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Gaming; Cheating and Penalties for Offenses

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of persons could be placed on the list.¹³ Chapter 289 revises the criteria to allow consideration of the following: (1) Any prior conviction of a crime that is a felony in Nevada or under federal law, a crime involving moral turpitude, or a violation of the gaming laws of any state;¹⁴ (2) any violation or conspiracy to violate state gaming, licensing, and control provisions governing the failure to disclose an interest in a gaming establishment that requires a license,¹⁵ or willful tax or fee evasion;¹⁶ (3) any notorious or unsavory reputation that would affect adversely public confidence and trust that the gaming industry is free from criminal or corruptive elements;¹⁷ or (4) any written order of a governmental agency that authorizes the exclusion or ejection of the person from an establishment where gaming or pari-mutuel wagering is conducted.¹⁸ Race, color, creed, national origin or ancestry, or sex remain impermissible grounds for placing the name of a person on the list.¹⁹ Moreover, prior to the enactment of Chapter 289, the Commission could revoke, limit, condition, suspend, or fine an individual licensee or certain licensed gaming establishments²⁰ for the failure to exclude or eject any person whose name appeared on the list.²¹ Chapter 289 limits this authority of the Commission to cases when the individual or establishment *knowingly* fails to exclude or eject the person.²²

13. See STATUTES OF NEVADA 1977, c. 571, §10, at 1430-1431.

14. N.R.S. §463.151 3(a). Compare *id.* with STATUTES OF NEVADA 1977, c. 571, §10, at 1430 (prior law restricted consideration of violations of gaming laws to those within provisions of §§463.010-463.720).

15. See N.R.S. §463.151 3(b)(1).

16. See *id.* §463.151 3(b)(2).

17. *Id.* §463.151 3(c). Compare *id.* with STATUTES OF NEVADA 1977, c. 571, §10, at 1431.

18. N.R.S. §463.151 3(d).

19. Compare *id.* §463.151 4 with STATUTES OF NEVADA 1977, c. 571, §10, at 1431.

20. See STATUTES OF NEVADA 1979, c. 430, §7, at 774-775 (amending N.R.S. §463.154).

21. See *id.*

22. Compare N.R.S. §463.154 with STATUTES OF NEVADA 1979, c. 430, §7, at 774-775.

Gaming; cheating and penalties for offenses

N.R.S. §§465.030, 465.040, 465.050, 465.060 (repealed); §§465.—, 465.— (new); §§207.080, 465.070, 465.080, 465.083, 465.085, 465.101 (amended); STATUTES OF NEVADA Chapter 272 (commencing with §1) (new).

SB 35 (Committee on Judiciary); STATS 1981, Ch 594
(Effective June 6, 1981)

Prior to the enactment of Chapter 594, gaming statutes enumerated

unlawful methods and devices that were considered cheating.¹ The purpose of Chapter 594 apparently is to clarify the various interpretations of cheating devices argued in previous cases.² Current law provides that "cheating" is altering the selection of criteria that determine the result, amount, or frequency of payment in a game.³ Chapter 594 provides that it is unlawful for any person, whether an owner or employee of a gaming establishment, or a player, to cheat at any gambling game⁴ or for any person to instruct another in cheating with the knowledge or intent that the information may be used for cheating.⁵ In addition, it is unlawful to manufacture,⁶ sell, distribute, use or induce to use,⁷ any cards, chips, dice, game, or device intended for use in cheating.⁸ Finally, Chapter 594 specifies that it is unlawful for any person to (1) alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is certain but before it is revealed to the players,⁹ (2) place a bet after acquiring, or aiding another in acquiring, knowledge of the outcome of the game or event that is the subject of the bet that is not available to all other players,¹⁰ (3) claim, collect or take, or attempt to claim, collect or take, with intent to defraud, money or anything of value in a gambling game, without having placed a wager, or to claim, collect or take an amount greater than the amount won,¹¹ or (4) knowingly entice or induce another to play or participate in a gambling game conducted in an unlawful manner.¹²

Existing law makes it unlawful to knowingly receive or use counterfeit chips or tokens or other unlawful coin of the United States other than that intended for use in the gambling game,¹³ or to use any device or means in an unlawful manner.¹⁴ Chapter 594 expands this provision to include coins, chips, or tokens not approved by the State Gaming Control Board.¹⁵ Furthermore, it is unlawful for any person who is not

1. See STATUTES OF NEVADA 1979, c. 655, §§177-180, at 1476-1478 (amending N.R.S. §§465.070, 465.080, 465.083).

2. See generally *Laney v. State*, 86 Nev. 173, 466 P.2d 666 (1970). See also *Sheriff v. Miller*, 93 Nev. 509, 569 P.2d 401 (1977).

3. N.R.S. §§463.011 (definition of game), 465.— 1 (definition of cheating).

4. *Id.* §465.083.

5. *Id.* §465.085 2.

6. *Id.* §465.085 1.

7. *Id.* §465.070 4. See also *id.* §465.085 2.

8. *Id.* §465.085 1.

9. *Id.* §465.070 1.

10. *Id.* §465.070 2.

11. *Id.* §465.070 3.

12. *Id.* §465.070 4.

