

**International
Comparative
Legal Guides**



Practical cross-border insights into gambling law

Gambling 2022

Eighth Edition

Contributing Editor:

Jason Chess
Wiggin LLP



ICLG.com

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USA – Nevada

Lewis Roca



Karl F. Rutledge



Glenn J. Light

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Not applicable.	Nevada Gaming Control Board and Commission.
	Poker	Nevada Gaming Control Board and Commission.	
	Bingo	Not applicable.	Nevada Gaming Control Board and Commission.
Betting	Betting	Nevada Gaming Control Board and Commission.	
	Sports/horse race betting (if regulated separately to other forms of betting)	Not applicable.	
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	Nevada Gaming Control Board and Commission.	
Lotteries	Lotteries	Not applicable.	

Relevant Product	Who regulates it in digital form?	Who regulates it in land-based form?
Social/Skill arrangements	<p>“Social” gaming with no prize in money or money’s worth</p> <p>Skill games and competitions with no element of chance</p>	Not applicable.

1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

Nevada delegates the authority to license and regulate gambling to two agencies: the Nevada Gaming Control Board (the “Board”); and the Nevada Gaming Commission (the “Commission”). The three-member Board is the full-time administrator of the gaming laws and regulations and makes recommendations on licensing matters to the Commission. In this regard, the Board conducts auditing, tax collection, criminal and civil enforcement of the gaming laws and regulations, equipment approvals and licensing investigations. The five part-time Commission members make final determinations regarding licence application approvals, the adoption of regulations and disciplinary action for regulatory violations by licensees.

Local city and county governments have concurrent authority to license and regulate gaming. Local governments, however, typically perceive licensing as a method of taxation, and rarely use their powers in a regulatory fashion.

Like most jurisdictions, gambling in Nevada is prohibited unless licensed. Most gambling regulation originates from the Nevada Gaming Control Act (the “Act”), and the regulations promulgated by the Commission thereunder. Permitted licensed gaming under the Act includes gambling games, off-track *pari-mutuel* wagering and sports pools. Gambling games are broadly defined to include “any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, cheques, credit or any representative of value, including, without limiting the generality of the foregoing; faro, monte, roulette, keno, bingo, fan-tan, twenty-one, blackjack,

seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck, Chinese chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot machine, any banking or percentage game or any other game or device approved by the Commission . . .”.

Nevada does not permit lotteries. On-track horse racing is limited to small seasonal events at local fairs.

Nevada does not regulate social games, where no prizes are awarded, or skill games not conducted by or on the physical premises of a licensed casino.

2 Application for a Licence and Licence Restrictions

2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, “Licences”) are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?

In Nevada, four tiers of licensing capture almost everyone involved in the gaming industry. The first tier includes gaming employees, who must register with the gaming regulators. This process is fairly simple and involves a two-page registration form, fingerprint cards and a modest fee. For these submissions, gaming regulators review applications for any criminal history.

The second tier includes requirements for persons associated with the gaming industry who, because of their positions, must register and undergo a more extensive review. For example, independent agents that bring high rollers to Nevada casinos must file more extensive forms and undergo a more substantial investigation. Others in this category are service providers, associated equipment manufacturers and those owning less than 5% of a private gaming company.

The third tier includes those persons or entities operating in “restricted” locations. For example, a tavern may operate 15 or fewer slot machines. An applicant for a restricted licence must complete an exhaustive application that covers personal history and limited financial information. The investigation is less intrusive, and significantly less expensive, than an investigation for a non-restricted licence. Nevertheless, the Board agents still conduct a thorough criminal background check on all restricted applicants.

The top tier is the most stringent of background investigations for a non-restricted gaming licence. This includes individuals with key positions in the gaming industry, such as owners, top management and inside directors.

Besides casino operators, a host of others must obtain the equivalent of a non-restricted licence. These include manufacturers and distributors of gaming equipment, persons who share in gaming revenues and slot route operators (persons who operate slot machines in another person’s business such as a tavern or convenience store).

2.2 Where Licences are available, please outline the structure of the relevant licensing regime.

See question 2.1.

