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SENATE MEMBERS PRESENT:

Chairman Close
Senator Ford
Senator Wagner
Senator K. Ashworth
Senator Hernstadt
Senator D. Ashworth
Senator Raggio

ASSEMBLY MEMBERS PRESENT:

Chairman Stewart
Mr. Sader
Mr. Thompson
Miss Foley
Mr. Beyer
Mr. Price
Mr. Chaney
Mr. Malone
Mrs. Cafferata
Mrs. Ham
Mr. Banner

MEMBERS ABSENT:

None

GUESTS PRESENT:

Russ Nielsen, UPI
Jack McFarren, Reno Newspapers
Patty Becker, Attorney General - Gaming
Robert Faiss, Nevada Resort Association
Katie Galli
Richard Bunker, Gaming Control Board
Harlen Elges, Gaming Control Board
Jack Shatton, Gaming Control Board
David Russell, Gaming Industry Association
Jerry Higgins, Gaming Industry Association
Frank Shattuck, Hilton Hotels Corp.
Lynne Carter, Gaming Control Board
Carl Dodge, Chairman, Gaming Commission

Chairman Close called the meeting to order at 8:10 a.m. and asked for testimony on SB 320.

1830

SB 320: Revises provisions on computation of gross revenue received by gaming establishments.

Carl Dodge, Chairman of the Gaming Commission, stated that this bill incorporates two very important areas. One concerning marker credit and the other being the definition of gross revenue. He reminded the committee of the extensive evening hearing held on this bill and the exploration of the problems at that time. The Industry urged the adoption of SB 287 and the State asked that SB 320 be amended. Since that time, and particularly in the last couple of weeks, there has been a very concerted effort between the State and the Industry to bring about a resolution of this matter. The attached EXHIBIT A is the result of those negotiations. Mr. Dodge stated that the executive committees of the Resort Associations in Southern and Northern Nevada are in agreement but some of the individual licensees may not be in agreement.

Senator Close asked if there were any oppositions to the proposed amendments. There were none forthcoming.

Patty Becker of the Attorney General's Office explained the proposed amendments as follows:

The first amendment states that this Act will have no effect on credit instruments issued prior to the effective date of the Act.

The second amendment substituting "board determines" for "commission finds" follows the Board's omnibus bill, SB 527, and the petition for redetermination of portions of the Gaming Control Act. The Board makes all of the initial findings. If a licensee is unhappy with the findings, he can then appeal to the Commission.

The third amendment at page 1, lines 10 through 12 of the bill, refers to the required address on a gaming credit instrument.

The fourth amendment at page 1, lines 18 through 20, resulted from the problem of the original credit instrument being given to the patron upon payment. The Board presumes that when the licensee does not have the original credit instrument, the patron has made payment on that. This section provides exceptions where the Board will not assume that instrument has been paid.

At page 2, line 5, the definition of gaming credit instrument should be for the entire Gaming Control Act. Therefore, "section" has been changed to "chapter".

At page 2, line 9, the new subsection was included as proposed by the Industry. At many times markers are settled for the future business of the patron. It was felt this is a business decision and should not have any tax consequences.

At page 2, line 19, Ms. Becker explained the amendment to be so that no shield play has any effect upon gross revenue. It should only be losses made out to gaming patrons that should be deducted from gross gaming revenue.

Ms. Becker explained that the amendment to NRS 463.388 came through discussions with the Gaming Industry, where it was determined this provision was more appropriate here than in the definition of gross gaming revenue.

Ms. Becker read the new Section 4 and reminded the committee that the Board had given them a proposed regulation which has been provided to the Industry. The Board already does have regulations on the computation and reporting of the win. This would be consistent with those regulations.

To the new Section 5, Ms. Becker stated that it was not desirable for this legislation to have any effect on the current litigation or which could arise over the issuance of credit instruments or the determination of gross revenue that occurs prior to July 1, 1981.

Senator Wagner asked with regard to the new subsection on page 2, following line 9, how to the discussion of retaining the future business of the patron that is going to be ascertained. Ms. Becker stated that there are settlement procedures in a licensee's submitted system of internal control which are followed now. It changes from establishment to establishment, but normally there must be two signatures of someone within the hierarchy above the credit manager for any type of settlement. There is a settlement form which the patron signs. If the proper settlement procedures have not been followed, a complaint action can be filed for a violation of the internal control procedures.

Senator Hernstadt asked if this serves prospectively to put the industry on an accrual basis or a cash basis. Ms. Becker stated that the industry will still be on a cash basis in accounting for markers. Senator Hernstadt expressed concern over the position of the IRS in determining income tax liability. Mr. Faiss stated that was a concern since it makes something taxable that was not before. He was satisfied that this does not, by the definition of gross revenues, only on cash. It is just when a certain determination is made that these types of markers must be included in the gross revenue for tax purposes. It was not his opinion that this could be used to tax these same markers. The industry is on a cash basis of accounting and taxation. In certain instances, when the Board makes a determination in that case, an additional tax has to be paid on those markers.

