

ALERTS AND UPDATES

New Jersey's Bill S-12 Redesigns the Regulatory System for the Gaming Industry

February 11, 2011

In a boost to New Jersey's casino and tourism industries, the state has enacted three new laws, and a fourth bill is pending before New Jersey Gov. Chris Christie. Links to additional Alerts summarizing the other pieces of legislation follow this piece.

On February 1, 2011, New Jersey Gov. Chris Christie signed into law Bill S-12. This legislation fundamentally redesigns the state's regulatory system over casinos and persons doing business with the gaming industry and substantially amends the state's Casino Control Act (the "Act"). The bill also significantly alters the authority of the Casino Control Commission ("Commission") and the Division of Gaming Enforcement ("Division").

The *Alert* below summarizes how S-12 affects the responsibilities of the Commission and Division, as well as its applicability to casino licensees, equipment manufacturers, investors, lenders and other vendors who conduct business within New Jersey's gaming industry.

General Changes

Shift of authority from Commission to Division. (Revised sections 63, 70 and 76.) The primary authority to promulgate regulations governing the industry in New Jersey has been shifted from the Commission to the Division. The Commission's authority to make regulations will be limited to regulations governing hearings that are to be conducted before it. On all other matters, the authority to make and enforce regulations will be placed in the Division. Moreover, the Division will have the authority to initiate and decide any actions against licensees or registrants, and impose sanctions on them for violation of the Act. The Division may outsource background checks to a private party, if that party has been awarded a contract under public bidding laws.

Division's authority to summarily modify regulations. (Revised section 69.) After enactment of S-12, the Division will have a 90-day window in which it can summarily revise existing regulations or adopt new regulations for a 270-day period. During the 270-day time frame, the Division will determine whether such rules or revisions should be adopted on a permanent basis.

Changes to Casino Licensing

Leases concerning casino-hotels. (Revised section 82(b)(5) and (6).) A lease agreement for a casino-hotel or the land under it will no longer need to be for a term in excess of 30 years or concern 100 percent of the casino-hotel or related land. Similarly, a lease agreement that provides for a percentage share of gaming revenue or casino profits does not have to concern a "significant portion" of the casino-hotel or related land.

Undue economic concentration. (Revised section 82(e).) The criteria that were previously established by the Commission, by regulation, to determine whether the issuance of a casino license would result in undue economic concentration—thereby requiring denial of a license—have now been incorporated into the language of the statute. The Commission may define additional criteria by regulation.

Presumption of financial stability. (Revised section 84(a).) An applicant for a casino license will be presumed to meet the financial stability requirement for licensure if it establishes by clear and convincing evidence each of the following standards:

- Assurance of financial integrity of casino operations by maintaining a bankroll adequate to pay winning wagers when due. This may be established by showing that the casino's bankroll is at least equal to the average daily minimum bankroll maintained for the same month in the previous year. In the case of a new casino, the Division shall determine this minimum by reference to a comparable facility.

- The ability to meet ongoing expenses; a licensee is presumed to have met this standard if it demonstrates the ability to achieve positive gross-operating profit.
- The ability to pay all taxes, investment-alternative obligations and regulatory fees, when due.
- The ability to make necessary capital and maintenance expenditures to ensure maintenance of a superior, first-class facility of exceptional quality. A licensee is presumed to have met this standard if it demonstrates that its capital and maintenance expenditures over the five-year period that includes the previous three and upcoming two years averages 5 percent of annual net revenue. A new facility is required to "otherwise establish compliance," but no method is stated.
- The ability to pay, exchange, refinance or extend debts that will become payable during the license term.

Security systems and management controls. (Revised section 84(d).) An applicant for a casino license is no longer required to provide a full description of its security systems and management controls as part of the application process.

Corporate and unincorporated association licensees. (S-12, paragraph 50(a)–(d).) Section 85 of the Act, governing corporate licensees, unincorporated associations and holding companies has been substantially rewritten as a new section. Applicants are still required to provide information about their financial structure, rights and privileges of security holders, highly compensated personnel, the terms of any indebtedness, and management or service contracts. Applicants are also required to establish their qualifications to do business in New Jersey.

