on any amounts then due from the person under sections 2 to 32, inclusive, of this act and the balance refunded to the person or his successors in interest.

Sec. 23. 1. Except as otherwise provided in NRS 360.235 and 360.395:

(a) No refund may be allowed unless a claim for it is filed with the Department. A claim must be filed within 3 years after the last day of the month following the reporting period for which the overpayment was made.

(b) No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Department within that period.

2. Each claim must be in writing and must state the specific grounds upon which the claim is founded.

3. Failure to file a claim within the time prescribed in subsection 1 constitutes a waiver of any demand against the State on account of overpayment.

4. Within 30 days after rejecting any claim in whole or in part, the Department shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

Sec. 24. 1. Except as otherwise provided in this section and NRS 360.320, interest must be paid upon any overpayment of any amount of the tax imposed by section 11 of this act in accordance with the provisions of section 13 of this act. The interest must be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the Department that a claim may be filed or the date upon which the claim is certified to the State Board of Examiners, whichever is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

2. If the Department determines that any overpayment has been made intentionally or by reason of carelessness, the Department shall not allow any interest on the overpayment.

Sec. 25. 1. No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against this State or against any officer of the State to

prevent or enjoin the collection under sections 2 to 32, inclusive, of this act of the tax imposed by section 11 of this act or any amount of tax, penalty or interest required to be collected.

2. No suit or proceeding may be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed.

Sec. 26. 1. Within 90 days after a final decision upon a claim filed pursuant to sections 2 to 32, inclusive, of this act is rendered by the Nevada Tax Commission, the claimant may bring an action against the Department on the grounds set forth in the claim.

2. An action brought pursuant to subsection 1 must be brought in a court of competent jurisdiction in Carson City, the county of this State where the claimant resides or maintains his principal place of business or a county in which any relevant proceedings were conducted by the Department, for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

3. Failure to bring an action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayments.

Sec. 27. 1. If the Department fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Nevada Tax Commission within 30 days after the last day of the 6-month period.

2. If the claimant is aggrieved by the decision of the Nevada Tax Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Department on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

3. *If judgment is rendered for the plaintiff, the amount of the judgment must first be credited towards any tax due from the plaintiff.*

4. *The balance of the judgment must be refunded to the plaintiff.*

Sec. 28. *In any judgment, interest must be allowed at the rate of 6 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Department.*

Sec. 29. *A judgment may not be rendered in favor of the plaintiff in any action brought against the Department to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.*

Sec. 30. 1. *The Department may recover a refund or any part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in a court of competent jurisdiction in Carson City or Clark County in the name of the State of Nevada.*

2. *The action must be tried in Carson City or Clark County unless the court, with the consent of the Attorney General, orders a change of place of trial.*

3. *The Attorney General shall prosecute the action, and the provisions of NRS, the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings.*

Sec. 31. 1. *If any amount in excess of \$25 has been illegally determined, either by the person filing the return or by the Department, the Department shall certify this fact to the State*

Board of Examiners, and the latter shall authorize the cancellation of the amount upon the records of the Department.

2. If an amount not exceeding \$25 has been illegally determined, either by the person filing a return or by the Department, the Department, without certifying this fact to the State Board of Examiners, shall authorize the cancellation of the amount upon the records of the Department.

Sec. 32. 1. A person shall not:

(a) Make, cause to be made or permit to be made any false or fraudulent return or declaration or false statement in any report or declaration, with intent to defraud the State or to evade payment of the tax or any part of the tax imposed by section 11 of this act.

(b) Make, cause to be made or permit to be made any false entry in books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by section 11 of this act.

(c) Keep, cause to be kept or permit to be kept more than one set of books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by section 11 of this act.

2. Any person who violates the provisions of subsection 1 is guilty of a gross misdemeanor.

Sec. 33. NRS 368A.010 is hereby amended to read as follows:

368A.010 As used in ~~[this chapter,]~~ **NRS 368A.010 to 368A.370, inclusive**, unless the context otherwise requires, the words and terms defined in NRS 368A.020 to 368A.110, inclusive, have the meanings ascribed to them in those sections.

Sec. 34. NRS 368A.050 is hereby amended to read as follows:

368A.050 1. “Business entity” includes:

(a) A corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust and their equivalents organized under the laws of this State or another jurisdiction and any other type of entity that engages in business.

