MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
February 10, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:31 a.m. on Tuesday, February 10, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Scott Jackson, Chief, Investigation Division, Department of Public Safety
Philip K. O'Neill, Division Chief, Records and Technology Division, Department of Public Safety
Mike Murphy, Coroner, Clark County
Dennis K. Neilander, Chair, State Gaming Control Board
Michael Somps, Deputy Attorney General, State Gaming Control Board
Dan R. Reaser, Association of Gaming Equipment Manufacturers

CHAIR CARE:
The hearing is opened on Senate Bill (S.B.) 28.

SENATE BILL 28: Revises reporting requirements concerning missing persons and unidentified dead bodies. (BDR 43-315)

SCOTT JACKSON (Chief, Investigation Division, Department of Public Safety):
Senate Bill 28 affects *Nevada Revised Statutes* (NRS) 480.460 and 480.500. It eliminates the requirement for law enforcement agencies to provide records of missing persons and unidentified deceased to the Investigation Division and the Records and Technology Division of the Department of Public Safety.

The statute requires both divisions to maintain the records but does not give the authority to enter them. This has created an inefficient and redundant system of maintaining records. We propose that the coroners enter those records into the National Crime Information Center (NCIC) directly, which would be a more efficient way to potentially identify unidentified deceased. The National Crime Information Center matches the records of missing persons with unidentified deceased and forwards that information to the originating law enforcement agency with jurisdiction.

PHILIP K. O'NEILL (Division Chief, Records and Technology Division, Department of Public Safety):
We reviewed our processes and noted there was a duplication of services in maintaining a state-only record file versus the national record file, which is more complete and accurate. Only two counties in Nevada have a coroner's office. The Clark County coroner's office has NCIC access. In the remaining 15 counties, the sheriff is also the coroner, and they have NCIC access. They can enter information into the national database.

MIKE MURPHY (Coroner, Clark County):
I support S.B. 28.

CHAIR CARE:
I will entertain a motion.

SENATOR WIENER MOVED TO DO PASS S.B. 28.

SENATOR AMODEI SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
The hearing on S.B. 28 is closed. The hearing on S.B. 83 is opened.

SENATE BILL 83: Makes various changes relating to the regulation of gaming. (BDR 41-311)

DENNIS K. NEILANDER (Chair, State Gaming Control Board):
Senate Bill 83 modernizes certain provisions in the Gaming Control Act. I have provided you with our proposed amendment (Exhibit C).

Senate Bill 83, beginning with sections 1, 3 and 5, provides the definition of manufacture and manufacturer. We are modernizing the definitions. Most of the gaming devices are now operated off platforms, which are networked computers with hardware and software.

We also define the term "control program." We use this term to describe the peripheral codes added to devices to perform different functions. The bill allows the Nevada Gaming Commission to further define "control program" through regulation.

The bill revises the definition of gaming employee, which triggers a determination of whether or not a person must be registered to perform certain functions. We are adding affiliates of license disseminators, certain selling activities, call centers and contract employees hired solely to perform gaming-related functions.

CHAIR CARE:
Is that going to increase the number of people considered gaming employees, or are these people who should be included anyway?

MR. NEILANDER:
It will not substantially increase the number because some of these employees fall under a broader provision elsewhere. We want to make it clear these particular positions are included.

The bill excludes barbacks. The Board sees no regulatory benefit in requiring barbacks to be included in this registration scheme.

Section 6 of the bill allows the Board to enter into lease arrangements regarding branch offices. It would be easier for us to deal directly with the lessors. We have branch offices for our enforcement division in Laughlin, Elko, Las Vegas, Reno and Carson City. We need weapon storage facilities and evidence lockers, and our laboratory has certain technical requirements.

Section 7 of the bill amends NRS 463.120 which contains the confidentiality provisions. We suggest a further amendment to ensure the confidentiality of particular documents received by the Board in the necessary administration of NRS 463.

A privileged provision sits outside NRS 463.120, and the confidentiality provisions are contained in NRS 463.120. Those two should be read together. There has been some confusion about whether the two provisions work together. A person's application is both confidential and privileged.

Section 8 of the bill recognizes that we used to have a Regulation 6A exemption from certain provisions of Title 31, which had to do with financial reporting. We no longer engage in financial reporting, and this reflects the change in the statute.

