

SENATE BILL NO. 266—SENATORS LIPPARELLI, HARDY;
GOICOECHEA, HAMMOND, KIECKHEFER AND SETTELMAYER

MARCH 13, 2015

Referred to Committee on Revenue and
Economic Development

SUMMARY—Revises provisions relating to the tax on live
entertainment. (BDR 32-720)

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

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

AN ACT relating to taxation; revising provisions relating to the
imposition of the tax on live entertainment on facilities
located at licensed gaming establishments; revising
provisions governing the exemptions and exclusions from
the tax on live entertainment; revising provisions
governing investigations and the initiation of complaints
by the State Gaming Control Board for violations relating
to the tax on live entertainment; and providing other
matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes an excise tax on admission to certain facilities where live
entertainment is provided. (Chapter 368A of NRS) Under existing law, if live
entertainment is provided at an establishment that is not a licensed gaming
establishment or certain smaller licensed gaming establishments, the tax is imposed
only if consideration is collected for admission to the area or premises where live
entertainment is provided. However, if live entertainment is provided at certain
larger licensed gaming establishments, the tax is imposed whenever live
entertainment is provided, regardless of whether consideration is collected for
admission to the area or premises where the live entertainment is provided. (NRS
368A.060) **Section 1** of this bill revises these provisions to provide that, regardless
of whether live entertainment is provided at a gaming establishment, the tax is
imposed only if consideration is collected for admission to the area or premises
where live entertainment is provided.

Existing law excludes from the tax on admission to facilities where live
entertainment is provided the following activities: (1) music in a restaurant, lounge
or similar area if the music does not routinely rise to the volume that interferes with
casual conversation and if such music would not generally cause patrons to watch



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as well as listen; (2) occasional performances by employees whose primary job function is that of preparing, selling or serving food, refreshments or beverages to patrons, if such performances are not advertised as entertainment to the public; (3) performances by performers who stroll continuously throughout certain larger gaming establishments; (4) performances in certain areas of larger gaming establishments if seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables; (5) certain occasional activities, including, without limitation, dancing, which primarily serve to provide ambience to a facility; (6) music performed by musicians who move constantly through the audience if no other form of live entertainment is provided to the patrons; (7) live entertainment that is incidental to certain amusement rides; and (8) live entertainment that is provided in a restaurant or which only serves as ambience if there is no charge to the patrons for that entertainment. (NRS 368A.090, 368A.200) **Sections 2 and 3** of this bill remove these exclusions and, thus, pursuant to **section 1**, these activities would be subject to the tax on live entertainment if they constitute live entertainment and consideration is collected for admission to the facility where the activity is provided.

Existing law requires the State Gaming Control Board to make investigations and to initiate a hearing by filing a complaint with the Nevada Gaming Commission if the Board is satisfied that a person or entity which is licensed, registered, found suitable or found preliminarily suitable or which previously obtained approval for an activity for which Commission approval was required or permitted should be limited, conditioned, suspended, revoked or fined. (NRS 463.310) **Section 5** of this bill similarly requires the Board to make investigations and to initiate a hearing by filing a complaint with the Commission if the Board is satisfied that such a person or entity has violated certain provisions relating to the tax on live entertainment.

Existing law also: (1) requires a licensed gaming establishment to maintain records relating to, report, pay and truthfully account for the tax on live entertainment; and (2) prohibits certain practices relating to falsifying information or books, records or accounts relating to the tax on live entertainment. (NRS 368A.160, 368A.350, 368A.360) **Section 4** of this bill provides that a violation of such provisions by a licensed gaming establishment is an unsuitable method of operation and is subject to investigation and disciplinary proceedings by the Board and the Commission.

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

Section 1. NRS 368A.060 is hereby amended to read as follows:

368A.060 ~~{1}~~ “Facility” means ~~{:~~

~~—(a) Any~~ **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:~~

~~—(1) An establishment that is not a licensed gaming establishment; or~~

~~—(2) A licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits.~~



~~—(b) Any area or premises where live entertainment is provided if the live entertainment is provided at any other licensed gaming establishment.~~

~~—2. “Facility” encompasses, if live entertainment is provided at a licensed gaming establishment that is licensed for:~~

~~—(a) Less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, any area or premises where the live entertainment is provided and for which consideration is collected, from one or more patrons, for the right or privilege of entering that area or those premises, even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises; or~~

~~—(b) At least 51 slot machines or at least 6 games, any designated area on the premises of the licensed gaming establishment within which the live entertainment is provided.]~~

Sec. 2. NRS 368A.090 is hereby amended to read as follows:

368A.090 1. “Live entertainment” means any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present.

