

NEW TABLE GAMES AND GAME VARIATIONS IN NEVADA

By Glenn Light, Karl Rutledge and Quinton Singleton



In Nevada, a developer of games cannot offer a table game for play unless it qualifies as a “game” or “gambling game” as defined in the Gaming Control Act or unless the Nevada Gaming Commission has approved it as a new game.¹ Similarly, a new variation to a previously approved game cannot be offered within the state unless it has been approved by the chairman of the Gaming Control Board or his designee.² Currently, the Gaming Control Act does not define what constitutes a variation to a previously approved game. However, in practice, the Gaming Control Board has restricted game variations to either a new side wager to an existing game or a change in the payable to an existing side wager or table game.

In 2008 alone, four new games and 54 variations on previously approved games were approved for play in Nevada. Such new games and game variations included California Draw Poker and Royal Hold 'em Poker, as well as Late Bet Baccarat (a version of baccarat), Money Suits 21 (a version of blackjack), Hard Pass Craps (a version of craps) and Quick Draw Hold 'em Bonus (a version of poker).³

This article examines the application process for new games and variations to previously approved games as well the recent legislative amendments by Senate Bill No. 83.

New Games

Unlike the approval process for many aspects of Nevada gaming, the developer of a new game is not required to be found suitable; however, the absence of mandatory licensure does not infer a lax approval process. The developer of a new game is required to provide his or her name, permanent address, Social Security number and driver's license, and undergo a background check.⁴ In addition, the recent enactment of Senate Bill No. 83 has bestowed upon the Gaming Control Board and Nevada Gaming Commission the discretionary power to require a finding of suitability or the licensing of any person who “has invented, has developed or owns the intellectual property to a game for which approval by the commission is being sought or has been received in accordance with the regulations by the commission.”⁵ As a consequence, the board and commission now have the express authority to call forward almost any person associated with a new game.

What Needs to be Filed?

The application process begins with the new game developer having to file an array of documentation with the board. This documentation can be divided between information specific to the applicant and information specific to the new game.

Documentation specific to the applicant consists of (i) a personal history questionnaire for each executive, officer, director and/or equity holder of greater than 10 percent or key employee of the developing corporation, limited liability company, partnership, etc.; together with (ii) an affidavit of full disclosure; (iii) a release and indemnity of all claims; and (iv) a request to release information. The applicant also must provide a breakdown of the ownership of the new game and projected revenue sharing from the new game.⁶

The personal history questionnaire contains a number of questions with regard to the applicant's character and fitness, and any misrepresentation or failure to disclose requested information may be deemed sufficient cause for the applicant to be called forward for a finding of suitability or denial of the new game application. The disclosures include, among other things, any arrests, detentions or litigation, as well as any privileged or professional licenses the applicant holds or has held, including gaming licenses.

Documentation specific to the new game includes (i) a formal request for approval of the new game; (ii) the name of the game, which must be different than the name of a game currently approved by the commission; (iii) the rules of play; (iv) the table layout; (v) the new game paraphernalia samples, such as dice or cards; (vi) a proposed payout schedule; (vii) the rack card; (viii) a statistical evaluation of theoretical percentages⁷; (ix) the filing receipt from the United States Patent and Trademark Office for the new game patent; (x) the contact information for persons able to discuss intricacies of the new game with the board; and (xi) the details of the Nevada Non-Restricted Group I licensee that will operate and monitor the new game during the field trial.⁸

What Type of Investigation is Conducted?

Once all the required documentation is filed, the Gaming Control Board's Enforcement Division reviews the application for completeness and conducts the background investigation of the applicant. The Enforcement Division forwards the statistical evaluation of the new game's theoretical percentages to the Technology Division for analysis and verification. As expected, the more complex the game, the longer it will take for the analysis and verification to be completed. If the Technology Division determines that the applicant's statistical evaluation of the math is incorrect, the game will be referred back to the applicant. Otherwise, the game will proceed forward for a field trial at a Nevada Non-Restricted Group I licensee venue.