2.3 What is the process of applying for a Licence for a Relevant Product?

Certain officers, directors and shareholders of a company seeking licensure must file individual applications and be investigated and approved. The requirements vary based on the type of entity. For private companies, this usually involves

all officers, directors and shareholders owning more than 5%. For public companies, it typically involves the chairman of the board, any director owning more than 5% of the stock, any director involved in the supervision of gaming, and the president, chief executive officer, chief operating officer, chief financial officer, chief technical officer and any shareholder owning more than 10% of any class of voting securities.

Non-restricted applications are voluminous. The most substantial is the Multi-Jurisdictional Personal History Disclosure Form. True to its name, this form is used in many gaming jurisdictions across the United States and contains two major parts. The first part, comprising about 45 pages, concentrates on the applicant’s personal history and elicits information regarding familial, educational, marital, civil litigation, criminal, residential information, employment history, licensing background and character references. The second part, comprising about 20 pages, asks for financial information including the amount and source of investment in the gaming establishment, tax information, bankruptcy disclosures, salary information and a detailed financial statement.

A short form, listing the reason for the application, is available to the public; otherwise, the Personal History Disclosure, the Financial Disclosure and other documents are kept confidential. An applicant must also file forms releasing and indemnifying the regulators, authorising release of documents from third parties, and submit fingerprints and an affidavit attesting the applicant has made full disclosures.

Board agents conduct the investigation. An investigative team can consist of one or more agents, depending upon the complexity of the investigation. For a significant investigation, the team usually consists of a supervisor, one or more financial agents and one or more background agents. A financial agent usually holds a degree in accounting and investigates the applicant’s current financial status, past financial activities, overall business probity and the financial status of the proposed gaming operation. Typically, a background agent will have a law enforcement background and investigates the applicant’s background, general reputation and personal and business associates.

The investigation consists of interviews of the applicant, a review of financial records, police records, civil and criminal court records, interviews of business and personal associates and an examination of their methods of doing business.

When the investigation concludes, the agents will again interview the applicant and explain any areas of concern. These areas of concern will be in a confidential report to the Board, and the applicant is not entitled to see this report.

The next step in the approval process is the Board hearing. The Board hearing is open to the public. The Board will either recommend approval or denial of the application, make no recommendation or refer the application back to the agents for further investigation.

After recommendation by the Board, the Commission will hear the application. The Commission has the final authority to approve or deny the licence. If the Board recommends approval of the application, then a simple majority of the Commission is necessary for licensing. If the Board recommends denial, then unanimous Commission approval is required for licensing.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Casinos in major cities are restricted to casino zones, such as the Las Vegas Strip and downtown, and to minimum criteria such as room requirements and ancillary amenities. These vary depending on location and state and local laws. There are also limitations on who can offer sports wagering. In particular, a

person must hold a non-restricted licence (to operate a casino) in order to be eligible to operate a sports book in Nevada.

2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.

Certain registrations (such as for independent agents, service providers and manufacturers of associated equipment) must be renewed on a time-period basis. However, gaming licences (such as to operate in non-restricted or restricted locations, manufacture gaming devices or share in gaming revenue) are not restricted by time periods. The regulators can, however, place restrictions on gaming licences including time limits and operational requirements, and licensees are always subject to disciplinary proceedings.

2.6 By Relevant Product, what are the key limits on providing services to customers? Please include in this answer any material promotion and advertising restrictions.

Gaming may only be offered to those who are 21 years old or greater. Additionally, mobile sports wagering is limited to those physically located in Nevada, and online poker is limited to those physically located in Nevada or a jurisdiction that has entered into a compact with Nevada. Therefore, these products must have geolocation services, and not accept wagers and disable the account if wagers are attempted from a barred location.

2.7 What are the tax and other compulsory levies?

Licence fees. Periodic percentage fees are the largest source of tax revenues. They apply only to non-restricted casino licensees (16 or more slot machines or any number of live games). The monthly fees are: 3.5% of gross gaming revenue from \$0 to \$50,000; 4.5% of the next \$84,000 gross revenue; and 6.75% of remainder gross revenue. "Gross revenue" is the difference between sums taken in by the casino and sums paid out as losses. Sums taken in include cash winnings, cash received in payment of credit, tournament entry fees and any percentages taken in by the house as a condition of operating a game (i.e., "rakes"). Property given as prizes generally can be deducted at actual cost.