1832

If the Board makes the determination that a marker was properly written off, Senator Hernstadt asked if that would be determinative and controlling because it is state law as far as IRS is concerned. Mr. Faiss stated that the Control Board decision cannot be binding upon the IRS. Their interpretation of the federal tax law might not be determined by how the Control Board determines the State law, but would determine it was a valid credit instrument.

Assemblyman Stewart asked if these suggested amendments would have a substantial effect on the revenues. Ms. Becker felt that would depend upon the final outcome in the Desert Inn case, but thought this to be pretty consistent with what has been done in the past. There might be a minor increase in revenue if, in the long run, the State loses the Desert Inn case. There is still one area in controversy which could have a negative fiscal impact on the State. On page 2 of SB 320 at line 19, the Gaming Control Board and Commission still wishes to delete "or its equivalent". It has always been the Board's interpretation and the law has always been applied as only allowing cash pay-outs to patrons to be deducted from gross gaming revenue and not other type of pay-outs. This has been in controversy with Harrah's over their premium points policy, where they give tickets out for slot machine pay-outs which can be redeemed for cash or merchandise. The State has won that case and there will not be any refund. The judge held that neither the cash nor the merchandise pay-outs can be deducted from gross revenue. The deletion of "or its equivalent" would comply with the law today. Keeping those words would change the law as it is today and would have an impact on gross revenue.

Carl Dodge stated that these amendments do not extend much beyond the original SB 320. The original fiscal note estimated that the loss to the State would be \$372,000 per year. If adopted without going further with some of the State's requests, the loss would be about \$370,000 a year.

David Russell recalled there was considerable testimony on the amount of time that the audit division of the State was involved on these type of audit trails on marker instruments. The testimony indicated that the State spent about \$400,000 a year in salaries alone conducting these audit trails. He suggested there might be savings in that area as well. On behalf of the Gaming Industry Association of Northern Nevada, Mr. Russell stated that through extensive meetings with Mr. Faiss, the Resort Association, Gaming Control Board and Commission, this bill and amendments are a compromise on an issue 8 years in duration. The Gaming Industry Association in Northern Nevada has accepted the compromise in the spirit intended and feels that this will put the credit instrument problems to bed. He encouraged the committees to pass the amendments as written.

1933

Senator Hernstadt asked the two Industry attorneys what kind of an offer was held over their heads to get them to cave in on going on a total cash basis. Mr. Russell stated the Industry is not backing off the cash basis at all. There was a tax opinion issued earlier which indicated that certain markers were considered invalid. That only amounts to 1% or 2% of the markers. This bill does not change the cash and accruals issued discussed earlier. The Industry felt that if they violated certain tenets on the issuance of credit instruments that are set forth in the amendments, then they ought to bear the risk for the burden on those instruments.

Senator Hernstadt read from the decision in the Suma case and interpreted it to mean there has been no policy for the past 8 years. Ms. Becker stated that this Act is not going to have any effect on the Desert Inn case. No matter how Suma is interpreted, it says that there are some types of gaming credit instruments that can be taxed. Mr. Faiss stated that anything done by the Legislature could be read as in support or opposition to something in that case. If nothing were done, it could have been read as ratification of that decision. The Industry would not want that to happen nor would the Gaming authorities. The formula laid out by Judge Goldman would have created staggering administrative burdens on the gaming enforcement agencies.

Senator Herstadt asked if this bill with these amendments would set clear and unequivocal standards for the future. Mr. Faiss stated it was the best they could do and there is still discretion left to the enforcement agencies.

David Russell commented that Chairman Dodge and Chairman Bunker have indicated the Industry, their representatives and the counsel will have every opportunity to participate in the drafting of the regulations addressed in this bill. Mr. Faiss commented that this compromise was due in major part to the esteem in which Chairman Dodge is held. He added that the Industry in Clark County arrived at this compromise despite the fact that at the time this puts the licensees in Clark County in added jeopardy. At the present time they are under a gross revenue system of taxation. That in county ordinance is based only on cash. One of the reasons given to the committees that the gross revenue basis did not cause any additional audit concern for them is that they use the audits of the state under this law. Under present law they could not. Unless something is done about the gross revenue basis, this leaves an opening for Clark County to add these things to the County ordinance and increase County taxation.

Chairman Carl Dodge stated that this is a classic compromise as are involved in with the Legislature. It falls substantially short of what the State was asking for. He was satisfied that

1834

it is more than the Industry felt it should accept. It was his opinion that this is a fair solution which will protect the State's revenues in a fair way and allow the casino licensees management decisions about the settlement of markers.

Chairman Dodge went on record to say he appreciated the good faith efforts made to bring about this compromise. He felt this bill will mark an era of better understanding between the regulators and the gaming industry in Nevada. He concluded by thanking the committees for their cooperation with the gaming legislation.

Chairman Close adjourned the meeting at 8:45 a.m.

