

SENATE BILL NO. 247—SENATOR TITUS

MARCH 21, 2005

Referred to Committee on Taxation

SUMMARY—Revises provisions governing tax on live entertainment. (BDR 32-680)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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 taxation; revising the provisions governing the applicability, imposition, collection and administration of the tax on live entertainment; and providing other matters properly relating thereto.

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)

This bill repeals the existing law and imposes the tax only on a facility where live adult entertainment is provided and removes the tax on all other forms of live entertainment. 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 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.

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

Section 1. Chapter 368A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 37, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 13,*



1 *inclusive, of this act have the meanings ascribed to them in those*
2 *sections.*

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

7 **Sec. 4.** *“Board” means the State Gaming Control Board.*

8 **Sec. 5.** *“Business” means any activity engaged in or caused*
9 *to be engaged in by a business entity with the object of gain,*
10 *benefit or advantage, either direct or indirect, to any person or*
11 *governmental entity.*

12 **Sec. 6. 1.** *“Business entity” includes:*

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

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

24 **2.** *The term does not include a governmental entity.*

25 **Sec. 7.** *“Facility” means:*

26 **1.** *Any area or premises where live adult entertainment is*
27 *provided and for which consideration is collected for the right or*
28 *privilege of entering that area or those premises if the live adult*
29 *entertainment is provided at:*

30 *(a) An establishment that is not a licensed gaming*
31 *establishment; or*

32 *(b) A licensed gaming establishment that is licensed for less*
33 *than 51 slot machines, less than six games, or any combination of*
34 *slot machines and games within those respective limits.*

35 **2.** *Any area or premises where live adult entertainment is*
36 *provided if the live adult entertainment is provided at any other*
37 *licensed gaming establishment.*

38 **Sec. 8.** *“Game” has the meaning ascribed to it in*
39 *NRS 463.0152.*

40 **Sec. 9.** *“Licensed gaming establishment” has the meaning*
41 *ascribed to it in NRS 463.0169.*

42 **Sec. 10.** *“Live adult entertainment” means any activity*
43 *provided for pleasure, enjoyment, recreation, relaxation, diversion*
44 *or other similar purpose which includes the exposure of one or*



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

4 **Sec. 11.** *“Personal anatomical feature” means any portion of*
5 *the:*

6 *1. Genitals, pubic region, anus or perineum of any human*
7 *person; or*

8 *2. Areola of any female human breast or of any male human*
9 *breast which has been surgically altered to appear as a female*
10 *human breast.*

11 **Sec. 12.** *“Slot machine” has the meaning ascribed to it in*
12 *NRS 463.0191.*

13 **Sec. 13.** *“Taxpayer” means:*

14 *1. If live adult entertainment that is taxable under this*
15 *chapter is provided at a licensed gaming establishment, the person*
16 *licensed to conduct gaming at that establishment.*

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

21 *3. If live adult entertainment that is taxable under this*
22 *chapter is provided at a publicly owned facility or on public land,*
23 *the person who collects the taxable receipts.*

24 **Sec. 14.** *The Department shall provide by regulation for a*
25 *more detailed definition of “live adult entertainment” consistent*
26 *with the general definition set forth in section 10 of this act for use*
27 *by the Board and the Department in determining whether an*
28 *activity is a taxable activity under the provisions of this chapter.*

29 **Sec. 15.** *1. There is hereby imposed an excise tax on*
30 *admission to any facility in this State where live adult*
31 *entertainment is provided at the rate of 10 percent of any*
32 *admission charge to the facility plus 10 percent of any amounts*
33 *paid for food, refreshments, alcoholic beverages and merchandise*
34 *purchased at the facility.*

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

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



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

5 **Sec. 16.** A taxpayer shall hold the amount of all taxes for
6 which he is liable pursuant to this chapter in a separate account in
7 trust for the State.