Section 9 of the bill amends the provisions authorizing the Board and Commission to require a finding of suitability for certain call center employees. These centralized facilities accept wagers on horseracing, for example.

CHAIR CARE:
How long have the call centers been around?

MR. NEILANDER:
Some call centers are now registered, but none are active. Over the last two years, a couple have come before us for licensing. We recognize other responsibilities where we should have the ability to find them suitable.

In subsection 8 of section 10, we propose broader language to the NRS 463.170 requirements of suitability. A person found suitable or granted a license has an ongoing obligation. If someone violates the obligation, specific

provisions can be used in a disciplinary action. We are eliminating a defense that might otherwise be raised.

Section 11 of the bill includes a provision requiring that gaming employees who change jobs must file a change notice. Under the previous law, employees had to go through a new process if they changed jobs. Under this bill, the registrations are good for five years and an employee simply has to file a notice with the Board if they change jobs.

We underestimated the number of employees who would change jobs. Because there is no fee associated with the change-of-employment notices, we do have the authority to raise the application fee initially. Page 13 of the bill reflects a $5 fee, which would ensure the program is self-funded. Page 12 of the bill shows the addition of the words “calendar days” rather than ten regular days. There was confusion regarding the ten-day requirement.

On pages 19 and 20 of the bill, the provisions regarding disseminators are modernized. These provisions have not been amended for many years. The bill reflects the current regulatory environment for disseminators.

CHAIR CARE:
Please go back to section 12, subsection 3, changing from 30 days to 45 days where the agent of the Board mails written notice to the Board.

MR. NEILANDER:
When we are out in the field to investigate a dispute, we sometimes cannot make a determination on the scene. In many cases, we confiscate the gaming device and take it back to the laboratory for analysis. By the time we have done that and get back to the licensee and patron, the 30-day time frame is difficult to meet. Part of that is the complexity of the devices we are dealing with today.

CHAIR CARE:
If we change it to 45 days, and you cannot meet the 45 days, you still retain jurisdiction. If you cannot do it in 45 days, you just do it as soon as possible?

MR. NEILANDER:
That is what we are doing now. We follow each dispute to the end. My enforcement division is the hardest hit by the budget problems. With fewer enforcement agents in the field, 45 days is a more workable number.

Section 17, subsection 2 of the bill adds limited liability partnerships. The provisions already existing in the chapter with respect to limited partnerships also apply to all limited liability partnerships, to the extent practicable. The limited liability partnership is new. We have not seen many in the gaming industry. We do have many limited liability corporations. There is no difference in how the limited liability partnership and the limited partnership are treated for regulatory purposes.

We are pulling section 18 of the bill. There are already remedies in place.

Section 19 of the bill addresses occasional situations where a licensee dies. The corporate shares then go into the estate. At times, beneficiaries are unwilling to cooperate with gaming authorities to keep the business going. We have a streamlined process to get someone in to keep the business open when there is a death and an estate situation. This section creates a remedy, if the circumstances warrant and through the oversight of the court, where those interested in carrying on the business can buy out those beneficiaries at fair market value.

CHAIR CARE:
Subsection 1 says, "No interest subject to the jurisdiction of the Nevada Gaming Control Act ... ." Is there a threshold percentage of interest in whatever the operation might be?

MR. NEILANDER:
There is no threshold if it is a private company. For example, if there are 100 shares outstanding and a beneficiary is entitled to 1 share, under the existing law, there cannot be a transfer without approval by the Commission. That one individual who is estranged from the family can hold up the other 99 shares. The interest that is referred to is usually shares of stock.

CHAIR CARE:
Section 18 will come out. Now we will discuss your amendment to the bill, Exhibit C.

MR. NEILANDER:
In the definition of manufacturer, paragraphs (a), (b) and (c) encompass the modern concepts of a manufacturer of a gaming device, Exhibit C, page C1. We have restructured to make it easier to follow.

There is a need in the manufacturing industry to use third parties to assist in the development of gaming devices. The Board's policy is that if the entire process is controlled by the licensee, which assumes control of the source code, it is consistent with the regulatory policy. Subsection 2 clarifies that in Exhibit C, page C2.