Respectfully submitted,



Jor Jan M. Martin
Assembly Committee Stenographer

MEMORANDUM

DATE: May 4, 1981

TO: ✓ Senator Melvin D. Close, Chairman, Senate Judiciary Committee
Assemblyman Jan Stewart, Chairman, Assembly Judiciary Committee


FROM: Patricia Becker, Chief Deputy Attorney General, Gaming Division

SUBJECT: S.B. 320

Attached are the amendments to S.B. 320 which have been agreed upon by the industry associations and the State Gaming Control Board and Nevada Gaming Commission.

The only issue remaining is whether the words "or its equivalent" on page 2, line 19 of the bill, should be deleted. It is my understanding that the Board and Commission will request your committees to delete this language and that the industry associations will not oppose this request.

An explanation of these amendments will be presented at the hearing scheduled for Wednesday morning and I will be available to respond to any inquiries concerning the bill and the proposed amendments.



Patricia Becker

PB:p

attachment

cc: Carl F. Dodge, Chairman, NGC
William N. Campbell (Nevada Resort Association)
Jerry Higgins (Gaming Industry Assoc. of Nevada)
Richard W. Bunker, Chairman, SGCB
John H. Stratton, Member, SGCB
Dale W. Askew, Member, SGCB
Jeff Kahn, Chief, Audit Division, SGCB
Lynne Carter, Legal Researcher, SGCB

PROPOSED AMENDMENT TO S.B. 320

1. Page 1, line 4, after "credit instrument" add the words "accepted after the effective date of this act."

2. Page 1, line 6, in place of "commission finds" substitute "board determines."

3. Page 1, lines 10 through 12, delete the present language and substitute the following:

"(b) The licensee does not have an address for the patron at the time of accepting the credit instrument or, failing that, has not provided the board, within a reasonable time after its request, the current address of the patron;"

4. Page 1, lines 18-20, delete the present language and substitute the following:

"(e) The licensee has not produced the credit instrument within a reasonable time after a request by the board for the instrument unless:

"(1) the credit instrument has been put or taken into possession of a court, government agency or financial institution;

"(2) the credit instrument has been returned to a patron upon partial payment; or

"(3) the licensee is unable to do so because of:

"(a) acts of God;

"(b) theft, where the licensee has filed a written criminal complaint, crime report or similar document with the appropriate law enforcement agency; or

"(c) other reasons beyond the control of the licensee;"

5. Page 1, line 21, after "forged" add the words "unless the licensee has filed a written criminal complaint, crime report or similar document with the appropriate law enforcement agency;"

6. Page 2, line 5, in place of "section" substitute "chapter."

7. Page 2, after line 9 add a new subsection reading as follows:

"4. Subsection 1 shall not apply to a credit instrument settled for less than the face amount thereof for the purpose of inducing partial payment, compromising a dispute or retaining the future business of the patron."

8. Page 2, line 15, delete "or its equivalent".

9. Page 2, line 17, delete "Cash received as compensation" and substitute "Compensation received".

10. Page 2, line 19, after "losses" add the words "to patrons".

11. Amend the bill as a whole by adding new sections following section 2, designated section 3, section 4 and section 5, to read as follows:

SEC. 3 NRS 463.388 is hereby amended to read as follows:

463.388

1. If the commission is not satisfied with the report of the state license fees or taxes required to be paid to the state pursuant to this chapter by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the report or upon the basis of an audit conducted by the board or upon the basis of any information within its possession or that may come into its possession, or any combination of the methods described in this subsection.

2. If any person fails to make a report of the state license fees or taxes as required by this chapter, the commission shall make an estimate of the amount of taxes or fees determined to be due pursuant to the provisions of this chapter. The estimate shall be made for the period or periods in respect to which the person failed to make a report and shall be based upon any information which is in the commission's possession or which may come into its possession. Upon the basis of this estimate, the commission shall compute and determine the amount required to be paid to the state, including penalties and interest.

Interest on a credit instrument that is the subject of a determination pursuant to Section 1 shall accrue from the last day of the month following the calendar quarter within which the credit instrument was accepted by the licensee.

3. In making a determination, the commission may offset overpayments and interest due thereon against underpayments and interest or penalties due thereon for the audit period.

4. If overpayments and interest thereon exceed underpayments, penalties and interest thereon, such excess shall be refunded to the licensee except where otherwise expressly provided.

SEC. 4 Chapter 463 of NRS is hereby amended by adding thereto a new section which shall read as follows:

The commission shall adopt regulations consistent with this act prescribing the manner in which winnings, compensation from games and gaming devices, and gross revenue shall be computed and reported by the licensee.

SEC. 5 Chapter 463 of NRS is hereby amended by adding thereto a new section which shall read as follows:

This act is not intended to have any effect on:

(a) any transaction which occurred prior to the effective date of this act;

(b) credit instruments accepted prior to the effective date of this act;

or on any right or controversy arising therefrom.