(b) A natural person engaging in a business if ~~he is deemed to be a business entity pursuant to NRS 368A.120.]~~ ***the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, or a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, for the business.***

2. The term does not include a governmental entity.

Sec. 35. NRS 368A.060 is hereby amended to read as follows:

368A.060 “Facility” means:

1. Any area or premises where live entertainment is provided and for which consideration is collected for the right or privilege of entering that area or those premises if the live entertainment is provided at ~~the~~:

~~—(a) An establishment that is not a licensed gaming establishment; or~~

~~—(b) A] a~~ licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits.

2. Any area or premises where live entertainment is provided if the live entertainment is provided at any other licensed gaming establishment.

Sec. 36. NRS 368A.080 is hereby amended to read as follows:

368A.080 “Licensed gaming establishment” ~~[has the meaning ascribed to it in NRS 463.0169.]~~
means any premises for which a nonrestricted license has been issued pursuant to chapter 463 of NRS.

Sec. 37. NRS 368A.110 is hereby amended to read as follows:

368A.110 “Taxpayer” means ~~[-~~

~~—1. If live entertainment that is taxable under this chapter is provided at a licensed gaming establishment,]~~ the person licensed to conduct gaming at ~~[that establishment.~~

~~—2. Except as otherwise provided in subsection 3, if live entertainment that is taxable under this chapter is not provided at a licensed gaming establishment, the owner or operator of the facility where the live entertainment is provided.~~

~~—3. If live entertainment that is taxable under this chapter is provided at a publicly owned facility or on public land, the person who collects the taxable receipts.]~~ *a licensed gaming establishment where live entertainment is provided.*

Sec. 38. NRS 368A.140 is hereby amended to read as follows:

368A.140 1. The Board shall:

(a) Collect the tax imposed by ~~[this chapter from taxpayers who are licensed gaming establishments;]~~ *NRS 368A.200*; and

(b) Adopt such regulations as are necessary to carry out the provisions of paragraph (a) ~~[-]~~,
including, without limitation, regulations providing for a more detailed definition of “live entertainment” consistent with the general definition set forth in NRS 368A.090 for use in determining whether an activity is a taxable activity under the provisions of NRS 368A.010 to

368A.370, inclusive. The regulations must be adopted in accordance with the provisions of chapter 233B of NRS and must be codified in the Nevada Administrative Code.

2. ~~{The Department shall:~~

~~—(a) Collect the tax imposed by this chapter from all other taxpayers; and~~

~~—(b) Adopt such regulations as are necessary to carry out the provisions of paragraph (a).~~

~~—3.} For the purposes of {:~~

~~—(a) Subsection]~~ **subsection 1**, the provisions of chapter 463 of NRS relating to the payment, collection, administration and enforcement of gaming license fees and taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the taxes imposed by ~~{this chapter}~~ **NRS 368A.010 to 368A.370, inclusive**, to the extent that ~~{those}~~ **the provisions of chapter 463 of NRS** do not conflict with the provisions of ~~{this chapter}~~.

~~—(b) Subsection 2, the provisions of chapter 360 of NRS relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the taxes imposed by this chapter to the extent that those provisions do not conflict with the provisions of this chapter.~~

~~—4. To ensure that the tax imposed by NRS 368A.200 is collected fairly and equitably, the Board and the Department shall:~~

~~—(a) Jointly, coordinate the administration and collection of that tax and the regulation of taxpayers who are liable for the payment of the tax.~~

~~—(b) Upon request, assist the other agency in the collection of that tax.]~~ ***NRS 368A.010 to 368A.370, inclusive.***

Sec. 39. NRS 368A.150 is hereby amended to read as follows:

368A.150 1. If ~~[-~~:

~~—(a) The]~~ ***the*** Board determines that a taxpayer ~~[who is a licensed gaming establishment]~~ is taking any action with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by ~~[this chapter,]~~ ***NRS 368A.200***, the Board shall establish an amount upon which ~~[the tax imposed by this chapter]~~ ***that tax*** must be based.