Corporate applicants will be required to establish and maintain the qualifications of each officer and director of the corporation; each person who directly or indirectly holds any beneficial interest in the securities of the corporation; any person who in the opinion of the director has the ability to control the applicant or elect a majority of the board of directors; and each holding, intermediary or subsidiary company.

With respect to holding, intermediary and subsidiary companies, each applicant is required to establish and maintain the qualifications of each corporate officer and director; each person who directly or indirectly holds a beneficial interest or ownership of 5 percent or more of the holding, subsidiary or intermediary company; any person who has the ability to control or elect a majority of the board of directors of the holding company and any other person the director considers appropriate. The director may waive any or all of the qualification requirements of a corporate officer, director or person who directly or indirectly holds 5 percent or more of the interest in the holding company.

Paragraph 51 of S-12 provides that these provisions apply, to the extent appropriate, to applicants and licensees that have a legal existence that is other than corporate.

Investors and financial backers. (S-12, paragraph 50(e)–(h).) Applicants are required to establish and maintain the qualification of any financial backer, investor, mortgagee, bondholder, or holder of indentures, notes or other indebtedness that bears relation to the casino operation or casino-hotel premises who holds 25 percent or more of the indebtedness (or 10 percent in circumstances of default). The director may require the qualification of any other financial source. Banks and licensed lending institutions are exempt from any qualification requirements under the Act if acting in the ordinary course of business.

An institutional investor who holds any of the following may be granted a waiver from qualification:

- Under 25 percent of the equity securities of a licensee's holding or intermediary companies, or
- 25 percent or less of the debt securities of a licensee's holding or intermediary companies, where the securities represent a percentage of the outstanding debt of the company not exceeding 25 percent, or a percentage of any issue of the outstanding debt of the company not exceeding 50 percent (unless the full issue is \$150 million or less).

This institutional investor waiver is available regardless of whether the securities are those of a publicly or privately held corporation, provided that the securities were purchased for investment purposes only. The investor is required to certify that it has no intention of influencing or

affecting the affairs of the issuer, provided that it may vote on matters put to a vote of the security holders. The director may waive qualification of an institutional investor who exceeds these thresholds upon a showing of good cause.

Statutory disqualifiers. (Revised section 86.) Several new statutory disqualifiers have been added. They include vehicular homicide in the second degree; endangering the welfare of a child; distributing, dispensing or possessing a controlled dangerous substance in proximity to public housing facilities, parks or buildings; and gaming-related offenses under the Act such as swindling or cheating, including using unlawful devices or counterfeit instruments. In addition, the failure to pay child support, the failure to repay an overpayment of food stamp benefits or low-income home energy-assistance benefits, or the failure to repay any debt to the state are now statutory disqualifiers—unless proof of a repayment arrangement is provided to the director's satisfaction.

License grants and renewal. (Revised section 87 and S-12, paragraph 54.) An initial casino license will be issued by the Commission following a hearing. Thereafter, no more than five years after the issuance of the license and every five years thereafter (unless shortened by the Division), casino licensees must submit such documentation to the Division as may be required by regulation to demonstrate that the licensee continues to be qualified under the Act. If the Division determines that there is no information sufficient to warrant revocation, suspension, limitation or conditioning of the license, the Division will issue a report stating this, and the license remains in full force and effect. If the Division believes there is a licensing issue, it will report on that issue, and the Commission will hold a hearing on the issue.

Multi-casino employees. (S-12, paragraph 57.) Two or more affiliated casino licensees may jointly petition that a casino employee be deemed a multi-casino employee of each of the licensees, provided that the multi-casino licensee does not engage in any incompatible functions as determined by the Division.

Presence of Commission inspectors and changes to count procedures. (Revised sections 63(f) and 100(c).) Commission inspectors are no longer required to be present on a 24-hour basis in a casino and are no longer required to be present during counts. In addition, the Division is required to promulgate by regulation appropriate procedures for conducting counts. The statutory requirement of two-keyed drop boxes is eliminated.