What Happens During the Field Trial?

Prior to submitting the new game application, the applicant must arrange for a Nevada Non-Restricted Group I licensee to host the field trial. Historically, the board has shown a preference for the host licensee to be located in Las Vegas, Laughlin or Reno; however, the board may permit a field trial to be conducted in a more remote location, such as Pahrump or Mesquite.

The field trial must start within 30 days of receipt of approval from the board. In conducting the field trial, a number of responsibilities are imposed upon the host licensee, including having to adapt the casino floor to house the new game. The host licensee is also required to provide constant video surveillance during the field trial and submit to the board weekly statistical reports of drops, fills, credits, wins and patron complaints. Moreover, the board often requests that the statistical play of the new game be tested against that of a "control game," which is a currently operated game with the most similarities in method of play to the new game. Any failure to comply with these requirements, including the timely submittal of complete and accurate field trial data, may result in termination of the field trial.

Because the host licensee bears the workload during the field trial, the licensee is entitled to receive 100 percent of the revenue generated by the new game. To ensure this occurs, the applicant is required to submit to the board a notarized statement attesting to the fact that the applicant will forego the field trial revenue.⁹

Field trials generally span 45 to 180 days. The board may consider conducting simultaneous trials at multiple locations in order to obtain comparable data in a shorter timeframe. Additionally, the board will take into consideration game approvals and play statistics from other jurisdictions. The host licensee may, however, cancel a field trial at any time. The most common reason for canceling a field trial is that the new game is performing badly and the host licensee could make better use of the floor space. In the event that a field trial is cancelled, the applicant must find another licensee to continue the field trial. If the applicant is unsuccessful, the new game application will be referred back to the applicant and a new field trial will take place once the applicant has located a suitable host licensee.

Final Approval

After completion of the field trial, the Enforcement Division prepares a report and submits it to the Gaming Control Board and Nevada Gaming Commission. Using this report, the board can either decide that the game requires additional testing or give a recommendation to the commission on whether to approve the game.¹⁰ In determining whether to approve a new game, the commission considers whether such approval is consistent with public policy, to which an economic evaluation is critical—i.e., whether the game generates more revenues for the state than it costs to regulate.¹¹

How Long Does the Process Take?

The overall process, from initial filing to a determination by the commission, typically takes one year. Timing can be impacted, however, by many factors, such as completeness of the application, diligence of the applicant in providing additional information, the workload at the board, the complexity of the game and the field trial. Moreover, each new game is unique, so the specific length of investigations and field trials will vary for each application. As such, no specific timeframe for the entire application procedure is provided within either the Gaming Control Act or Regulation 14.

How Much Does the Process Cost?

Each application for a new game must be accompanied by a

nonrefundable application fee of \$5,000.¹² The account created by this deposit is used to pay investigative costs. Additional deposits may be requested during the course of the investigation. Final satisfaction of all expenses incurred by the board must be paid before the game is heard before the board for approval.

When is an Application Referred Back to the Applicant?

The board works closely with the applicant throughout the application process, and it is common practice for the board and applicant to mutually participate in refining the application prior to the appearances before the board and commission. Delays in obtaining approval usually relate to (i) new game information, such as submitting incorrect theoretical percentages, failing to provide a copy of the rack card or table layout or requiring clarification of the new game's rules; (ii) failing to identify a host licensee or a host licensee canceling the field trial; and (iii) incorrectly submitting a new game application as a game variation application. In the majority of instances, these errors will cause the new game application to be referred back to the applicant. The onus is then on the applicant to work with the board to remedy all errors.

In some instances, the new game application may be denied. As stated above, the new game must be consistent with the public policy of the state.¹³ In addition to this, regulators now have the express power to deny a game based on the suitability of the inventor, developer or owner of the intellectual property of a game.¹⁴ Simply, regulators will not permit a person to engage in the gaming industry when his or her involvement is likely to result in regulatory violations or create poor public perception due to the applicant's poor reputation. A person may be found unsuitable for such reasons as character issues, including dishonesty in completing the new game application; unsuitable business practices; or prior unsuitable conduct in the gaming industry. If a person is found to be unsuitable he or she will become a "denied applicant" who is unable to do gaming business with the state of Nevada.