8 **Sec. 17. 1.** The Board shall:

9 (a) Collect the tax imposed by this chapter from taxpayers who
10 are licensed gaming establishments; and

11 (b) Adopt such regulations as are necessary to carry out the
12 provisions of paragraph (a). The regulations must be adopted in
13 accordance with the provisions of chapter 233B of NRS and must
14 be codified in the Nevada Administrative Code.

15 2. The Department shall:

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

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

20 3. For the purposes of:

21 (a) Subsection 1, the provisions of chapter 463 of NRS relating
22 to the payment, collection, administration and enforcement of
23 gaming license fees and taxes, including, without limitation, any
24 provisions relating to the imposition of penalties and interest, shall
25 be deemed to apply to the payment, collection, administration and
26 enforcement of the taxes imposed by this chapter to the extent that
27 those provisions do not conflict with the provisions of this chapter.

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

35 4. To ensure that the tax imposed by section 15 of this act is
36 collected fairly and equitably, the Board and the Department
37 shall:

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

41 (b) Upon request, assist the other agency in the collection of
42 that tax.

43 **Sec. 18. 1.** Except as otherwise provided in this section:

44 (a) Each taxpayer who is a licensed gaming establishment
45 shall file with the Board, on or before the 24th day of each month,



1 *a report showing the amount of all taxable receipts for the*
2 *preceding month. The report must be in a form prescribed by the*
3 *Board.*

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

8 *2. The Board or the Department, if it deems it necessary to*
9 *ensure payment to or facilitate the collection by the State of the tax*
10 *imposed by section 15 of this act, may require reports to be filed*
11 *not later than 10 days after the end of each calendar quarter.*

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

15 *4. The Board and the Department shall deposit all taxes,*
16 *interest and penalties it receives pursuant to this chapter in the*
17 *State Treasury for credit to the State General Fund.*

18 **Sec. 19.** *Upon written application made before the date on*
19 *which payment must be made, the Board or the Department may,*
20 *for good cause, extend by 30 days the time within which a*
21 *taxpayer is required to pay the tax imposed by this chapter. If the*
22 *tax is paid during the period of extension, no penalty or late*
23 *charge may be imposed for failure to pay at the time required, but*
24 *the taxpayer shall pay interest at the rate of 1 percent per month*
25 *from the date on which the amount would have been due without*
26 *the extension until the date of payment, unless otherwise provided*
27 *in NRS 360.232 or 360.320.*

28 **Sec. 20.** *1. Each person responsible for maintaining the*
29 *records of a taxpayer shall:*

30 *(a) Keep such records as may be necessary to determine the*
31 *amount of the liability of the taxpayer pursuant to the provisions*
32 *of this chapter;*

33 *(b) Preserve those records for:*

34 *(1) At least 5 years if the taxpayer is a licensed gaming*
35 *establishment or until any litigation or prosecution pursuant to*
36 *this chapter is finally determined, whichever is longer; or*

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

40 *(c) Make the records available for inspection by the Board or*
41 *the Department upon demand at reasonable times during regular*
42 *business hours.*

43 *2. The Board and the Department may by regulation specify*
44 *the types of records which must be kept to determine the amount*



1 *of the liability of a taxpayer from whom they are required to*
2 *collect the tax imposed by this chapter.*

3 3. *Any agreement that is entered into, modified or extended*
4 *after July 1, 2005, for the lease, assignment or transfer of any*
5 *premises upon which any activity subject to the tax imposed by this*
6 *chapter is, or thereafter may be, conducted shall be deemed to*
7 *include a provision that the taxpayer who is required to pay the tax*
8 *must be allowed access to, upon demand, all books, records and*
9 *financial papers held by the lessee, assignee or transferee which*
10 *must be kept pursuant to this section. Any person conducting*
11 *activities subject to the tax imposed by section 15 of this act who*
12 *fails to maintain or disclose his records pursuant to this subsection*
13 *is liable to the taxpayer for any penalty paid by the taxpayer for*
14 *the late payment or nonpayment of the tax caused by the failure to*
15 *maintain or disclose records.*

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

18 **Sec. 21.** 1. *To verify the accuracy of any report filed or, if*
19 *no report is filed by a taxpayer, to determine the amount of tax*
20 *required to be paid:*