~~[(b) The Department determines that a taxpayer who is not a licensed gaming establishment is taking any action with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter, the Department shall establish an amount upon which the tax imposed by this chapter must be based.]~~

2. The amount established by the Board ~~[for the Department]~~ pursuant to subsection 1 must be based upon the tax liability of business entities that are deemed comparable by the Board ~~[for the Department]~~ to that of the taxpayer.

Sec. 40. NRS 368A.160 is hereby amended to read as follows:

368A.160 1. Each person responsible for maintaining the records of a taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of ~~[this chapter,]~~ ***NRS 368A.010 to 368A.370, inclusive;***

(b) Preserve those records for ~~[-~~

~~—— (1) At] at least 5 years [if the taxpayer is a licensed gaming establishment] or until any litigation or prosecution pursuant to [this chapter] **NRS 368A.010 to 368A.370, inclusive**, is finally determined, whichever is longer; [or~~

~~—— (2) At least 4 years if the taxpayer is not a licensed gaming establishment or until any litigation or prosecution pursuant to this chapter is finally determined, whichever is longer;] and~~

(c) Make the records available for inspection by the Board ~~[for the Department]~~ upon demand at reasonable times during regular business hours.

2. The Board ~~[and the Department]~~ may by regulation specify the types of records which must be kept to determine the amount of the liability of a taxpayer . ~~[from whom they are required to collect the tax imposed by this chapter.]~~

3. Any agreement that is entered into, modified or extended after January 1, 2004, for the lease, assignment or transfer of any premises upon which any activity subject to the tax imposed by ~~[this chapter]~~ **NRS 368A.200** is, or thereafter may be, conducted shall be deemed to include a provision that the taxpayer required to pay the tax must be allowed access to, upon demand, all books, records and financial papers held by the lessee, assignee or transferee which must be kept pursuant to this section. Any person conducting activities subject to the tax imposed by NRS 368A.200 who fails to maintain or disclose his records pursuant to this subsection is liable to the taxpayer for any penalty paid by the taxpayer for the late payment or nonpayment of the tax caused by the failure to maintain or disclose records.

4. A person who violates any provision of this section is guilty of a misdemeanor.

Sec. 41. NRS 368A.170 is hereby amended to read as follows:

368A.170 1. To verify the accuracy of any report filed or, if no report is filed by a taxpayer, to determine the amount of tax required to be paid ~~for~~:

~~—(a) The~~, *the* Board, or any person authorized in writing by the Board, may examine the books, papers and records of any ~~[licensed gaming establishment that]~~ *person who* may be liable for the tax imposed by ~~[this chapter]~~.

~~—(b) The Department, or any person authorized in writing by the Department, may examine the books, papers and records of any other person who may be liable for the tax imposed by this chapter.]~~ **NRS 368A.200.**

2. Any person who may be liable for the tax imposed by ~~[this chapter]~~ **NRS 368A.200** and who keeps outside of this State any books, papers and records relating thereto shall pay to the Board ~~for the Department]~~ an amount equal to the allowance provided for state officers and employees generally while traveling outside of the State for each day or fraction thereof during which an employee of the Board ~~for the Department]~~ is engaged in examining those documents, plus any other actual expenses incurred by the employee while he is absent from his regular place of employment to examine those documents.

Sec. 42. NRS 368A.180 is hereby amended to read as follows:

368A.180 1. ~~[Except as otherwise provided in this section and NRS 360.250, the]~~ *The* records and files of the Board ~~[and the Department]~~ concerning the administration of ~~[this chapter]~~ **NRS 368A.010 to 368A.370, inclusive**, are confidential and privileged. The Board ~~[, the Department]~~ and any employee of the Board ~~for the Department]~~ engaged in the administration of ~~[this chapter]~~ **NRS 368A.010 to 368A.370, inclusive**, or charged with the custody of any such records or files shall not disclose any information obtained from the records or files of the Board ~~for the Department]~~ or from

any examination, investigation or hearing authorized by the provisions of ~~[this chapter.]~~ **NRS 368A.010 to 368A.370, inclusive.** The Board ~~[, the Department]~~ and any employee of the Board ~~[or the Department]~~ may not be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the Board ~~[and the Department]~~ concerning the administration of ~~[this chapter.]~~ **NRS 368A.010 to 368A.370, inclusive,** are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Board ~~[or the Department]~~ and production of records, files and information on behalf of the Board ~~[or the Department]~~ or a taxpayer in any action or proceeding pursuant to the provisions of ~~[this chapter.]~~ **NRS 368A.010 to 368A.370, inclusive,** if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a taxpayer or his authorized representative of a copy of any report or other document filed by the taxpayer pursuant to ~~[this chapter.]~~ **NRS 368A.010 to 368A.370, inclusive.**