2. The term:

(a) Includes, without limitation, any one or more of the following activities:

(1) Music or vocals provided by one or more professional or amateur musicians or vocalists;

(2) Dancing performed by one or more professional or amateur dancers or performers;

(3) Acting or drama provided by one or more professional or amateur actors or players;

(4) Acrobatics or stunts provided by one or more professional or amateur acrobats, performers or stunt persons;

(5) Animal stunts or performances induced by one or more animal handlers or trainers, except as otherwise provided in subparagraph ~~(7)~~ (3) of paragraph (b);

(6) Athletic or sporting contests, events or exhibitions provided by one or more professional or amateur athletes, sportsmen or sportswomen;

(7) Comedy or magic provided by one or more professional or amateur comedians, magicians, illusionists, entertainers or performers;

(8) A show or production involving any combination of the activities described in subparagraphs (1) to (7), inclusive; and

(9) A performance involving one or more of the activities described in this paragraph by a disc jockey who presents recorded



music. For the purposes of this subparagraph, a disc jockey shall not be deemed to have engaged in a performance involving one or more of the activities described in this paragraph if the disc jockey generally limits his or her interaction with patrons to introducing the recorded music, making announcements of general interest to patrons, and explaining, encouraging or directing participatory activities between patrons.

(b) Excludes, without limitation, any one or more of the following activities:

~~(1) Instrumental or vocal music, which may or may not be supplemented with commentary by the musicians, in a restaurant, lounge or similar area if such music does not routinely rise to the volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;~~

~~— (2) Occasional performances by employees whose primary job function is that of preparing, selling or serving food, refreshments or beverages to patrons, if such performances are not advertised as entertainment to the public;~~

~~— (3) Performances by performers of any type if the performance occurs in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, as long as the performers stroll continuously throughout the facility;~~

~~— (4) Performances in areas other than in nightclubs, lounges, restaurants or showrooms, if the performances occur in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, which enhance the theme of the establishment or attract patrons to the areas of the performances, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables;~~

~~— (5) Television, radio, closed circuit or Internet broadcasts of live entertainment;~~

~~(6)~~ (2) Entertainment provided by a patron or patrons, including, without limitation, singing by patrons or dancing by or between patrons;

~~(7)~~ and

(3) Animal behaviors induced by animal trainers or caretakers primarily for the purpose of education and scientific research. ~~;~~ and

~~(8) An occasional activity, including, without limitation, dancing, that:~~

~~(I) Does not constitute a performance;~~



~~(II) Is not advertised as entertainment to the public;~~
~~(III) Primarily serves to provide ambience to the facility;~~
~~and~~
~~(IV) Is conducted by an employee whose primary job~~
~~function is not that of an entertainer.]~~

Sec. 3. 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 occupancy of:

(a) Less than 7,500 persons, 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 persons, the rate of the tax is 5 percent of the admission charge to the facility.

2. Amounts paid for:

(a) Admission charges collected and retained by a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c), or by a nonprofit corporation organized or existing under the provisions of chapter 82 of NRS, are not taxable pursuant to this section.

(b) 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), or a nonprofit corporation organized or existing under the provisions of chapter 82 of NRS.



(c) Any boxing contest or exhibition governed by the provisions of chapter 467 of NRS.

(d) Live entertainment that ~~is not provided at a licensed gaming establishment if the facility in which the live entertainment~~ is provided **at a facility that** has a maximum occupancy of less than 200 persons.

~~(e) Live entertainment that is provided at a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 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 occupancy of less than 200 persons.~~

~~(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)~~ **(f)** 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)~~ **(g)** 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.~~

~~(k) Food and product demonstrations provided at a shopping mall, a craft show or an establishment that sells grocery products, housewares, hardware or other supplies for the home.~~

~~(l) Live entertainment that is incidental to an amusement ride, a motion simulator or a similar digital, electronic, mechanical or electromechanical attraction. For the purposes of this paragraph, live entertainment shall be deemed to be incidental to an amusement ride, a motion simulator or a similar digital, electronic, mechanical or electromechanical attraction if the live entertainment is:~~

~~— (1) Not the predominant element of the attraction; and~~

~~— (2) Not the primary purpose for which the public rides, attends or otherwise participates in the attraction.~~

~~(m) Live entertainment that is provided to the public in an outdoor area, without any requirements for the payment of an admission charge or the purchase of any food, refreshments or merchandise.~~

~~(n)~~ **(h)** An outdoor concert, unless the concert is provided on the premises of a licensed gaming establishment.



~~[(e)]~~ (i) Beginning July 1, 2007, race events scheduled at a race track in this State as a part of the National Association for Stock Car Auto Racing Nextel Cup Series, or its successor racing series, and all races associated therewith.

~~[(f)]~~ (j) Beginning July 1, 2007, a baseball contest, event or exhibition conducted by professional minor league baseball players at a stadium in this State.

~~[(g)] Live entertainment provided in a restaurant which is incidental to any other activities conducted in the restaurant or which only serves as ambience so long as there is no charge to the patrons for that entertainment.]~~

~~6. [The Commission may adopt regulations establishing a procedure whereby a taxpayer that is a licensed gaming establishment may request an exemption from the tax pursuant to paragraph (q) of subsection 5. The regulations must require the taxpayer to seek an administrative ruling from the Chair of the Board, provide a procedure for appealing that ruling to the Commission and further describe the forms of incidental or ambient entertainment exempted pursuant to that paragraph.~~

~~—7.]~~ As used in this section, “maximum occupancy” 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. 4. NRS 368A.360 is hereby amended to read as follows:

368A.360 **1.** Any licensed gaming establishment liable for the payment of the tax imposed by NRS 368A.200 who willfully fails to report, pay or truthfully account for the tax is subject to the ~~[revocation of]~~ *investigatory or disciplinary proceedings that are set forth in NRS 463.310 to 463.318, inclusive, and may have* its gaming license *revoked* by the Commission.