21 (a) *The Board, or any person authorized in writing by the*
22 *Board, may examine the books, papers and records of any licensed*
23 *gaming establishment that may be liable for the tax imposed by*
24 *this chapter.*

25 (b) *The Department, or any person authorized in writing by*
26 *the Department, may examine the books, papers and records of*
27 *any other person who may be liable for the tax imposed by this*
28 *chapter.*

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

39 **Sec. 22.** 1. *Except as otherwise provided in this section and*
40 *NRS 360.250, the records and files of the Board and the*
41 *Department concerning the administration of this chapter are*
42 *confidential and privileged. The Board, the Department and any*
43 *employee of the Board or the Department engaged in the*
44 *administration of this chapter or charged with the custody of any*
45 *such records or files shall not disclose any information obtained*



1 *from the records or files of the Board or the Department or from*
2 *any examination, investigation or hearing authorized by the*
3 *provisions of this chapter. The Board, the Department and any*
4 *employee of the Board or the Department may not be required to*
5 *produce any of the records, files and information for the*
6 *inspection of any person or for use in any action or proceeding.*

7 2. *The records and files of the Board and the Department*
8 *concerning the administration of this chapter are not confidential*
9 *and privileged in the following cases:*

10 (a) *Testimony by a member or employee of the Board or the*
11 *Department and production of records, files and information on*
12 *behalf of the Board or the Department or a taxpayer in any action*
13 *or proceeding pursuant to the provisions of this chapter if that*
14 *testimony or the records, files or information, or the facts shown*
15 *thereby, are directly involved in the action or proceeding.*

16 (b) *Delivery to a taxpayer or his authorized representative of a*
17 *copy of any report or other document filed by the taxpayer*
18 *pursuant to this chapter.*

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

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

24 (e) *Disclosure in confidence to the Governor or his agent in*
25 *the exercise of the Governor's general supervisory powers, or to*
26 *any person authorized to audit the accounts of the Board or the*
27 *Department in pursuance of an audit, or to the Attorney General*
28 *or other legal representative of the State in connection with an*
29 *action or proceeding pursuant to this chapter, or to any agency of*
30 *this or any other state charged with the administration or*
31 *enforcement of laws relating to taxation.*

32 **Sec. 23. 1. If:**

33 (a) *The Board determines that a taxpayer who is a licensed*
34 *gaming establishment is taking any action with intent to defraud*
35 *the State or to evade the payment of the tax or any part of the tax*
36 *imposed by this chapter, the Board shall establish an amount upon*
37 *which the tax imposed by this chapter must be based.*

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

44 2. *The amount established by the Board or the Department*
45 *pursuant to subsection 1 must be based upon the tax liability of*



1 *business entities that are deemed comparable by the Board or the*
2 *Department to that of the taxpayer.*

3 **Sec. 24. 1. If a taxpayer:**

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

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

11 *↳ he is entitled to receive a credit for the amount of tax paid on*
12 *account of that uncollected amount. The credit may be used*
13 *against the amount of tax that the taxpayer is subsequently*
14 *required to pay pursuant to this chapter.*

15 **2. If the Internal Revenue Service disallows a deduction**
16 *described in paragraph (b) of subsection 1 and the taxpayer*
17 *claimed a credit on a return for a previous reporting period*
18 *pursuant to subsection 1, the taxpayer shall include the amount of*
19 *that credit in the amount of taxes reported pursuant to this chapter*
20 *in the first return filed with the Board or the Department after the*
21 *deduction is disallowed.*

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

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

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

31 *↳ in the first return filed with the Board or the Department after*
32 *that collection.*

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

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

41 *(b) For the first or second return, other than a return*
42 *described in paragraph (a), in any calendar year which contains*
43 *one or more violations, assess a penalty equal to the amount of the*
44 *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 or the Department through an audit which covered more than one return of the taxpayer, the Board or 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. 25. The remedies of the State provided for in this chapter 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.

Sec. 26. 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.