Casino locations also pay a quarterly slot machine fee of \$20 per machine, an annual slot machine fee of \$250 per machine, a quarterly game (table games, keno, bingo and race and sports) fee and an annual table game fee. The quarterly and annual game fees vary depending on the number of games in the casino.

Live Entertainment Tax. A 9% tax is imposed on all amounts paid for admission to the area or premises where live entertainment is provided by any gaming establishment. Included in the term "admission charge" are: (1) entertainment fee; (2) cover charge; (3) required food, beverage or merchandise minimums; (4) membership fees; and (5) a service charge or any other fee or charge that must be paid in exchange for access to the facility where live entertainment is provided.

Other fees. These include disseminator fees, *pari-mutuel* fees, manufacturing and distributing fees and slot route operator's licence fees.

2.8 What are the broad social responsibility requirements?

Responsible gambling is addressed on four levels. First, licensed

casinos must train all personnel who interact with patrons on the nature and symptoms of problem gambling, and how to assist patrons with obtaining information on available programmes. Second, casinos must have programmes that permit patrons to self-limit access to credit, cheque cashing or casino promotional material. Third, casinos cannot allow the use of credit cards by patrons at slot machines. Fourth, casinos must pay a slot machine tax that goes to a deducted state fund used to provide private grants to non-profit treatment and prevention providers.

2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

Anti-Money Laundering ("AML") laws governing casino operations are promulgated and administered by the federal government under the Bank Secrecy Act ("BSA"), enacted in 1970. Most Nevada casinos are in the BSA definition of "financial institution" as any "casino, gambling casino, or gaming establishment with an annual gaming revenue of more than \$1,000,000 which is licenced as a casino, gambling casino, or gaming establishment under the laws of any state". Accordingly, to comply with BSA regulations, casinos must file reports regarding certain cash payments and suspicious activity occurring within the casino, as provided in the BSA. This includes Currency Transaction Reports for all cash transactions made by a patron, in one gaming day, which exceed \$10,000 either individually or in the aggregate, and Suspicious Activity Reports if they identify a suspicious activity involving money laundering or where the money is derived from or involves criminal activities, whether attempted or completed, and \$5,000 or more in funds or other assets are involved.

Virtual currencies are not able to be used for regulated gambling.

2.10 What (if any) restrictions were placed during the COVID-19 pandemic? Are they still in force?

On March 17, 2020, Governor Sisolak issued Emergency Directive 002 which declared that all non-essential businesses, including casinos, must cease operations effective March 17, 2020 at 11:59 pm. As such, for the first time since 1963, all casinos on the Las Vegas Strip were closed. Casinos were allowed to reopen on June 4, 2020, during Nevada's Phase 2 reopening plan so long as they filed approved re-opening plans with the Board that addressed a variety of factors including capacity limits, social distancing measures between all games, and the enforcement of mask mandates. Since then, in order to allow casinos to increase their capacity limits, gaming licensees have been encouraged to implement plans to have a majority of their staff vaccinated. Currently, most casinos are operating at 100% capacity with no social distancing measures in place. As it currently stands, most mitigation measures have dissipated with the exception of mask mandates which are currently still effective based on the Governor's emergency directives.

3 Online/Mobile/Digital/Electronic Media

3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?

In Nevada, sports wagers can be made using mobile devices

with licensed operators where both the bettor and operator are located in Nevada.

At the time of writing, poker is the only casino game that can be played online in Nevada. The operator must be a licensed and the player must be located in Nevada or a jurisdiction that has entered into a compact with Nevada.

3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?

Nevada law includes a “bad actor” clause which excludes certain persons and assets from interactive gaming operations in Nevada if the person or asset continued to operate in the United States following the passage of the Unlawful Internet Gambling Enforcement Act (the “UIGEA”). Nevada’s bad actor clause applies to covered persons and covered assets. A “Covered Person” is any person who has owned over 5% of an interactive gaming facility or provided any services as an interactive gaming service provider in violation of the UIGEA. 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 facility that knowingly and intentionally offered interactive gaming that involved patrons located in the United States in violation of the UIGEA. The term includes: (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.