SENATOR WIENER:
With respect to assuming responsibility, if the manufacturer is responsible for the entire process and encounters something questionable, would it have a contract remedy? The manufacturer would not have any recovery through you.

MR. NEILANDER:
Yes. We would only have jurisdiction over the licensee. Later in the bill, there is a definition of "control program." We propose the Commission have some oversight regarding these independent contractors.

Section 3 defines gaming device. We are updating the language. Subsection 2(d) recognizes control program. The definition of "control program" is at the bottom of the page in Exhibit C, page C2. The engineers will delve into what affects win or loss.

The amendments to NRS 463.120 for section 7 appear in Exhibit C, page 3. Subsection 4(a) previously referred to the Gaming Control Act, but a number of other acts that surround the Gaming Control Act relate solely to gaming. We made sure those are specifically included here with NRS 462, 463A, 463B, 464, 465 and 466. These relate to things like horseracing, enforcement provisions and criminal provisions.

In subsection 4(b), we have added an applicant's or a natural person's criminal record, antecedents and background as being protected. We want to ensure that is broad enough to capture any person who might be in the situation where the Board has those records.

CHAIR CARE:
Is this someone other than the applicant?

MR. NEILANDER:
Yes. It could be a person whose background or criminal record information has come to us for whatever reason. They may not be an applicant, and this would ensure the information is confidential.

CHAIR CARE:
The natural person may not be aware you have his criminal record?

MR. NEILANDER:
Yes. In some of the circumstances, they would not be aware.

Subsection 4(e) clarifies that it relates specifically to audits, investigations, determinations or hearings required of the Board under the Act, Exhibit C, page C3. Those are confidential but not necessarily privileged. If they are not privileged, they may be subject to release by a court order. There are circumstances where the court would want to open a record for a variety of reasons to protect someone's safety or health.

Subsection 5 states that information is confidential and privileged if it is related to an application for a license, a finding of suitability or a required approval, Exhibit C, page C3. It cannot be released by court order or otherwise unless the Board waives that privilege.

CHAIR CARE:
In a high-profile case, Sheldon Adelson was sued by someone for compensation that person alleged he should have received for assisting Mr. Adelson in China. In the discovery process and upon court order, the plaintiff obtained records kept by your department. Is that what happened?

MR. NEILANDER:
Yes. That is generally what happened in that case. From a policy perspective, it is imperative for the Board to rely on the information applicants provide in their application. It is part of the suitability standard. We are concerned that an applicant may be advised by counsel that in filling out their application, they can be less than candid because a third party may obtain information through a civil suit. Here, we are addressing a bigger policy question because everyone who files a gaming application knows they must be completely honest. They may add information that ultimately is not relevant to the regulatory process, but we do want full disclosure. Those applicants understand that anything they disclose

in their application may be used against them in an administrative process. But most people do not think a third party would be able to access their application through civil litigation.

We are limiting that privileged portion to the application, finding of suitability or approval in Exhibit C, page C3. However, the court could still open the other matters because they are only deemed confidential and not privileged.

In the case you mentioned, we produced a number of documents, and the court held an in camera hearing and reviewed the documents with our counsel present. The other parties had an opportunity to argue to the court individually.

CHAIR CARE:
This indicates to me that the court would treat this quite gingerly, with a lot of sensitivity.

MR. NEILANDER:
The court determined those documents were not otherwise available from any source. The court followed *Laxalt v. McClatchy, et al.*, 116 F.R.D. 455 (D. Nev. 1987), 116 F.R.D. 455 (D. Nev. 1986) and 109 F.R.D. 632 (D. Nev. 1986). Therefore, we have structured this in a two-tiered way.

SENATOR WIENER:
In your amendment, is there a distinction between absolute privilege and privilege?

MICHAEL SOMPS (Deputy Attorney General, State Gaming Control Board):
There is not a significant distinction. Absolutely privileged is more than is absolutely necessary. Privileged alone is sufficient.

MR. NEILANDER:
There is an ability to waive that provision in Exhibit C, page C4.

The amendment in Exhibit C, page C5, allows the Commission to require licensing for developers of table games. There are some related provisions in the statute now, but no one provision allows us to address the table-game developers. Currently, the individuals who invent these games are not licensed. They go through a background check.

