

THE NEVADA LEGISLATURE'S 77TH SESSION AND THE LEGALIZATION OF INTERSTATE ONLINE GAMBLING

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The Nevada State Legislature is currently in its 77th Legislative Session, which convened on Feb. 4 and adjourns June 3. As part of this legislative session, the State Gaming Control Board has set forth several bills for consideration by the legislature. These bills include:

- Senate Bill 9, which makes various changes to the regulation of gaming, including revisions to various statutory definitions; revisions to the registration of persons who hold an ownership interest in certain business entities that hold a gaming license; revisions to the inspection of games, gaming devices, associated equipment, cashless wagering systems, intercasino linked systems, mobile gaming systems and interactive gaming systems; and revisions to the regulation of independent testing laboratories.
- Senate Bill 10, which revises provisions relating to refunds of excess state fees and certain taxes paid by gaming licensees.
- Senate Bill 17, which revises various deadlines for gaming licensees to file financial reports and pay certain fees for state gaming licenses.
- Assembly Bill 3, which revises provisions governing the enforcement of the tax on live entertainment.
- Assembly Bill 127, which authorizes the Nevada Gaming Commission to adopt a seal identifying certain licensees of interactive gaming.
- Assembly Bill 141, which revises provisions concerning tips and gratuities received by employees. (While this bill is not gaming-specific, it impacts several gaming companies, such as The Wynn, that started non-traditional tip-sharing arrangements with table game dealers several years ago.)
- Assembly Bill 5, later replaced by Assembly Bill 114, which requires the Nevada Gaming Commission to adopt regulations authorizing the governor of Nevada to enter into agreements with other states to conduct interactive gaming; prohibits the issuance of licenses to operate interactive gaming to certain persons; and revises other provisions related to interactive gaming.

The focus of this article is on Assembly Bill 114 (AB 114), which was signed into law by Gov. Sandoval on Feb. 21 and has several key aspects.

First, AB 114 removes the condition that a license to operate interstate interactive gaming does not become effective until either: (i) federal law authorizing the specific type of interactive gaming for which the license was granted is enacted; or (ii) the United States Department of Justice notifies the Gaming Control Board or the Nevada Gaming Commission in writing that it is permissible under federal law to operate the specific type of interactive gaming for which the license was granted.¹ Instead, AB 114 authorizes the governor to enter into agreements with other states to allow patrons of those states to participate in interactive gaming. Specifically, AB 114 provides:

- The [Nevada Gaming] Commission shall, by regulation, authorize the governor, on behalf of the state of Nevada, to:
1. Enter into agreements with other states, or authorized agencies thereof, to enable patrons in the signatory states to participate in interactive gaming offered by licensees in those signatory states; and
 2. Take all necessary action to ensure that any agreement entered into pursuant to this section becomes effective.²

As a result, operators of interactive gaming systems licensed in Nevada will be able to accept wagers from players located in other U.S. states when those states enter into compacts with Nevada. It is important to note, however, that AB 114 does not permit Nevada to enter into compacts with foreign jurisdictions. A consensus simply could not be reached by members of the industry, the sponsor of AB 114 and the governor as to whether it should go beyond the borders of the U.S. Further limiting the scope of these compacts is that Nevada gaming regulations currently only authorize online poker. As the Nevada gaming regulations only permit online poker, as opposed to any other type of Internet gambling, any compacts with other states to share online gamblers will be limited to poker only.³

Additionally, under the terms of AB 114, any regulations adopted pursuant to this amendment must set forth provisions

for potential revenue-sharing arrangements between Nevada and any other state or agency within another state.⁴ This will undoubtedly be a point of contention during the negotiation of the compacts, as each member state seeks to obtain a favorable share or revenue.

AB 114 also imposes bans on certain persons who owned or operated interactive gaming facilities in the U.S. in violation of the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA). Specifically, AB 114 creates two classifications: “covered assets” and “covered persons.” A “covered asset” is any tangible or intangible asset specifically designed for use in and used in connection with the operation of an interactive gaming facility⁵ that knowingly and intentionally offered interactive gaming in the U.S. in violation of UIGEA. The term includes, without limitation:

1. Any trademark, trade name, service mark or similar intellectual property under which an interactive gaming facility was identified to the patrons of the interactive gaming facility;
2. Any information regarding persons via a database, customer list or any derivative of a database or customer list; and
3. Any software or hardware relating to the management, administration, development, testing or control of an interactive gaming facility.⁶

The definition of a “covered person” is divided into three categories. The first is any person who owned 5 percent or more, or any amount that provides control, of an interactive gaming facility or an entity operating an interactive gaming facility that knowingly and intentionally operated interactive gaming in the U.S. in violation of UIGEA. The second is any interactive gaming service provider that knowingly or intentionally acted or proposed to act on behalf of a person falling within the first category with knowledge that the interactive gaming facility operated in violation of UIGEA. The third and final category is any person who purchased or acquired, directly or indirectly: (i) 5 percent or more, or any amount that provides control, of any person who falls within the first or second category; or (ii) any covered assets, in whole or in part.⁷