(c) Publication of statistics so classified as to prevent the identification of a particular person or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the Governor or his agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Board ~~[or the Department]~~ in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding pursuant to ~~[this chapter.]~~ **NRS 368A.010 to**

368A.370, inclusive, or to any agency of this or any other state charged with the administration or enforcement of laws relating to taxation.

Sec. 43. NRS 368A.200 is hereby amended to read as follows:

368A.200 1. Except as otherwise provided in this section, there is hereby imposed an excise tax on admission to any facility in this State where live entertainment is provided. If the live entertainment is provided at a facility with a maximum seating capacity of:

(a) Less than 7,500, the rate of the tax is 10 percent of the admission charge to the facility plus 10 percent of any amounts paid for food, refreshments and merchandise purchased at the facility.

(b) At least 7,500, the rate of the tax is 5 percent of the admission charge to the facility.

2. Amounts paid for gratuities directly or indirectly remitted to persons employed at a facility where live entertainment is provided or for service charges, including those imposed in connection with the use of credit cards or debit cards, which are collected and retained by persons other than the taxpayer are not taxable pursuant to this section.

3. A business entity that collects any amount that is taxable pursuant to subsection 1 is liable for the tax imposed, but is entitled to collect reimbursement from any person paying that amount.

4. Any ticket for live entertainment must state whether the tax imposed by this section is included in the price of the ticket. If the ticket does not include such a statement, the taxpayer shall pay the tax based on the face amount of the ticket.

5. The tax imposed by subsection 1 does not apply to:

(a) Live entertainment that this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Live entertainment that is provided by or entirely for the benefit of a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

(c) Any ~~boxing contest or exhibition governed by the provisions of chapter 467 of NRS.]~~
contest, game or other event involving the athletic or physical skills of amateur or professional athletes.

(d) Live entertainment that is not provided at a licensed gaming establishment . ~~[if the facility in which the live entertainment is provided has a maximum seating capacity of less than 300.]~~

(e) Live entertainment that is provided at a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits, if the facility in which the live entertainment is provided has a maximum seating capacity of less than 300.

(f) Merchandise sold outside the facility in which the live entertainment is provided, unless the purchase of the merchandise entitles the purchaser to admission to the entertainment.

(g) Live entertainment that is provided at a trade show.

(h) Music performed by musicians who move constantly through the audience if no other form of live entertainment is afforded to the patrons.

(i) Live entertainment that is provided at ~~a licensed gaming establishment at~~ private meetings or dinners attended by members of a particular organization or by a casual assemblage if the purpose of the event is not primarily for entertainment.

(j) Live entertainment that is provided in the common area of a shopping mall, unless the entertainment is provided in a facility located within the mall.

6. As used in this section, “maximum seating capacity” means, in the following order of priority:

(a) The maximum occupancy of the facility in which live entertainment is provided, as determined by the State Fire Marshal or the local governmental agency that has the authority to determine the maximum occupancy of the facility;

(b) If such a maximum occupancy has not been determined, the maximum occupancy of the facility designated in any permit required to be obtained in order to provide the live entertainment; or

(c) If such a permit does not designate the maximum occupancy of the facility, the actual seating capacity of the facility in which the live entertainment is provided.

Sec. 44. NRS 368A.210 is hereby amended to read as follows:

368A.210 A taxpayer shall hold the amount of all taxes for which he is liable pursuant to ~~this chapter~~ **NRS 368A.010 to 368A.370, inclusive**, in a separate account in trust for the State.

Sec. 45. NRS 368A.220 is hereby amended to read as follows:

368A.220 1. Except as otherwise provided in this section ~~for~~:

~~—(a) Each taxpayer who is a licensed gaming establishment~~, **each taxpayer** shall file with the Board, on or before the 24th day of each month, a report showing the amount of all taxable receipts for the preceding month. The report must be in a form prescribed by the Board.