The Commission's ability to adopt regulations to address third-party developers is included in section 19, subsection 9 of the amendment in Exhibit C, page C8. There is a definition of independent contractor in Exhibit C, page C9.

We ask that some of these provisions be effective July 1 and others, October 1 to recognize the potential rulemaking by the Commission.

CHAIR CARE:
In section 13, subsections 2 and 3 of the bill, "written notice" had been deleted and replaced with "notify." Are you contemplating e-mail communication?

MR. NEILANDER:
Yes. Sometimes these are telephone communications. When race meets come up and the disseminators are trying to get all the contracts in place, we will usually call to let them know it is okay so they can get going before we give them written notice.

An old account not used for many years is referenced in section 20 of the bill. This is an account for the operation of hearing panels. These hearing panels were created long ago, and they have never been used. We suggest those hearing panels be eliminated.

SENATOR WIENER:
Can you give us an update as to the success of gaming devices that can be used within the facility but away from the gaming activity?

MR. NEILANDER:
The Legislature did grant the ability for the Board and Commission to go forward with mobile gaming devices. We have had a number of manufacturers come forward for licensing. The specific license is an operator of a mobile gaming system. We have tested several systems in the laboratory, most recently a device at the Venetian. For purposes of the field trial, we only allowed it to be used in a small area in the Venetian. It worked well. It did not generate much play. When it was taken outside the permitted areas, it performed as it should. A version of that device is in our laboratory now. The company that manufactures that device has also been licensed to operate the race and sports book at the new M Resort Spa Casino opening in March. They intend to use that as a showcase to market the mobile gaming devices. We have had no regulatory problems with it.

SENATOR WIENER:
We had concerns about the mobile gaming device going to the second floor or outside certain perimeters. If it were taken up to a room, there might be different issues with other people accessing it. The concern would be young people. Is that part of the regulatory process? Is there some limitation on where the device could be taken?

MR. NEILANDER:
The existing law provides it can only function in public areas. It specifically excludes hotel rooms. The notion was that it could only be offered in large casinos that have good surveillance. Each time the operator of a mobile gaming system places devices at a nonrestricted gaming establishment, their plan has to be approved by the Board's laboratory and an inspection is done. Unless the technology is inexpensive, mobile gaming devices will not be seen on upper floors.

CHAIR CARE:
Please give us an update on international gaming salons, more recently called gaming salons. In the first few years, these salons were not popular. Are they being used now?

MR. NEILANDER:
They are, but not as extensively as we all had envisioned. There are three major properties in Las Vegas that use them from time to time. Some individuals would only play in a salon, but others prefer the excitement of the floor. We have not had any problems from a regulatory point of view. The Commission has allowed the licensees to set the wager.

CHAIR CARE:
I recall the Bush Administration took the approach that Internet gaming might be a violation of the Wire Act. In 2001, the mechanism was set up so that if you are comfortable with what the Department of Justice says, you can go forward.

MR. NEILANDER:
Your recollection is accurate. When the enabling provisions were passed for us to regulate, license and tax that activity, we talked to the Department of Justice. They sent us a letter saying it would violate the Wire Act. There are bills pending in Congress and some appetite to look at carving out poker as a

way to start this rolling. It is up in the air at this point at the federal level. At the state level, we are still estopped from doing anything further.

DAN R. REASER (Association of Gaming Equipment Manufacturers):
I have provided a one-page summary of the notes of my testimony (Exhibit D). We are here today to support Senate Bill 83 with the amendments Mr. Neilander has identified.

Important issues need to be balanced and evaluated by the Gaming Commission. What is a control program and what level of regulation is appropriate for independent contractors? We have worked with the Board, and we agree with the changes in section 1 of the amendment. It is important that the definition of "manufacture" be clarified.

There should be clear direction that if you are a manufacturer who takes control and responsibility for the manufacturing process, the buck stops with you. That should remain Nevada law. The amendments the Board has accepted in Exhibit C, page C1 achieved that result.

We agree that the changes in section 3 of the amendment should be made for clarification. The placement of the word "object" makes it clear we are talking about a tangible thing. In section 3, subsection 7, it is appropriately made clear that a control program is necessary to operate a gambling game, Exhibit C, page C2.