AB 114 imposes four general prohibitions against covered persons and people using covered assets. First, a covered person may not be found suitable for licensure for a period of 5 years following the enactment of AB 114. Second, a covered person may not be found suitable for licensure unless such covered person expressly submits to the jurisdiction of the U.S. and of each state in which it operated after the enactment of UIGEA and agrees to waive any statutes of limitation, equitable remedies or laches that otherwise would preclude prosecution for a violation of federal or state law in connection with the operation of interactive gaming. Third, any person that uses a covered asset for the operation of interactive gaming may not be found suitable for licensure for a period of 5 years following the enactment of AB 114. Fourth, use of a covered asset is grounds for revocation of an interactive gaming license or finding of suitability.⁸

With that said, AB 114 does allow the Nevada Gaming Commission to waive these prohibitions in certain circumstances. Most notably, the commission may waive the prohibitions where the covered person did not violate federal or

state law in connection with its operation of interactive gaming or the covered asset was not used after the passage of UIGEA in violation of any federal or state law.⁹ With respect to a person applying for a waiver, the commission shall afford the person an opportunity to be heard and present relevant evidence. The commission acts as finder of fact and is entitled to evaluate the credibility of witnesses and persuasiveness of the evidence. A majority vote of the whole commission is required to grant or deny such a waiver. The Gaming Control Board shall make investigations to determine any facts or recommendations that it deems necessary or proper to aid the commission in making such determinations.¹⁰

Finally, AB 114 allows the Nevada Gaming Commission to amend, by regulation, the initial and renewal licensing fees for operators of interactive gaming systems, which are currently set at \$500,000 and \$250,000, respectively. Specifically, the commission may increase the initial license fee to not more than \$1 million and the renewal fee to not more than \$500,000 if it determines one or more of the following:¹¹

- (a) A higher fee is necessary to ensure licensees have the financial capacity to operate interactive gaming;
- (b) Regulatory costs to carry out the duties of the commission and the board, outside of investigative costs, require additional personnel or other regulatory expenditures;
- (c) A higher fee is necessary because of costs incurred or other conditions associated with entering into an interactive gaming agreement with one or more other states; or
- (d) Federal legislation requires a higher fee or imposes requirements necessitating the higher fee or making it advisable.¹²

Similarly, the Nevada Gaming Commission may decrease the initial license fee to not less than \$150,000 and the renewal fee to not less than \$75,000 if it determines two or more of the following:

- (a) The fee is not competitive with fees charged in other jurisdictions;
- (b) The low number of applicants demonstrates that the fee is too high;
- (c) A lower fee would generate greater competition in the market;
- (d) A lower fee is necessary because of conditions associated with entering into an interactive gaming agreement with one or more other states; or
- (e) Federal legislation requires a lower fee or makes a lower fee advisable.¹³

The fees were a point of contention during the legislative review and approval of AB 114. Many officials, including the governor, wanted to keep the fees as-is so as to keep the licensing process economically viable for applicants. and subsequently to not deter companies from seeking licensing in the state. In contrast, others, including Assemblyman Horne, who was appointed by the governor to guide AB 114 through the legislative process, wanted to increase fees in order to maintain Nevada’s “gold standard” of licensing and deter certain applicants who may negatively impact this. The outcome is

ultimately a compromise between the two positions, which affords the Nevada Gaming Commission the flexibility to amend the fees depending upon the success of the market.

In the absence of federal legislation regulating online gaming, Nevada is the first state to pass legislation authorizing the entering into partnerships with other states to share player pools. Such partnerships are beneficial on many levels. Most notably, partnering with other states gives Nevada an expanded customer market and provides other states with Nevada's expertise in gambling regulation. The next step is negotiating these compacts. This will undoubtedly be a back-and-forth process as member states seek to protect their interests and maximize their individual gains. Finally, it remains to be seen whether the law will be further revised to allow compacts with foreign jurisdictions. The player liquidity that would be available to operators of interactive gaming may make this a sought after revision.

1 See A.B. 114, 77th Reg. Sess., § 10(2) (Nev. 2013); Nev. Rev. Stat. § 463.750(2)(h).

2 A.B. 114, 77th Reg. Sess., § 6(1) (Nev. 2013).

3 See NGC Reg. 5A.140(1)(a).

4 See A.B. 114, 77th Reg. Sess., § 6(2) (Nev. 2013).

5 "Interactive gaming facility" means any Internet website, or similar communications facility in which transmissions may cross any state's boundaries, through which any person operates interactive gaming through the use of communications technology.

6 See A.B. 114, 77th Reg. Sess., § 2 (Nev. 2013).

7 See A.B. 114, 77th Reg. Sess., § 3 (Nev. 2013).

8 See A.B. 114, 77th Reg. Sess., § 10(6) (Nev. 2013).

9 See A.B. 114, 77th Reg. Sess., § 10(7) (Nev. 2013).

10 See A.B. 114, 77th Reg. Sess., § 10(8) (Nev. 2013).

11 See Nev. Rev. Stat. § 463.765.

12 See A.B. 114, 77th Reg. Sess., § 11(2) (Nev. 2013); Nev. Rev. Stat. § 463.765(2)(a)-(d).

13 See A.B. 114, 77th Reg. Sess., § 11(3) (Nev. 2013); Nev. Rev. Stat. § 463.765(3)(a)-(e).



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