Game Variations

The application process for game variations is a simplified version of the new game process. The applicant is not required to complete a Personal History Disclosure Form or arrange for a field trial of the game variation. Instead, the applicant must simply provide (i) a letter requesting approval of the game variation; (ii) a signed and notarized Request to Release Information Form and Release and Indemnity of All Claims Form; (iii) a complete and comprehensive description of the approved, standard game; (iv) a complete and comprehensive description of the proposed variation/modification to the standard game; (v) a depiction of the difference between the standard game and the proposed variation; (vi) a mathematical analysis of the theoretical percentages of the proposed game variation;¹⁵ (vii) the game layout; (viii) the rules of play; (ix) the pay schedules or paytables for the proposed game variation; and (x) samples of new or modified gaming accessories or apparatuses, including cards, dice, shakers, tiles, etc., associated with the proposed game variation.¹⁶

Once the application is filed with the board, the Technology

Division will conduct a review of the game's theoretical percentages. However, once the review has been completed, the game variation does not have to receive the approval of the commission. Instead, the game only needs to be approved by the chairman of the board or his designee.¹⁷

The timeframe from filing an application to approval is usually three months. Again, the actual length of the process depends on a variety of factors, including the completeness and accuracy of the application and whether the application is referred back to the applicant.

At the time of this writing, regulatory amendments are being considered with regard to game variations. If such amendments are to occur, it is likely that a definition of the term "game variation," and the procedures concerning the application process, will be codified within Regulation 14.

Please feel free to contact the authors for the most current status of the law. ☐

1 Nev. Rev. Stat. § 463.0152. ("Game" or "gambling game" means any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, checks, 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 ...)

2 The current designee for the chairman is the chief of the Enforcement Division.

3 A complete list of approved gambling games is published periodically by the Board's Enforcement Division.

4 NGC. Reg. 14.230(2).

5 Nev. Rev. Stat. § 463.162(5)(e).

6 See New Game Evaluation Procedure (Revised 03/09).

7 Unlike most jurisdictions, Nevada does not require the new game's theoretical percentages to be calculated by an established testing laboratory. Often, however, it is prudent for an applicant to have the math prepared by a knowledgeable and reputable source, because incorrect statistical evaluations will be referred back to the applicant and will delay the approval process.

8 Id.

9 Id.

10 See NGC. Reg. 14.250.

11 Id.

12 Supra note 6.

13 Supra note 9.

14 Supra note 5.

15 The mathematical analysis of the house advantage must not exceed 25 percent, based on maximum play.

16 Game Variation/Modification of an Approved Game Format (Revised 03/09).

17 Supra note 2.

Glenn Light is an associate in the Gaming Practice Group at the Las Vegas offices of Lewis and Roca. He focuses his practice on casinos, restricted gaming locations, horse racing, Internet gaming, sweepstakes and contests. He is a former associate editor of Casino Lawyer magazine. He can be reached at glight@lrlaw.com.

Karl Rutledge is an associate in the Gaming Practice Group at the Las Vegas offices of Lewis and Roca. His gaming practice focuses on land-based gaming locations, Internet gaming, sweepstakes and contests. He is a former associate editor of Casino Lawyer magazine. He can be reached at krutledge@lrlaw.com.

Quinton Singleton is an associate in Lewis and Roca's Corporate and Securities, Taxation and Gaming practice groups. His gaming practice focuses on casinos, restricted gaming locations, sports betting and Internet gaming, in conjunction with corporate practice focusing on securities, corporate and partnership structuring and transactions, mergers and acquisitions, reorganizations and tax matters. He can be reached at qsingleton@lrlaw.com.