We are all familiar with the Sony PlayStation. Electronic Arts produces a huge library of games played on that platform. That is a perfect example of how the technology industry affects the gaming industry. Companies like Apple, Sony and cell phone-makers are putting their business plans on the hardware platform to deliver products. Gaming device manufacturers are that type of company.

The gaming industry needs to have the same dynamics of that technology industry available. It does today under the existing definition of the gaming device in NRS 463.0155. The gaming industry should not have to employ everyone who might come up with an application or content. The gaming industry should be allowed to have a contract relationship with an independent contractor to develop a concept the manufacturer purchases, vets and incorporates with the computer program that operates the gaming device. The

manufacturer builds the box and submits it to the Gaming Control Board for approval. That is the importance of independent contractors.

This is where the balancing act might come for the Commission. If you tell those people they have to go through a full-blown licensing as if they owned a casino, they would probably rather build something for Apple than for Bally's or other Nevada-based manufacturers.

We ask that the changes to section 19 in Exhibit C, page C7 be made. The revisions in subsection 9 in Exhibit C, page C8, create a list regarding the people outside of the manufacturing community. We have made sure those are available to the Commission when it adopts rules for independent contractors.

The definition of independent contractors in subsection 10 in Exhibit C, page C9, makes sure employees of the manufacturers are not swept within this ambit because that would be a huge regulatory burden. It also ensures this includes those actually producing control programs and not just sound or graphics that have no relationship to win or loss of the game.

The Board has agreed to implement provisions in section 22 in Exhibit C, page C9, making sure there is no change in the law before the Commission can have the regulations in place.

Senate Bill 83 provides the necessary framework, definitions and tools for the Commission to move forward, making sure the regulation necessary to maintain Nevada's reputation as a leader in the field is balanced with marketplace requirements.

I will make some remarks on behalf of Lionel Sawyer and Collins regarding section 7 changing NRS 463.120 in Exhibit C, page C3. There is a difference that is important between absolute and nonabsolute privilege. An absolute privilege is one where the court may not look behind privilege. In NRS 463.3407, if a person provides information in their gaming application that a third party believes defamed them, that is absolutely privileged. That person can never be sanctioned.

A privilege without the word "absolute" means it is qualified. The court may do what the *Laxalt* decisions say must be done when the Gaming Control Act and a need to look at the privileged and confidential information of an applicant

collide. The court must apply a stringent finding of necessity. It must look at each of the litigants' positions. Before it makes disclosure of any information, the court must in camera look at the information and determine whether it is absolutely necessary that this information become public. One of those prongs is that there is no other availability of this information. It is appropriate to clarify this statute and make sure that courts set aside the privilege and confidentiality only if it is absolutely necessary.

CHAIR CARE:
In Exhibit C, page C8, where there is a reference to business arrangements between the manufacturer and the independent contractor, is that a memorandum of understanding? Does it go so far as a handshake?

MR. REASER:
For someone in the gaming industry, such as a manufacturer, this is a requirement the Commission could impose on manufacturers to disclose the nature of the business arrangements. Yes. It could be something less than a written contract. However, in the industry, they are done by written contract because you are contracting with an independent developer of an intellectual property. You want to ensure you have ownership if you decide to buy and incorporate it into the master computer program for the gaming device.

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
Regarding privilege versus absolute privilege, are you suggesting that the language in the Board's proposed amendment should refer to absolutely privileged rather than privileged?

MR. REASER:
That is a call for the Gaming Control Board. I wanted the distinction to be understood by the Committee. The absolute privilege does run to the applicant under NRS 463.3407. Nevada Revised Statute 463.120 is a public records statute. Both absolute privilege and confidentiality requirements are contained in NRS 463.3407 that circles back to the Board and the Commission through NRS 463.120 and NRS 49 if it is attorney/client privilege. There is a strict relevance standard.

CHAIR CARE:
Mr. Wilkinson, please do some research on that subject and get back to us, realizing the Gaming Control Board is incomparable to any other State

department or agency. Please research whether there is any other comparable statute relating to a State department or agency or any case law on that point.

The hearing is closed on S.B. 83.

There being no further matters to come before the Committee, the hearing is adjourned at 9:49 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: