

COLORADO DEPARTMENT OF REGULATORY AGENCIES  
OFFICE OF POLICY AND RESEARCH

# COLORADO DIVISION OF GAMING

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## 1995 SUNSET REVIEW



**Joint Legislative Sunrise/Sunset Review Committee  
1995-1996 Members**

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Chair**

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June 30, 1995

The Honorable Richard Mutzebaugh, Chair  
Joint Legislative Sunrise/Sunset Review Committee  
State Capitol Building  
Denver, Colorado 80203

Dear Senator Mutzebaugh:

The Colorado Department of Regulatory Agencies has completed the evaluation of the **Division of Gaming**. We are pleased to submit this written report, which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to Section 24-34-104 (8)(a), of the Colorado Revised Statutes, which states in part:

*"The Department of Regulatory Agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section..."*

*The Department of Regulatory Agencies shall submit a report and such supporting materials as may be requested, to the Sunrise and Sunset Review Committee created by joint rule of the Senate and House of Representatives, no later than July 1 of the year preceding the date established for termination..."*

The report discusses the question of whether there is a need for the regulation provided under article 47.1 of title 12, C.R.S. The report also discusses the effectiveness of the division and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joseph A. Garcia  
Executive Director

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## *EXECUTIVE SUMMARY*

The Department of Regulatory Agencies has concluded the 1995 Sunset Review of the Division of Gaming and recommends that the Division be continued by the General Assembly.

When the General Assembly wrote the statute governing limited gaming in Colorado, they made it clear that they wanted strict regulatory oversight of the industry. They recognized that the public had to have confidence and trust in the industry in order for limited gaming to be successful. There is a potential for economic harm to the public in an unregulated or loosely regulated limited gaming industry. Furthermore, the nature of gaming is such that consumers cannot protect themselves from unscrupulous businesses. The public expects and demands the state to regulate and scrutinize the way limited gaming operates in Colorado.

This review also makes several recommendations to improve the regulatory program by making specific changes in the statute. This report does not exam the performance and responsibility of the Limited Gaming Control Commission. Such a review is beyond the scope of this review.

## ***BACKGROUND***

On November 6, 1990, the voters of Colorado approved a constitutional amendment to allow limited stakes gaming in the mountain towns of Back Hawk, Central City, and Cripple Creek. "Limited stakes gaming" is defined as a maximum single bet of \$5 on slot machines, live blackjack, and poker games..

Limited stakes gaming was presented to the voters of Colorado as a way to revitalize three small mountain towns. These towns depended upon revenues from summer crowds to carry them through the slow winter months. Many people thought that the current tourist shops would remain, and that there would be a few slot machines and card tables in the back of the tourist shops. Few people envisioned the casino industry becoming the primary source of revenue for these towns and the main reason why tourists visited them.

When gaming started in Colorado on October 1, 1991, a total of 11 casinos were operating. These were full-fledged casinos, not the small operations in tourist shops. By September 1992, there were 75 casinos in Colorado. With the increase in the number of casinos and devices, came increased competition. The casinos found that the seasonal tourist cycle of large numbers during the summer and a dramatic drop-off of numbers during the winter continued in the gaming towns. By January 1993, only 63 casinos remained in business. Currently, there are **58** operating casinos in Colorado with approximately 5,900 employees.

The function of the Division of Gaming (“Division”), located within the Department of Revenue, is to license, implement, regulate, and supervise the conduct of limited gaming in Colorado. The Division investigates the background of all gaming license applicants. These investigations include scrutinizing personal and financial histories and the sources of all investment money. The Division continues to monitor license holders for such problems as hidden ownership interests and organized crime involvement. Division auditors conduct revenue audits of casinos to ensure that they follow the required accounting and compliance procedures. They also work with Division investigators to conduct compliance inspections to determine whether casinos are following proper procedures in handling money.

The Division works closely with the five-member Colorado Limited Gaming Control Commission (“Commission”) created by the constitutional amendment. The Commission has final authority over all expenses concerning the regulation of gaming in Colorado, and it also must approve the budget for the Division. The Commission also has authority to pass rules and to make final decisions on licenses.

The Division is cash funded. No general tax dollars are used for its operation or expenses. The funds are collected from the gaming tax, application and license fees, and any fines levied by the Division.

Gaming revenue is computed on and reported as Adjusted Gross Proceeds (“AGP”), which is the amount of money wagered minus the amount paid out in prizes. AGP revenues generated by casinos on a monthly basis have increased from nearly \$8.4 million during the first month of operation to more than \$33.2 million in July 1994. After three years of limited gaming in Colorado, casinos have paid \$85 million in gaming tax revenues to the state.

## ***SUMMARY OF STATUTE***

Colorado Constitution, article XVIII, § 9(2) authorizes the formation of the limited gaming control commission, and requires it to administer and regulate gaming in Colorado. In order to license, implement, regulate and supervise the conduct of limited gaming, the General Assembly created the Division of Gaming within the department of revenue. The director of the Division is appointed by, and subject to removal by, the executive director of the department of revenue.

### ***Statutory Qualifications for the Director of the Division***

The statute requires that the director must be of good character and not have any convictions of any felony or gambling related offense. It further obligates the director to “devote his entire time and attention to the duties of his office and shall not be engaged in any other profession or occupation.” § 12-47.1-203(1), C.R.S..

As the head of the division, the director is responsible for direction and supervision of the administrative and technical activities of the division. Additionally, the director must attend commission meetings, advise and make recommendations to the commission about rules and other procedures, and perform any lawful acts which the Commission determines is necessary to protect the security and integrity of gaming in Colorado.

No one employed with the division of gaming may have been convicted of a felony or gambling-related offense.



### **Division Investigators**

Investigators of the division of gaming, and their supervisors, including the director and the executive director, have all the powers of any level II peace officer as defined in §18-1-901(3)(I)(III), C.R.S.. These powers include the authority to:

1. Make arrests for violation of this article, article 20 of title 18, C.R.S., the rules and regulations promulgated pursuant to this article, other laws or regulations pertaining to the conducting of limited gaming, and any criminal law of Colorado, if, during the performance of the officer's duties, probable cause is established that a violation has occurred.
2. Inspect, examine, investigate, hold, or impound any premises where limited gaming is conducted, any devices or equipment designed for or used in limited gaming, and any books and records in any way connected with any limited gaming activity.
3. Require any licensed person, upon demand, to permit an inspection of the person's licensed premises, gaming equipment and devices, or books or records; and to permit the testing and the seizure for testing or examination purposes of all devices, equipment, and books and records.
4. Serve all warrants, notices, summonses, or other processes.
5. Conduct investigations into the character, record, and reputation of all applicants for limited gaming licenses, all licensees, and other persons the commission may designate pertaining to limited gaming.
6. Investigate violations of all the laws pertaining to limited gaming.
7. Assist or aid any sheriff, peace officer, or other local official with jurisdiction in the performance of their duties.

All criminal violations are referred to the appropriate district attorney. Local sheriffs, police departments, and other local law enforcement agencies may also enforce the provisions of this article and the rules and regulations promulgated under this statute.

### **Conflicts of Interest**

Section 12-47.1-401, C.R.S. declares that employees of the Division (as well as Commission members) are in positions of public trust. In order to ensure the integrity of the division, the employees, and Commission members (and their family members) are restricted from engaging in several activities. Among such restrictions are as follows:

1. They may not have any interest, direct or indirect, in any licensee, licensed premises, establishment, or business involved in or with limited gaming.
2. They may not have any interest of any kind in licenses issued pursuant to this statute.
3. They may not own or have any interest in property in any county where limited gaming is permitted, except those division employees assigned to work regularly in Gilpin or Teller county may own private residential property.
4. They may not accept gifts or anything of value from persons, corporations, associations, or firms that contracts with or offers services, supplies, materials, or equipment which is licensed by the Division.

They may not participate in limited gaming.

5. They may not have been convicted of a felony or any gambling-related offense.

### **Licenses**

All licenses require annual renewal. There are 5 types of licenses. They are as follows:

**Manufacturer/Distributor:** This is issued to companies that manufacture or distribute approved slot or video machines. These licensees may not have any proprietary interest in a retail license.

**Retail:** This is issued to persons who conduct or permit limited gaming on their premises. A retailer licensee must maintain sole and exclusive legal possession of the premises for which the retail license is issued. Any person licensed as a retailer must also possess an operator's license. (For auditing and compliance purposes, casinos are separated into 3 categories. These categories are explained on pages 13 and 14 in the Program Administration Section.)

**Operator:** This is issued to persons who permit slot machines on their premises or to person who place and operate slot machines on the retailer's premises.

**Key Employee:** This is issued to a person who has management or policy making decision authority in a gaming establishment.

**Support Employee:** This is issued to people who work directly with the gaming operation such as dealers, cashiers, etc.

A license issued under this statute is a revocable privilege. No vested interest or property right in a license is acquired. All licenses are revocable and nontransferable. An application for renewal of a license must be filed with the Commission no later than 120 days prior to the expiration of the current license. Renewal of a license may be denied for any violation of the statute, any violation of the rules and regulations, any reason which would have prevented its original issuance, or for any good cause shown.

All licensed employees of gaming establishments must register with the local sheriff within 10 days after beginning employment.

### ***Disqualification for Licensure***

The Commission must deny a license to any applicant who meets any of the following criteria:

1. Fails to prove by clear and convincing evidence that the applicant is qualified under the requirements of the statute;
2. Fails to provide information, documentation, and assurances required by the statute or by the Commission;
3. Fails to reveal any fact material to qualification or to supply information that is untrue or misleading as to a material fact pertaining to qualification;

4. If the applicant, or any of its officers or directors, or any of its general partners, or any stockholders, limited partners, or other persons having a financial or equity interest of 5% or greater in the applicant has been convicted of any of the following:
  - A felony within 10 years prior to the date of application;
  - A misdemeanor gambling-related offense or misdemeanor theft by deception within 10 years prior to the date of application;
  - A misdemeanor involving fraud or misrepresentation within 10 years prior to the date of the application;
  - Any gambling-related felony or felony involving theft by deception; or
  - Any felony involving fraud or misrepresentation.
5. There are charges or prosecution currently pending in any jurisdiction. The applicant may request that the Commission defer decision during the pendency of the charges;
6. Applicants or any person who is required to be qualified under this statute who are career offenders or a member of a career offender cartel or an associate of a career offender or cartel in such a manner which creates a reasonable belief that the association is of such a nature as to be harmful to gaming operations;
7. Applicants or any person who is required to be qualified under this statute who refuses to cooperate with any legislative investigatory body or other official investigatory of any state or of the United States when such body is engaged in the investigation of crimes relating to gaming, official corruption, or organized crime activity; or
8. Applicants or any person who is required to be qualified under this statute who has been a professional gambler as defined in this statute.

All applicants and licensees must provide relevant information prior to licensure or renewal. Applicants for licensure and all licensees may have to provide fingerprints, submit handwriting samples, and have their pictures taken prior to licensure or renewal. At the formal request by or upon issuance of a subpoena, all applicants and licensees must produce information, evidence, or testimony before the Commission. Licenses may be suspended or revoked, and applications may be denied if applicants, licensees, any employees, or persons interested, directly or indirectly, in the applicant or license refuses or fails to comply with a Commission request or subpoena.

### ***Applicants and Application Fees***

Application fees and fees to pay for background investigations are established by the Commission. These fees may vary depending on the type of application, the complexity of the investigation, or the costs of the commission in reviewing the matters involved.

Applicants waive any rights of confidentiality including confidentiality of any financial or personnel records. The application forms also contain a provision which allows the information contained in the application to be accessible to law enforcement agents, the federal government, any foreign country, or any Indian tribe.

Persons, or any person who have an ownership interest of 5% or more in an applicant, may not reapply for licensure for at least 1 year from the date of denial. If applicants have been denied twice, they may not reapply for at least 3 years.