~~[(b) All other taxpayers shall file with the Department, on or before the last day of each month, a report showing the amount of all taxable receipts for the preceding month. The report must be in a form prescribed by the Department.]~~

2. The Board, ~~for the Department,~~ if it deems it necessary to ensure payment to or facilitate the collection by the State of the tax imposed by NRS 368A.200, may require reports to be filed not later than 10 days after the end of each calendar quarter.

3. Each report required to be filed by this section must be accompanied by the amount of the tax that is due for the period covered by the report.

4. The Board ~~and the Department~~ shall deposit all taxes, interest and penalties it receives pursuant to ~~this chapter~~ **NRS 368A.010 to 368A.370, inclusive**, in the State Treasury for credit to the State General Fund.

Sec. 46. NRS 368A.230 is hereby amended to read as follows:

368A.230 Upon written application made before the date on which payment must be made, the Board ~~for the Department~~ may, for good cause, extend by 30 days the time within which a taxpayer is required to pay the tax imposed by ~~this chapter~~ **NRS 368A.200**. If the tax is paid during the period of extension, no penalty or late charge may be imposed for failure to pay at the time required, but the taxpayer shall pay interest at the rate of 1 percent per month from the date on which the amount would have been due without the extension until the date of payment. ~~[unless otherwise provided in NRS 360.232 or 360.320.]~~

Sec. 47. NRS 368A.240 is hereby amended to read as follows:

368A.240 1. If a taxpayer:

(a) Is unable to collect all or part of an admission charge or charges for food, refreshments and merchandise which were included in the taxable receipts reported for a previous reporting period; and

(b) Has taken a deduction on his federal income tax return pursuant to 26 U.S.C. § 166(a) for the amount which he is unable to collect,

➔ he is entitled to receive a credit for the amount of tax paid on account of that uncollected amount.

The credit may be used against the amount of tax that the taxpayer is subsequently required to pay pursuant to ~~[this chapter.]~~ ***NRS 368A.010 to 368A.370, inclusive.***

2. If the Internal Revenue Service disallows a deduction described in paragraph (b) of subsection 1 and the taxpayer claimed a credit on a return for a previous reporting period pursuant to subsection 1, the taxpayer shall include the amount of that credit in the amount of taxes reported pursuant to ~~[this chapter.]~~ ***NRS 368A.010 to 368A.370, inclusive,*** in the first return filed with the Board ~~[for the Department]~~ after the deduction is disallowed.

3. If a taxpayer collects all or part of an admission charge or charges for food, refreshments and merchandise for which he claimed a credit on a return for a previous reporting period pursuant to subsection 2, he shall include:

(a) The amount collected in the charges reported pursuant to paragraph (a) of subsection 1; and

(b) The tax payable on the amount collected in the amount of taxes reported,

➔ in the first return filed with the Board ~~[for the Department]~~ after that collection.

4. Except as otherwise provided in subsection 5, upon determining that a taxpayer has filed a return which contains one or more violations of the provisions of this section, the Board ~~[for the Department]~~ shall:

(a) For the first return of any taxpayer that contains one or more violations, issue a letter of warning to the taxpayer which provides an explanation of the violation or violations contained in the return.

(b) For the first or second return, other than a return described in paragraph (a), in any calendar year which contains one or more violations, assess a penalty equal to the amount of the tax which was not reported.

(c) For the third and each subsequent return in any calendar year which contains one or more violations, assess a penalty of three times the amount of the tax which was not reported.

5. For the purposes of subsection 4, if the first violation of this section by any taxpayer was determined by the Board ~~for the Department~~ through an audit which covered more than one return of the taxpayer, the Board ~~for the Department~~ shall treat all returns which were determined through the same audit to contain a violation or violations in the manner provided in paragraph (a) of subsection 4.

Sec. 48. NRS 368A.260 is hereby amended to read as follows:

368A.260 1. ~~Except as otherwise provided in NRS 360.235 and 360.395:~~

~~—(a)~~ No refund may be allowed unless a claim for it is filed with ~~the~~

~~—(1) The Board, if the taxpayer is a licensed gaming establishment; or~~

~~—(2) The Department, if the taxpayer is not a licensed gaming establishment.]~~ **the Board.** A

claim must be filed within 3 years after the last day of the month following the reporting period for which the overpayment was made.

~~[(b)]~~ No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Board ~~for the Department~~ within that period.

2. Each claim must be in writing and must state the specific grounds upon which the claim is founded.

3. Failure to file a claim within the time prescribed in ~~[this chapter]~~ **subsection 1** constitutes a waiver of any demand against the State on account of overpayment.

4. Within 30 days after rejecting any claim in whole or in part, the Board ~~[or the Department]~~ shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

Sec. 49. NRS 368A.270 is hereby amended to read as follows:

368A.270 1. Except as otherwise provided in this section , ~~[and NRS 360.320,]~~ interest must be paid upon any overpayment of any amount of the tax imposed by ~~[this chapter]~~ **NRS 368A.200** in accordance with the provisions of NRS 368A.140.

2. ~~[If the overpayment is paid to the Department, the interest must be paid:~~

~~—(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the Department that a claim may be filed or the date upon which the claim is certified to the State Board of Examiners, whichever is earlier.~~

~~—(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.~~

~~—3.]~~ If the Board ~~[or the Department]~~ determines that any overpayment has been made intentionally or by reason of carelessness, the Board ~~[or the Department]~~ shall not allow any interest on the overpayment.

Sec. 50. NRS 368A.280 is hereby amended to read as follows:

368A.280 1. No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against this State or against any officer of the State to

prevent or enjoin the collection under ~~[this chapter]~~ ***NRS 368A.010 to 368A.370, inclusive***, of the tax imposed by ~~[this chapter]~~ ***NRS 368A.200*** or any amount of tax, penalty or interest required to be collected.

2. No suit or proceeding may be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed.

Sec. 51. NRS 368A.290 is hereby amended to read as follows:

368A.290 1. Within 90 days after a final decision upon a claim filed pursuant to ~~[this chapter]~~ ***NRS 368A.010 to 368A.370, inclusive***, is rendered by ~~[-~~

~~—(a) The]~~ ***the*** Nevada Gaming Commission, the claimant may bring an action against the Board on the grounds set forth in the claim.

~~[(b) The Nevada Tax Commission, the claimant may bring an action against the Department on the grounds set forth in the claim.]~~

2. An action brought pursuant to subsection 1 must be brought in a court of competent jurisdiction in Carson City, the county of this State where the claimant resides or maintains his principal place of business or a county in which any relevant proceedings were conducted by the Board , ~~[or the Department,]~~ for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

3. Failure to bring an action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayments.

Sec. 52. NRS 368A.300 is hereby amended to read as follows:

368A.300 1. If the Board fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Nevada Gaming Commission within 30 days after the last day of the 6-month period.

2. ~~[[If the Department fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Nevada Tax Commission within 30 days after the last day of the 6-month period.]~~

~~—3.]~~ If the claimant is aggrieved by the decision of ~~[-~~

~~—(a) The]~~ *the* Nevada Gaming Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

~~[(b) The Nevada Tax Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Department on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.]~~

~~—4.]~~ 3. If judgment is rendered for the plaintiff, the amount of the judgment must first be credited towards any tax due from the plaintiff.

~~[5.]~~ 4. The balance of the judgment must be refunded to the plaintiff.

Sec. 53. NRS 368A.310 is hereby amended to read as follows:

368A.310 In any judgment, interest must be allowed at the rate of 6 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Board . ~~[for the Department.]~~

Sec. 54. NRS 368A.320 is hereby amended to read as follows:

368A.320 A judgment may not be rendered in favor of the plaintiff in any action brought against the Board ~~[or the Department]~~ to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

Sec. 55. NRS 368A.330 is hereby amended to read as follows:

368A.330 1. The Board ~~[or the Department]~~ may recover a refund or any part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in a court of competent jurisdiction in Carson City or Clark County in the name of the State of Nevada.

2. The action must be tried in Carson City or Clark County unless the court, with the consent of the Attorney General, orders a change of place of trial.

3. The Attorney General shall prosecute the action, and the provisions of NRS, the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings.