3.3 What terminal/machine-based gaming is permitted and where?

All types of gaming devices are permitted in Nevada. Slot and video poker machines are allowed in convenience stores, grocery stores, casinos and in taverns and restaurants provided they satisfy certain eligibility and zoning requirements. Sports wagering kiosks are permitted in sports books and certain restricted gaming establishments. Mobile and in-room gaming is permitted in casinos.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

The gaming regulators handle violations of the laws involving licensees. The Commission has full and absolute power to revoke, suspend, limit or condition any gaming licence, and to fine any gaming licensee for any cause deemed reasonable. This includes the violation by a licensee’s agent or employee of any provision of the Act or the Regulations of the Commission.

The regulations are very detailed, and a violation of any of them subjects the licensee to disciplinary action. As an example, licensees have been subjected to disciplinary action for violating internal controls, associating with disreputable individuals, refusing access to the casino count room, evading payment of state gaming taxes, improperly granting gaming credit and bringing disrepute to Nevada.

The Board will investigate the grounds for a potential disciplinary action and, when satisfied that such a violation has occurred, will file a complaint with the Commission. During

the proceedings, the Board acts as a prosecutor, and the Commission acts as a judge and jury. In the hearing before the Commission, the licensee has the right to examine witnesses, introduce exhibits, cross-examine opposing witnesses and offer rebuttal evidence. If the Commission determines that the licensee has violated a statute or regulation, then it may impose financial penalties and/or suspend, revoke, limit or condition the licence.

A licensee may seek judicial review in state court of any penalty imposed by the Commission.

Where the violations involve employees, patrons or third parties, either the Enforcement Division of the Board, who are law enforcement officials, or other police agency may handle the investigation. Criminal violations, however, are prosecuted by either state or federal prosecutors in the criminal justice courts.

4.2 What form does enforcement action take in your jurisdiction?

Enforcement actions in Nevada are based on the strong public policy goals of the Act – that Nevada gaming licensees must be persons of “good character, honesty and integrity” who “do not pose a threat to the public interest of this state or to the effective regulation and control of gaming”. Accordingly, conduct that reflects poorly upon Nevada or the gaming industry constitutes an “unsuitable method of operation”.

The Board has broad investigatory powers to determine whether a licensee has violated any of the provisions of the relevant Nevada statutes and regulations of the Commission. Importantly, Board agents may inspect any gaming premises without a warrant, and a failure to cooperate is justification in itself for disciplinary action.

Enforcement actions can arise both through formal and informal channels. The informal (and non-public) actions include violation letters and orders to show cause.

Violation letters are the least formal – and are not filed with the Commission. These are notifications to licensees, which request written responses. If the response is candid and sets out specific steps or procedures that will be implemented to avoid the issues identified from occurring again, the action may end there. Orders to show cause, while still not a formal disciplinary action, are more formal than violation letters. These are drafted by the attorney general’s office, reviewed by the Board and then formally served via registered mail on the licensee. The licensee’s response should include a detailed explanation of the facts and arguments as to whether or not a violation has occurred, or what remedial action has been taken. The Board chair can then deem whether the response is adequate, or if not, instruct the attorney general’s office to prepare a formal disciplinary complaint.

A formal disciplinary complaint is filed with the Commission and is also publicly available. The format is similar to other formal legal complaints, including a recitation of the applicable laws and facts constituting alleged violations by the licensee. A vast majority of these complaints are settled prior to going through the formal hearing process. This generates substantial fines, licence surrenders, suspensions and/or revocation of licences. In the small number of matters that move forward with the hearing, the process is similar to other administrative enforcement actions, including filing an “answer” to the complaint, entering into a scheduling order, conducting discovery and, eventually, a public hearing before the Commission.

The Commission will then enter findings of fact, conclusions of law and an order, which is a formal written decision detailing the conclusion of the Commission and the assessed penalties. The decision need only be supported by “any evidence” in the

record – a very low threshold. Accordingly, while the licensee may petition for judicial review of the decision by a state court judge, this is seldom done.

4.3 Do other non-national laws impact upon liability and enforcement?

No, there are no non-national laws that impact upon enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

Yes, as long as the gambling debt satisfies the requirement for a credit instrument under Nevada gaming law. Nevada casinos can enforce credit instruments, most commonly markers and personal cheques, in Nevada courts. A gaming credit instrument is an instrument which represents a debt owed to a casino, and includes any writing taken in consolidation, redemption or payment of a prior credit instrument.

4.5 What appetite for and track record of enforcement does your local regulatory authority have? Have fines, licence revocations or other sanctions been enforced in your jurisdiction?