2. *A violation of any provision of this chapter, or any regulation adopted pursuant thereto, by a licensed gaming establishment is:*

(a) An unsuitable method of operation; and

(b) Subject to the investigatory and disciplinary proceedings that are set forth in NRS 463.310 to 463.318, inclusive, and shall be punished as provided in those sections.



Sec. 5. NRS 463.310 is hereby amended to read as follows:

463.310 1. The Board shall make appropriate investigations:

(a) To determine whether there has been any violation of this chapter or chapter **368A**, 462, 464, 465 or 466 of NRS or any regulations adopted thereunder.

(b) To determine any facts, conditions, practices or matters which it may deem necessary or proper to aid in the enforcement of any such law or regulation.

(c) To aid in adopting regulations.

(d) To secure information as a basis for recommending legislation relating to this chapter or chapter **368A**, 462, 464, 465 or 466 of NRS.

(e) As directed by the Commission.

2. If, after any investigation the Board is satisfied that:

(a) A license, registration, finding of suitability, preliminary finding of suitability, pari-mutuel license or prior approval by the Commission of any transaction for which the approval was required or permitted under the provisions of this chapter or chapter 462, 464 or 466 of NRS should be limited, conditioned, suspended or revoked; or

(b) A person or entity which is licensed, registered, found suitable or found preliminarily suitable pursuant to this chapter or chapter 464 of NRS or which previously obtained approval for any act or transaction for which Commission approval was required or permitted under the provisions of this chapter or chapter 464 of NRS should be fined,

➤ the Board shall initiate a hearing before the Commission by filing a complaint with the Commission in accordance with NRS 463.312 and transmit therewith a summary of evidence in its possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the Board.

3. Upon receipt of the complaint of the Board, the Commission shall review the complaint and all matter presented in support thereof, and shall conduct further proceedings in accordance with NRS 463.3125 to 463.3145, inclusive.

4. After the provisions of subsections 1, 2 and 3 have been complied with, the Commission may:

(a) Limit, condition, suspend or revoke the license of any licensed gaming establishment or the individual license of any licensee without affecting the license of the establishment;

(b) Limit, condition, suspend or revoke any registration, finding of suitability, preliminary finding of suitability, pari-mutuel license, or prior approval given or granted to any applicant by the Commission;



(c) Order a licensed gaming establishment to keep an individual licensee from the premises of the licensed gaming establishment or not to pay the licensee any remuneration for services or any profits, income or accruals on the investment of the licensee in the licensed gaming establishment; and

(d) Fine each person or entity, or both, which is licensed, registered, found suitable or found preliminarily suitable pursuant to this chapter or chapter 464 of NRS or which previously obtained approval for any act or transaction for which Commission approval was required or permitted under the provisions of this chapter or chapter 464 of NRS:

(1) Not less than \$25,000 and not more than \$250,000 for each separate violation of any regulation adopted pursuant to NRS 463.125 which is the subject of an initial or subsequent complaint; or

(2) Except as otherwise provided in subparagraph (1), not more than \$100,000 for each separate violation of the provisions of this chapter or chapter 368A, 464 or 465 of NRS or of ~~the~~ any regulations ~~{of the Commission}~~ adopted thereunder, which is the subject of an initial complaint and not more than \$250,000 for each separate violation of the provisions of this chapter or chapter 368A, 464 or 465 of NRS or of ~~the~~ any regulations ~~{of the Commission}~~ adopted thereunder, which is the subject of any subsequent complaint.

➤ All fines must be paid to the State Treasurer for deposit in the State General Fund.

5. For the second violation of any provision of chapter 465 of NRS by any licensed gaming establishment or individual licensee, the Commission shall revoke the license of the establishment or person.

6. If the Commission limits, conditions, suspends or revokes any license or imposes a fine, or limits, conditions, suspends or revokes any registration, finding of suitability, preliminary finding of suitability, pari-mutuel license or prior approval, it shall issue its written order therefor after causing to be prepared and filed its written decision upon which the order is based.

7. Any such limitation, condition, revocation, suspension or fine so made is effective until reversed upon judicial review, except that the Commission may stay its order pending a rehearing or judicial review upon such terms and conditions as it deems proper.

8. Judicial review of any such order or decision of the Commission may be had in accordance with NRS 463.315 to 463.318, inclusive.

Sec. 6. Any administrative regulations relating to the tax on live entertainment imposed pursuant to chapter 368A of NRS which



were adopted by the Nevada Tax Commission or the Nevada Gaming Commission before July 1, 2015, and which conflict or are inconsistent with the provisions of this act are void, unless those regulations are amended before July 1, 2015, to be consistent with the provisions of this act.

Sec. 7. This act becomes effective:

1. Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

2. On July 1, 2015, for all other purposes.