Sec. 27. 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:

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

(2) The Department if the taxpayer is not a licensed gaming establishment.

→ 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 or 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 constitutes a waiver of any demand against the State on account of overpayment.



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

5 **Sec. 28.** 1. *Except as otherwise provided in this section and*
6 *NRS 360.320, interest must be paid upon any overpayment of any*
7 *amount of the tax imposed by this chapter in accordance with the*
8 *provisions of section 17 of this act.*

9 2. *If the overpayment is paid to the Department, the interest*
10 *must be paid:*

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

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

20 3. *If the Board or the Department determines that any*
21 *overpayment has been made intentionally or by reason of*
22 *carelessness, the Board or the Department shall not allow any*
23 *interest on the overpayment.*

24 **Sec. 29.** 1. *No injunction, writ of mandate or other legal or*
25 *equitable process may issue in any suit, action or proceeding in*
26 *any court against this State or against any officer of the State to*
27 *prevent or enjoin the collection under this chapter of the tax*
28 *imposed by this chapter or any amount of tax, penalty or interest*
29 *required to be collected.*

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

34 **Sec. 30.** 1. *Within 90 days after a final decision upon a*
35 *claim filed pursuant to this chapter is rendered by:*

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

38 (b) *The Nevada Tax Commission, the claimant may bring an*
39 *action against the Department on the grounds set forth in the*
40 *claim.*

41 2. *An action brought pursuant to subsection 1 must be*
42 *brought in a court of competent jurisdiction in Carson City, the*
43 *county of this State where the claimant resides or maintains his*
44 *principal place of business or a county in which any relevant*
45 *proceedings were conducted by the Board or the Department, for*



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

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

6 **Sec. 31.** 1. *If the Board fails to mail notice of action on a*
7 *claim within 6 months after the claim is filed, the claimant may*
8 *consider the claim disallowed and file an appeal with the Nevada*
9 *Gaming Commission within 30 days after the last day of the*
10 *6-month period.*

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

16 3. *If the claimant is aggrieved by the decision of:*

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

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

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

30 5. *The balance of the judgment must be refunded to the*
31 *plaintiff.*

32 **Sec. 32.** *In any judgment, interest must be allowed at the rate*
33 *of 6 percent per annum upon the amount found to have been*
34 *illegally collected from the date of payment of the amount to the*
35 *date of allowance of credit on account of the judgment, or to a*
36 *date preceding the date of the refund warrant by not more than 30*
37 *days. The date must be determined by the Board or the*
38 *Department.*

39 **Sec. 33.** *A judgment may not be rendered in favor of the*
40 *plaintiff in any action brought against the Board or the*
41 *Department to recover any amount paid when the action is*
42 *brought by or in the name of an assignee of the person paying the*
43 *amount or by any person other than the person who paid the*
44 *amount.*



1 **Sec. 34. 1.** *The Board or the Department may recover a*
2 *refund or any part thereof which is erroneously made and any*
3 *credit or part thereof which is erroneously allowed in an action*
4 *brought in a court of competent jurisdiction in Carson City or*
5 *Clark County in the name of the State of Nevada.*

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

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

14 **Sec. 35. 1.** *If any amount in excess of \$25 has been*
15 *illegally determined, either by the person filing the return or by the*
16 *Board or the Department, the Board or the Department shall*
17 *certify this fact to the State Board of Examiners, and the latter*
18 *shall authorize the cancellation of the amount upon the records of*
19 *the Board or the Department.*

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

26 **Sec. 36.** *Any licensed gaming establishment liable for the*
27 *payment of the tax imposed by section 15 of this act who willfully*
28 *fails to report, pay or truthfully account for the tax is subject to the*
29 *revocation of his gaming license by the Nevada Gaming*
30 *Commission.*

31 **Sec. 37. 1.** *A person shall not:*

32 (a) *Make, cause to be made or permit to be made any false or*
33 *fraudulent return or declaration or false statement in any report*
34 *or declaration, with intent to defraud the State or to evade*
35 *payment of the tax or any part of the tax imposed by this chapter.*

36 (b) *Make, cause to be made or permit to be made any false*
37 *entry in books, records or accounts with intent to defraud the State*
38 *or to evade the payment of the tax or any part of the tax imposed*
39 *by this chapter.*

40 (c) *Keep, cause to be kept or permit to be kept more than one*
41 *set of books, records or accounts with intent to defraud the State*
42 *or to evade the payment of the tax or any part of the tax imposed*
43 *by this chapter.*

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



1 **Sec. 38.** NRS 233B.039 is hereby amended to read as follows:
2 233B.039 1. The following agencies are entirely exempted
3 from the requirements of this chapter:

- 4 (a) The Governor.
- 5 (b) The Department of Corrections.
- 6 (c) The University and Community College System of Nevada.
- 7 (d) The Office of the Military.
- 8 (e) Except as otherwise provided in ~~NRS 368A.140,~~ *section 17*
9 *of this act*, the State Gaming Control Board.
- 10 (f) The Nevada Gaming Commission.
- 11 (g) The Welfare Division of the Department of Human
12 Resources.
- 13 (h) The Division of Health Care Financing and Policy of the
14 Department of Human Resources.
- 15 (i) The State Board of Examiners acting pursuant to chapter 217
16 of NRS.
- 17 (j) Except as otherwise provided in NRS 533.365, the Office of
18 the State Engineer.
- 19 (k) The Division of Industrial Relations of the Department of
20 Business and Industry acting to enforce the provisions of
21 NRS 618.375.
- 22 (l) The Administrator of the Division of Industrial Relations of
23 the Department of Business and Industry in establishing and
24 adjusting the schedule of fees and charges for accident benefits
25 pursuant to subsection 2 of NRS 616C.260.
- 26 (m) The Board to Review Claims in adopting resolutions to
27 carry out its duties pursuant to NRS 590.830.
- 28 2. Except as otherwise provided in subsection 5 and NRS
29 391.323, the Department of Education, the Board of the Public
30 Employees' Benefits Program and the Commission on Professional
31 Standards in Education are subject to the provisions of this chapter
32 for the purpose of adopting regulations but not with respect to any
33 contested case.
- 34 3. The special provisions of:
 - 35 (a) Chapter 612 of NRS for the distribution of regulations by
36 and the judicial review of decisions of the Employment Security
37 Division of the Department of Employment, Training and
38 Rehabilitation;
 - 39 (b) Chapters 616A to 617, inclusive, of NRS for the
40 determination of contested claims;
 - 41 (c) Chapter 703 of NRS for the judicial review of decisions of
42 the Public Utilities Commission of Nevada;
 - 43 (d) Chapter 91 of NRS for the judicial review of decisions of the
44 Administrator of the Securities Division of the Office of the
45 Secretary of State; and



(e) NRS 90.800 for the use of summary orders in contested cases,

➤ prevail over the general provisions of this chapter.

4. The provisions of NRS 233B.122, 233B.124, 233B.125 and 233B.126 do not apply to the Department of Human Resources in the adjudication of contested cases involving the issuance of letters of approval for health facilities and agencies.

5. The provisions of this chapter do not apply to:

(a) Any order for immediate action, including, but not limited to, quarantine and the treatment or cleansing of infected or infested animals, objects or premises, made under the authority of the State Board of Agriculture, the State Board of Health, or any other agency of this State in the discharge of a responsibility for the preservation of human or animal health or for insect or pest control;

(b) An extraordinary regulation of the State Board of Pharmacy adopted pursuant to NRS 453.2184; or

(c) A regulation adopted by the State Board of Education pursuant to NRS 392.644 or 394.1694.