See question 4.2. Fines and revocations are regularly (and swiftly) enforced. Some more notable fines and enforcement actions include a recent fine imposed on Wynn Resorts in February 2019 for \$20 million. This fine was nearly four times higher than the previous record fine imposed against Cantor

Gaming (\$5.5 million in 2014). There have also been several instances of licensees either being forced to surrender their licences, or have them revoked, either in addition to or *in lieu* of a fine. Additionally, in response to COVID-19 mitigation efforts, several gaming licensees have been disciplined and fined by the Board and Commission for failing to adequately adhere to social distancing guidelines and effectively enforce state-wide mask mandates.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling law/regulations are being discussed currently?

Recently, the Board and Commission began the process of amending various gaming regulations. Amendments to Regulation 14, although subtle, allows casinos and manufacturers to be able to develop expanded cashless wagering technologies by altering the language of the regulation to be more encompassing. Further, amendments to Regulation 22 were adopted by the Commission which allow a licensed race book to determine the outcome of wagers for horse races based on a nationally televised broadcast, instead of only receiving such information from a licensed disseminator. Additionally, amendments to Regulation 22 are currently being drafted in order to remove business entity wagering. Lastly, of note, legislation was recently passed that creates the Nevada Esports Commission, which would serve as the regulatory body tasked with the regulation of esports competitions in Nevada. For the avoidance of doubt, wagering on esports is still within the discretion of the Board and Commission and the Board may, in its discretion, adopt regulations as necessary to allow for such wagering.



Karl F. Rutledge is Chair of the Lewis Roca Commercial Gaming Industry Group and provides counsel on gaming, esports, fantasy sports, sports betting and promotional marketing. He is a member of the Executive Committee of the Gaming Law Section of the State Bar of Nevada and is immediate past Chair of the Gaming Law Committee of the American Bar Association Business Law Section. Karl is an adjunct professor at the University of Nevada, Las Vegas, William F. Harrah College of Hotel Administration, where he teaches Gaming Industry Regulation. He is recognised by *Chambers USA* for gaming and licensing in the nationwide category and was named to Vegas Inc.'s "40 Under 40" for 2019 and Emerging Leaders of Gaming "40 Under 40" 2019–2020 Class by *Global Gaming Magazine*. *The Best Lawyers in America®* has listed Karl in gaming law since 2012 and he was recognised as "Lawyer of the Year" for 2021.

Lewis Roca
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
USA

Tel: +1 702 949 8317
Email: krutledge@lewisroca.com
URL: www.lewisroca.com



Glenn J. Light is a Partner and member of the Lewis Roca Commercial Gaming Industry Group providing counsel on nearly every aspect of commercial gaming transactions, including corporate structure, financing and due diligence. In particular, Glenn guides individuals, operators, manufacturers, distributors and service providers through the licensing process – from advising clients on how to best structure operations from a licensing standpoint to working with the regulators to obtain the necessary licences. Glenn is also an adjunct professor at the University of Nevada, Las Vegas, William F. Harrah College of Hotel Administration, where he teaches a class titled "Gaming Industry Regulation". Glenn has been listed in *The Best Lawyers in America®* in the category of Gaming Law since 2019 and was recognised as "Lawyer of the Year" in the area of gaming law for 2022. He has also been recognised by *Chamber USA* for Gaming & Licensing since 2020 and has been recognised as a Mountain States Super Lawyer in the area of gaming since 2012.

Lewis Roca
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
USA

Tel: +1 702 949 8276
Email: glight@lewisroca.com
URL: www.lewisroca.com

The Lewis Roca Commercial Gaming Industry Group has been at the forefront of all major gaming trends for the past quarter-century. We have proudly served the gaming industry as trusted legal counsellors, as well as internet gaming pioneers, authors, educators and influencers addressing issues in the sports betting, esports, social gaming and fantasy sports industries. Our team counsels clients on the intricate state, tribal and federal regulations that govern casinos, sports betting, daily fantasy sports ("DFS") operators, payment processors as well as advertisers and marketing affiliates across the U.S. We help clients operate legally in the U.S. under state and federal gambling and sweepstakes laws and provide guidance through the licensing process from advice on how to best structure operations from a licensing angle to working with regulators to obtain necessary licences.

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