

GLS

eNewsletter

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Gaming Law Section

LEGISLATIVE CONSIDERATION OF ESPORTS EVENT REGULATION

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Senate Bill 165 (S.B. 165) became law in Nevada, effective July 1, 2021.¹ As introduced, S.B. 165 would have substantially changed how Esports events are hosted in Nevada by creating the Nevada Esports Commission.² The proposed Commission would regulate Esports events in a manner similar to the Nevada Athletic Commission sanctioning and regulating boxing and mixed martial arts events in the state. Proponents of S.B. 165 argued the legislation would enhance the integrity of video gaming competitions and streamline the process for hosting Esports events in Nevada through an independent sanctioning Commission, but leave regulation of Esports wagering solely to the Nevada Gaming Commission and Nevada Gaming Control Board (“NGCB”).³ Conversely, video game industry opponents of S.B. 165 argued the bill would have the unintended consequence of driving Esports events out of Nevada as a result of onerous rules and fees imposed on players and Esports event hosts that would not apply elsewhere in the United States.⁴

Following substantial amendments, as enrolled, S.B. 165 creates the Esports Technical Advisory Committee and requires the NGCB to appoint this Committee’s members. The Committee is tasked with providing recommendations to the NGCB intended to “...safeguard the integrity of Esports when wagers are placed at such competitions.”⁵ The Board may then, in its discretion, adopt regulations as necessary to carry out the recommendations of the Committee.⁶

Currently, wagers on Esports in Nevada are approved by the NGCB on an individual basis as an “other event” regardless of whether or not an Esports competition takes place in Nevada.⁷ Approved wagers on other events vary widely, ranging from betting on Esports tournaments to wagering on Major League Baseball’s 2021 Gold Glove award and the 2021 World Series Most Valuable Player.⁸ When reviewing requests to offer wagers on other events, the NGCB considers many factors regarding the event



and proposed wagers. However, whether the other event is an Esports competition or a performance-based award, subsection 2(c) of Reg. 22.1201 provides a common thread for all such wagers by requiring information or documentation demonstrating that:

- (1) *The event could be effectively supervised;*
- (2) *There are integrity safeguards in place;*
- (3) *The outcome of the event would be verifiable;*
- (4) *The outcome of the event would be generated by a reliable and independent process;*
- (5) *The outcome of the event would be unlikely to be affected by any wager placed;*
- (6) *The event could be conducted in accordance with any applicable laws; and*
- (7) *The granting of the request for approval would be consistent with the public policy of the state.⁹*

Although the standards for event wagering are clear, the duties of the Esports Technical Advisory Committee in formulating recommendations for regulating Esports events are challenging. Staging complex electronic events like an Esports tournament differs from a holding a live action athletic contest. For instance, MMA fighters will never need a dedicated fiber network connection to compete in the octagon. Accordingly, any Committee recommendations adopted for sanctioning future Esports events may also have an impact on how the NGCB and Nevada Gaming Commission approve and regulate wagers placed on such events.

Unless or until new regulations are promulgated based on the Esports Technical Advisory Committee recommendations, wagering on other events will continue under Reg. 22.1201 processes and standards. While sanctioning Esports events, regulating Esports betting and approving wagers on other events such as an end-of-season sporting award competition are very different, the core standards of integrity for these activities remain the same. ■

¹ S.B. 165, 81st Session (Nev. 2021).

² S.B. 165, 81st Session (as introduced, March 2, 2021).

³ *Senate Bill 165: Establishes provisions relating to Esports: Hearing on S.B. 165 Before the S.Comm. on Judiciary*, 81st Session (Nev. 2021).

⁴ Press Release, Entertainment Software Association, The Entertainment Software Association (ESA) Opposes Senate Bill (SB) 165 and Efforts to Over-Regulate Video Games and Drive Esports out of Nevada (April 29, 2021) (on file with author).

⁵ S.B. 165, *supra* note 1.

⁶ *Id.*

⁷ Nev. Gaming Comm'n Reg. 22.1201

⁸ Nev. Gaming Control Board, Approval to Offer Wagers on Major League Baseball's World Series MVP (April 8, 2021); Approval to Offer Wagers on Major League Baseball's Gold Glove Award (May 6, 2021).

⁹ Nev. Gaming Comm'n Reg. 22.1201(c) (emphasis added).



GLS Update

- **September 1st:** *Nevada Gaming Lawyer* magazine will be published with a focus this year on our outstanding female regulators and gaming lawyers. Digital versions of past issues (2007-2020) are available at <https://www.nvbar.org/content/gaming-law-section/>.
- **November 5th:** *2021 Gaming Law Conference* is scheduled for the Red Rock Casino Resort & Spa. This year's conference (6 hours of CLE, including 2 ethics and 1 substance abuse) will have presentations on the 2021 Legislative Session, AML Risks for Online Gaming, an update on the first Gambling Treatment Diversion Court, as well as the popular Regulators Roundtable featuring J. Brin Gibson, Chairman of the Nevada Gaming Control Board. Online registration available at www.nvbar.org/liveseminars and early bird discounts available through August 19th.
- **Gaming Employee Registration Pro Bono Program.** If you are interested in being included on the list of attorneys willing to accept a case from one of the legal aid centers in state to assist an indigent individual who exercising his or her appeal rights to be registered as a gaming employee, please contact Robert Horne, Communications Manager for the State Bar of Nevada (rhorne@nvbar.org or 702-382-2200). There is a brochure on the Gaming Law Section's webpage (listed above) providing lawyers with an overview of what to expect during representation.

The *GLS eNewsletter* is a quarterly digital publication.

Look for the next issue on or about October 21, 2021.

WHAT IS A GAMING LAWYER?

Although the Gaming Law Section appears to focus on a narrow specialty, the practice of gaming law is quite diverse. Gaming law is often thought of as representing clients before the Nevada Gaming Control Board and Nevada Gaming Commission. However, you are going to find litigators who represent clients in the gaming industry, you will find labor and employment attorneys in-house at gaming companies, and you will discover that many gaming industry regulators have law degrees.

Gaming lawyers often need to have an understanding or may face questions that touch on almost every legal area. For example, riverboat casinos that are found in some jurisdictions might trigger a need to understand admiralty law, while the estate planning of casino owners may require a gaming lawyer to become familiar with trusts. Gaming lawyers will often interface with corporate law, contracts, and sometimes even criminal law, while some gaming lawyers may have knowledge into complex areas like antitrust or securities law.

There are many specializations even within gaming law. There are lawyers who may focus on sweepstakes and prize giveaways (so that an activity will not be considered gambling), who specialize in mobile or internet-based gaming, or who assist gaming companies with programs to prevent money laundering and other legal or regulatory violations.

Every year, the State Bar of Nevada's Gaming Law Section hosts the annual *Gaming Law Conference* in November. This year's conference is scheduled to be held at the Red Rock Casino Resort & Spa on November 5, 2021. The conference presents a great opportunity to mix and mingle with gaming lawyers from a variety of backgrounds. You will meet academics who study why gambling is heavily regulated, in-house attorneys who work for companies that design and develop slot machines or are operators, government regulatory lawyers, and firm partners and associates who represent a wide range of clients from taverns to resort hotel casinos.

If you practice an area of law that is not traditionally "gaming," you can still be part of the Gaming Law Section because there are certainly gaming lawyers who have likely been exposed to your field of practice.