6. The State Board of Parole Commissioners is subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

Sec. 39. NRS 463.0136 is hereby amended to read as follows:

463.0136 "Associated equipment" means:

1. Any equipment or mechanical, electromechanical or electronic contrivance, component or machine used remotely or directly in connection with gaming, any game, race book or sports pool that would not otherwise be classified as a gaming device, including dice, playing cards, links which connect to progressive slot machines, equipment which affects the proper reporting of gross revenue, computerized systems of betting at a race book or sports pool, computerized systems for monitoring slot machines and devices for weighing or counting money; or

2. A computerized system for recordation of sales for use in an area subject to the tax imposed pursuant to ~~NRS 368A.200~~ *section 15 of this act.*

Sec. 40. NRS 463.270 is hereby amended to read as follows:

463.270 1. Subject to the power of the Commission to deny, revoke, suspend, condition or limit licenses, any state license in force may be renewed by the Commission for the next succeeding license period upon proper application for renewal and payment of state license fees and taxes as required by law and the regulations of the Commission.

2. All state gaming licenses are subject to renewal on the first day of each January and all quarterly state gaming licenses on the first day of each calendar quarter thereafter.



3. Application for renewal must be filed with the Commission, and all state license fees and taxes required by law, including, without limitation, NRS ~~[368A.200,]~~ 463.370, 463.373 to 463.3855, inclusive, 463.660, 464.015 and 464.040, *and section 15 of this act*, must be paid to the Board on or before the dates respectively provided by law for each fee or tax.

4. Application for renewal of licenses for slot machines only must be made by the operators of the locations where such machines are situated.

5. Any person failing to pay any state license fees or taxes due at the times respectively provided shall pay in addition to such license fees or taxes a penalty of not less than \$50 or 25 percent of the amount due, whichever is the greater, but not more than \$1,000 if the fees or taxes are less than 10 days late and in no case in excess of \$5,000. The penalty must be collected as are other charges, license fees and penalties under this chapter.

6. Any person who operates, carries on or exposes for play any gambling game, gaming device or slot machine or who manufactures, sells or distributes any gaming device, equipment, material or machine used in gaming after his license becomes subject to renewal, and thereafter fails to apply for renewal as provided in this section, is guilty of a misdemeanor and, in addition to the penalties provided by law, is liable to the State of Nevada for all license fees, taxes and penalties which would have been due upon application for renewal.

7. If any licensee or other person fails to renew his license as provided in this section, the Commission may order the immediate closure of all his gaming activity until the license is renewed by the payment of the necessary fees, taxes, interest and any penalties. Except for a license for which fees are based on the gross revenue of the licensee, failure to renew a license within 30 days after the date required by this chapter shall be deemed a surrender of the license.

8. The voluntary surrender of a license by a licensee does not become effective until accepted in the manner provided in the regulations of the Commission. The surrender of a license does not relieve the former licensee of any penalties, fines, fees, taxes or interest due.

Sec. 41. NRS 463.408 is hereby amended to read as follows:

463.408 1. As used in this section, "holidays or special events" refers to periods during which the influx of tourist activity in this State or any area thereof may require additional or alternative industry accommodation as determined by the Board.

2. Any licensee holding a valid license under this chapter may apply to the Board, on application forms prescribed by the Board, for a holiday or special event permit to:



1 (a) Increase the licensee's game operations during holidays or
2 special events; or

3 (b) Provide persons who are attending a special event with
4 gaming in an area of the licensee's establishment to which access by
5 the general public may be restricted.

6 3. The application must be filed with the Board at least 15 days
7 before the date of the holiday or special event.

8 4. If the Board approves the application, ~~the~~ *the Board* shall
9 issue to the licensee a permit to operate presently existing games or
10 any additional games in designated areas of the licensee's
11 establishment. The number of additional games must not exceed 50
12 percent of the number of games operated by the licensee at the time
13 the application is filed. The permit must state the period for which it
14 is issued and the number, if any, of additional games allowed. For
15 purposes of computation, any fractional game must be counted as
16 one full game. The licensee shall present any such permit on the
17 demand of any inspecting agent of the Board or *the* Commission.

18 5. Before issuing any permit, the Board shall charge and collect
19 from the licensee a fee of \$14 per game per day for each day the
20 permit is effective. The fees are in lieu of the fees required under
21 NRS 463.380, 463.383 and 463.390.