Changes to Gaming-Related Casino Service Industry Enterprise Licenses

Changes to the definition of Casino Service Industry Enterprise. (Revised section 12.) S-12 adds new language to the definition of "Casino Service Industry Enterprise." While the definition primarily remains the same, the provision slightly alters the explanation of the "goods or services" provided by vendors. The new language now defines a Casino Service Industry Enterprise as "any vendor offering goods or services which directly relate to casino or gaming activity, including gaming equipment and simulcast wagering equipment manufacturers, suppliers, repairers and independent testing laboratories, junket enterprises and junket representatives" that provides casino applicants or licensees with goods or services.

Licensing authority shifted to Division. (Revised section 42.) Section 42(d) now vests the power to review, and approve or deny all Casino Service Industry Enterprise applicants in the Division. Additionally, under section 42(f), the Division may revoke a Casino Service Industry Enterprise license upon findings pursuant to the disqualification criteria in section 86.

License terms and renewals. (Revised section 94.) Section 94(e) removes the requirement that Casino Service Industry Enterprise licenses be issued for an initial term of four years and renewed for subsequent terms of five years. Pursuant to section 94(h), registrations remain valid unless suspended or revoked by the Division, or such registration expires or is voided by law. However, five years after obtaining a license (and every five years thereafter) the Division or Commission reserve the authority to request documentation and information from the licensee to demonstrate to the satisfaction of the commission or director that the licensee continues to meet the requirements of section 89 and section 92(a), respectively. Upon receipt of such information, the Commission or Division, as applicable, may take such action on the license, including suspension or revocation, as it deems appropriate. The Division is currently in the process of determining appropriate fees to be paid upon the filing of the informational filings. The fees will be deposited into the Casino Control Fund.

Expedited deployment of new gaming equipment. (Revised section 100.) Section 100(h)(5) provides new language and is called the "14-Day Rule." Pursuant to the provision, any new gaming equipment, that is submitted for testing to the Division's slot lab for approval prior to or

simultaneously with the submission of such new equipment for testing in a jurisdiction other than New Jersey, will be able to be deployed by a casino on the casino floor 14 days after submission of such equipment for testing. If that equipment has not been approved within that 14-day period, the deployment of the equipment is on a field-test basis.

Elimination of Nongaming Casino Service Industry Licenses

Registration requirement for vendors. (Revised section 92.) S-12 completely revises the provision of the Act concerning nongaming-related casino service industry licensees. Section 92(c) is rewritten to remove the requirement that nongaming-related business be licensed with the Commission. Nongaming-related businesses will now only be required to register with the Division. The Division is, however, afforded the right to require any nongaming-related business to apply for a Casino Service Industry Enterprise license. Vendor registrations remain in effect unless revoked, suspended, limited or otherwise restricted by the Division, unless the registrant has not conducted business with a casino-hotel facility for a period of three years. The Division has been charged with creating regulations to carry out the vendor registration process.

Disqualification of vendors. (Revised section 92.) Similar to Casino Service Industry Enterprise licensees, discussed above, vendors may be disqualified in accordance with the criteria of section 86 of the Act. However, a vendor registration cannot be denied or revoked if the vendor can demonstrate rehabilitation in accordance with section 91(d) of the Act, as revised.

Related Duane Morris Alerts

Besides Bill S-12, New Jersey has enacted two more laws concerning gaming and tourism, and an additional bill is pending before New Jersey Gov. Chris Christie. *Duane Morris Alerts* summarizing the other pieces of legislation are:

- [New Jersey's Bill S-11 Establishes the Atlantic City Tourism District](#)
- [New Jersey's Bill S-490 Permits Casinos to Offer Internet Wagering](#)
- [New Jersey's Bill S-1866 Permits the Construction of "Boutique" Casinos](#)

For Further Information

If you have any questions about the information addressed in this *Alert*, please contact [Gilbert L. Brooks](#), who is a partner in Duane Morris' [Gaming Practice Group](#), or the attorney in the firm with whom you are regularly in contact.

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