Sec. 56. NRS 368A.340 is hereby amended to read as follows:

368A.340 1. If any amount in excess of \$25 has been illegally determined, either by the person filing the return or by the Board , ~~[or the Department,]~~ the Board ~~[or the Department]~~ shall certify this fact to the State Board of Examiners, and the latter shall authorize the cancellation of the amount upon the records of the Board . ~~[or the Department.]~~

2. If an amount not exceeding \$25 has been illegally determined, either by the person filing a return or by the Board , ~~[or the Department,]~~ the Board , ~~[or the Department,]~~ without certifying this fact to the State Board of Examiners, shall authorize the cancellation of the amount upon the records of the Board . ~~[or the Department.]~~

Sec. 57. NRS 368A.350 is hereby amended to read as follows:

368A.350 1. A person shall not:

(a) Make, cause to be made or permit to be made any false or fraudulent return or declaration or false statement in any report or declaration, with intent to defraud the State or to evade payment of the tax or any part of the tax imposed by ~~[this chapter.]~~ **NRS 368A.200.**

(b) Make, cause to be made or permit to be made any false entry in books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by ~~[this chapter.]~~ **NRS 368A.200.**

(c) Keep, cause to be kept or permit to be kept more than one set of books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by ~~[this chapter.]~~ **NRS 368A.200.**

2. Any person who violates the provisions of subsection 1 is guilty of a gross misdemeanor.

Sec. 58. NRS 368A.370 is hereby amended to read as follows:

368A.370 The remedies of the State provided for in ~~[this chapter.]~~ **NRS 368A.010 to 368A.370, inclusive**, are cumulative, and no action taken by the Board ~~[the Department]~~ or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in ~~[this chapter.]~~ **NRS 368A.010 to 368A.370, inclusive.**

Sec. 59. NRS 368A.120, 368A.130 and 368A.250 are hereby repealed.

Sec. 60. This act becomes effective on July 1, 2005, and expires by limitation on the last day of the month in which a court of competent jurisdiction enters a final order declaring unconstitutional or invalid any of the provisions of sections 2 to 32, inclusive, of this act which differ from the provisions of chapter 368A of NRS, as that chapter existed on June 30, 2005.

TEXT OF REPEALED SECTIONS

368A.120 Natural persons who are deemed to be business entities. A natural person engaging in a business shall be deemed to be a business entity that is subject to the provisions of this chapter if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, or a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, for the business.

368A.130 Adoption by Department of regulations for determining whether activity is taxable. The Department shall provide by regulation for a more detailed definition of “live entertainment” consistent with the general definition set forth in NRS 368A.090 for use by the Board and the Department in determining whether an activity is a taxable activity under the provisions of this chapter.

368A.250 Certification of excess amount collected; credit and refund. If the Department determines that any tax, penalty or interest it is required to collect has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in its records and shall certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must be credited on any amounts then due from the person under this chapter, and the balance refunded to the person or his successors in interest.”.

**If this amendment is adopted, the Legislative
Counsel's Digest will be changed to read as follows:**

Legislative Counsel's Digest:

Existing law imposes a tax on an admission charge to any facility where live entertainment, including live adult entertainment, is provided. (NRS 368A.200) The tax is administered by the State Gaming Control Board with respect to taxpayers who are licensed gaming establishments and by the Department of Taxation with respect to all other taxpayers. (NRS 368A.140)

This bill repeals the provisions of the existing law applicable to a facility that does not hold a nonrestricted gaming license and provides for the separate taxation of any facility where live adult entertainment is provided. This bill imposes a tax on live adult entertainment at the rate of 10 percent of any admission charge to such a facility, plus 10 percent of any amounts paid for food, refreshments, alcoholic beverages and merchandise purchased at the facility. This bill excludes houses of prostitution and facilities for which a nonrestricted gaming license has been issued from the tax on live adult entertainment, and provides for the administration of the tax solely by the Department of Taxation.

This bill also amends the existing law to provide for the separate taxation of a facility for which a nonrestricted gaming license has been issued. This bill does not change the application or rate of the tax on live entertainment currently in effect for such facilities, except that sporting events are exempted from taxation. This bill provides for the administration of the tax solely by the State Gaming Control Board.

This bill provides that if the provisions of this bill concerning the tax on live adult entertainment are held to be unconstitutional, the tax on all forms of live entertainment will be reinstated as currently set forth in the provisions of Chapter 368A of NRS.