22 6. The additional games allowed under a permit must not be
23 counted in computing the tax imposed by ~~NRS 368A.200.~~ *section*
24 *15 of this act.*

25 7. If any such additional games are not removed at the time the
26 permit expires, the licensee is immediately subject to the fees
27 provided for in this chapter.

28 **Sec. 42.** NRS 368A.010, 368A.020, 368A.030, 368A.040,
29 368A.050, 368A.060, 368A.070, 368A.080, 368A.090, 368A.100,
30 368A.110, 368A.120, 368A.130, 368A.140, 368A.150, 368A.160,
31 368A.170, 368A.180, 368A.200, 368A.210, 368A.220, 368A.230,
32 368A.240, 368A.250, 368A.260, 368A.270, 368A.280, 368A.290,
33 368A.300, 368A.310, 368A.320, 368A.330, 368A.340, 368A.350,
34 368A.360 and 368A.370 are hereby repealed.

35 **Sec. 43.** This act becomes effective on July 1, 2005, and
36 expires by limitation on the last day of the month in which a court of
37 competent jurisdiction enters a final order declaring unconstitutional
38 or invalid any of the provisions of sections 2 to 37, inclusive, of this
39 act which differ from the provisions of chapter 368A of NRS, as that
40 chapter existed on June 30, 2005.



LEADLINES OF REPEALED SECTIONS

- 368A.010 Definitions.
- 368A.020 "Admission charge" defined.
- 368A.030 "Board" defined.
- 368A.040 "Business" defined.
- 368A.050 "Business entity" defined.
- 368A.060 "Facility" defined.
- 368A.070 "Game" defined.
- 368A.080 "Licensed gaming establishment" defined.
- 368A.090 "Live entertainment" defined.
- 368A.100 "Slot machine" defined.
- 368A.110 "Taxpayer" defined.
- 368A.120 Natural persons who are deemed to be business entities.
- 368A.130 Adoption by Department of regulations for determining whether activity is taxable.
- 368A.140 Duties of Board and Department; applicability of chapters 360 and 463 of NRS.
- 368A.150 Establishment of amount of tax liability when Board or Department determines that taxpayer is acting with intent to defraud State or to evade payment of tax.
- 368A.160 Maintenance and availability of records for determining liability of taxpayer; liability to taxpayer of lessee, assignee or transferee of certain premises; penalty.
- 368A.170 Examination of records by Board or Department; payment of expenses of Board or Department for examination of records outside State.
- 368A.180 Confidentiality of records and files of Board and Department.
- 368A.200 Imposition and amount of tax; liability and reimbursement for payment; ticket for live entertainment must indicate whether tax is included in price of ticket; exemptions from tax.
- 368A.210 Taxpayer to hold taxes in separate account.
- 368A.220 Filing of reports and payment of tax; deposit of amounts received in State General Fund.
- 368A.230 Extension of time for payment; payment of interest during period of extension.
- 368A.240 Credit for amount of tax paid on account of certain charges taxpayer is unable to collect; violations.



368A.250 Certification of excess amount collected; credit and refund.

368A.260 Limitations on claims for refund or credit; form and contents of claim; failure to file claim constitutes waiver; service of notice of rejection of claim.

368A.270 Interest on overpayments; disallowance of interest.

368A.280 Injunction or other process to prevent collection of tax prohibited; filing of claim is condition precedent to maintaining action for refund.

368A.290 Action for refund: Period for commencement; venue; waiver.

368A.300 Rights of claimant upon failure of Board or Department to mail notice of action on claim; allocation of judgment for claimant.

368A.310 Allowance of interest in judgment for amount illegally collected.

368A.320 Standing to recover.

368A.330 Action for recovery of erroneous refund: Jurisdiction; venue; prosecution.

368A.340 Cancellation of illegal determination.

368A.350 Prohibited acts; penalty.

368A.360 Revocation of gaming license for failure to report, pay or truthfully account for tax.

368A.370 Remedies of State are cumulative.