13. Compare *id.* §465.080 1, 2(a) with STATUTES OF NEVADA 1979, c. 655, §178, at 1477.

14. N.R.S. §465.080 2(b).

15. *Id.* §465.080 2, 2(a).

an authorized employee of a licensee acting within the scope of his or her employment to possess any device intended for use in cheating¹⁶ or, while on the premises of any licensed gaming establishment, to possess any key or device known to be designed for opening, entering, or affecting the operation of any gambling game, drop box, or any electronic or mechanical device connected to it, or for removing money or other contents from it.¹⁷ Chapter 594 specifically provides that possession of more than one of the devices described permits a "rebuttable inference"¹⁸ that the possessor intended to use them for cheating.¹⁹

Chapter 594 also modifies penalties for cheating by distinguishing first and subsequent offenses.²⁰ Any person who cheats or manufactures a cheating device is subject to imprisonment in the state prison for one to ten years or a fine up to \$10,000, or both, for first²¹ and subsequent offenses.²² A court may not suspend a sentence or grant probation, however, to a person convicted of subsequent offenses.²³ In addition, any conspiracy or attempt to conspire will be punished as a completed crime, whether the person personally played any gambling game or used any device to cheat or facilitate cheating.²⁴

In a related change, Chapter 594 changes provisions governing witness testimony in gaming prosecutions.²⁵ Prior law provided that no person otherwise competent as a witness was exempt from testifying in court concerning gaming offenses on the ground that the testimony was self-incriminating.²⁶ The witness, however, was protected from prosecution for any offense related to the testimony.²⁷ Chapter 594 repeals this provision, apparently restoring the witness' ability to claim the privilege against self-incrimination and removing the automatic immunity against prosecution arising from any potentially incriminating tes-

16. *Id.* §465.080 3. See generally *Laney v. State*, 86 Nev. 173, 466 P.2d 666 (1970); *Sheriff v. Miller*, 93 Nev. 509, 569 P.2d 401 (1977); *Stokes v. State*, 76 Nev. 474, 357 P.2d 851 (1960). See also *Fernandez v. State*, 81 Nev. 276, 402 P.2d 38 (1965).

17. *Id.*

18. An inference is a permissive deduction which the jury may or may not reach without express direction of law, while a presumption is a mandatory deduction, born as a matter of law. *State v. Corby*, 28 N.J. 106, 114, 145 A.2d 289, 293 (1958). Thus it appears the Nevada Legislature was referring to a rebuttable presumption. See generally N.R.S. §47.250 (disputable presumptions); see also N.R.S. §47.230 (presumptions against accused in criminal actions). For another explanation of the distinction between an inference and a presumption see CAL. EVID. CODE §600(a), (b).

19. See N.R.S. §465.080 5.

20. *Id.* §465.— 1(a), (b).

21. *Id.* §465.— 1(a).

22. *Id.* §465.— 1(b).

23. *Id.*

24. *Id.* §465.— 2.

25. See STATUTES OF NEVADA 1981, c. 594, §11, at — (repealing N.R.S. §465.050).

26. See *id.* 1979, c. 524, §9, at 1020.

27. *Id.*

timony given.²⁸

28. Compare N.R.S. §465.050 with STATUTES OF NEVADA 1979, c. 534, §9, at 1020.

Gaming; authority of attorney general to prosecute gaming offenses

N.R.S. §463. — (new); §§228.120, 463.141 (amended).
SB 33 (Committee on Judiciary); STATS 1981, Ch 292

Prior to the enactment of Chapter 292, the Nevada Gaming Commission (hereinafter referred to as the Commission) had the power to initiate and direct proceedings, actions, or prosecutions instituted to enforce state gaming, licensing, and control provisions.¹ Prior law expressly permitted the Commission to request a district attorney or, if the district attorney refused, the attorney general, to institute and conduct enforcement proceedings.² Chapter 292 authorizes both the Commission and the State Gaming Control Board (hereinafter referred to as the Board) to initiate proceedings to enforce these provisions.³ Either body may request that a district attorney, or recommend that the attorney general, prosecute any public offense committed in violation of provisions governing the licensing and control of gaming,⁴ the supervision of specified gaming establishments,⁵ or pari-mutuel betting.⁶ The Board, however, is required to notify the Commission if it initiates any proceeding or requests the prosecution of any offense.⁷

In addition, Chapter 292 specifies that when a district attorney for the county where a specified violation⁸ occurs receives a written request to file a complaint or information or to present the matter to a grand jury, but fails to do so within fifteen days, the Commission or Board may recommend that the attorney general prosecute the case.⁹ Upon

1. STATUTES OF NEVADA 1967, c. 376, §35, at 1040 (enacting N.R.S. §463.141 1). *See also* Nevada Tax Comm'n v. Mackie, 75 Nev. 6, 9-12, 333 P.2d 985, 986-988 (action to revoke gaming license is an administrative decision to be made by Nevada Tax Commission), Nevada Tax Comm'n v. Hicks, 73 Nev. 115, 310 P.2d 852 (suitability to engage in gambling is an administrative decision to be made by Nevada Tax Commission).

2. Compare N.R.S. §463.141 with STATUTES OF NEVADA 1967, c. 376, §35, at 1040.

3. *See* N.R.S. §463.141.

4. *See id.* §§463.010-463.720.

5. *See id.* §§463B.010-463B.280.

6. *See id.* §§463.141, 464.010-464.100.

7. *Id.* §463.141.

8. *See id.* §§463.010-463.720 (Licensing and Control of Gaming), 463B.010-463B.280 (Supervision of Certain Gaming Establishments), 464.010-464.100 (Pari-Mutuel Betting), 465.030-465.101 (Crimes and Liabilities Concerning Gaming).

9. *Id.* §463.— 1.