## *PROGRAM DESCRIPTION AND ADMINISTRATION*

is contained in the Appendices.

### ***Applications***

There are two types of applicants based on the number of persons with interests in the license, and their residency. A Type I applicant has 6 or fewer persons with a 5% or more interest in the license, all of whom live in Colorado. A Type II applicant is any applicant that does not meet the criteria of Type I. There are no application fees for Key or Support employees.

### ***Application Fees***

| Type I           |       | Type II          |         |
|------------------|-------|------------------|---------|
| Mfg./Distributor | \$500 | Mfg./Distributor | \$1,000 |
| Operator         | \$500 | Operator         | \$1,000 |
| Retail           | \$500 | Retail           | \$1,000 |

### ***Background Investigation***

A background deposit is used to cover the costs of conducting a background check of all employees except Support employees. The Division bills against the deposit as well as for any travel or out-of-pocket expenses. If there is money remaining at the end of the background check, it is refunded to the applicant. If the Division determines that investigation related expenses will exceed the initial deposit, an additional deposit is required.

### ***Background Investigation Deposit***

|                    |          |
|--------------------|----------|
| Type I applicants  | \$ 5,000 |
| Type II applicants | \$10,000 |
| Key Employee       | \$ 1,000 |

An organizational chart of the Division

**Key  
Employee**

A key employee is an employee, agent, or executive of a gaming licensee who has decision making power concerning any part of the operation of a gaming licensee. "Each licensed retailer must always have one key employee available at all times to make determinations regarding matters which arise from the operation of its limited gaming establishment. Retailers may therefore, wish to consider licensing more than one key employee, Each manufacturer/distributor and operator must have at least one key employee licensed by the Commission." "Available at all times" means for an "A" licensee - within 15 minutes or "B, C" licensees means on the premises. For an explanation of the differences between "A", "B", and "C" licenses, please see pages 13 and 14 in the Program Administration Section.

**Support  
Employee**

A support employee is anyone who works directly with the gaming operation such as dealers, slot mechanics, and change personnel. This year the Division started a new application process for support applicants. If applicants take their application in person to any Division office, they may receive a "temporary" license within one hour. This streamlining of the licensing of support personnel is one of the best innovations the Division has implemented.

Prior to this new procedure, it took 4 to 6 weeks for support personnel to get a license. People who applied for support licenses wanted to start working in the casinos as soon as possible, and the casinos wanted them to start working as soon as possible. This created a hardship for both the applicants and the casinos. The Division had discovered that after investigating their backgrounds, only approximately 1% of the applicants for support licenses were disqualified. If the Division, after a temporary license has been issued, discovers information for which one may be disqualified they revoke the license.



**Annual License Fees**

|                  |         |
|------------------|---------|
| Mfg./Distributor | \$1,000 |
| Operator         | \$1,000 |
| Retail           | \$ 250  |
| Key Employee     | \$ 150  |
| Support          | \$ 100  |

**Original Gaming Licenses Issued**

|                   | <u>FY 1992</u> | <u>FY 1993</u> | <u>FY 1994</u> |
|-------------------|----------------|----------------|----------------|
| Mfg./Distributor  | 17             | 12             | 2              |
| Operator          | 8              | 3              | 9              |
| Operator/Retailer | 98             | 36             | 18             |
| Retailer          | 3              | 0              | 5              |
| Key Associated    | 177            | 60             | 71             |
| Key               | 366            | 203            | 209            |
| Support           | 5,729          | 3,392          | 1,579          |

**Accounting and Internal Control Procedures**

The Commission has established, in rule, internal controls and accounting procedures for casinos which the Division, through its auditing section, enforces. These procedures include reports and statement requirements for reporting and paying gaming taxes and fees, records of ownership requirements, standard financial and audited financial statements, procedures for handling cash and meeting minimum bankroll requirements, adjusted gross proceeds computations, and record retention requirements.

For auditing purposes, retail and operator licenses are divided into 4 categories. These categories are as follows:

Group A = licensee with 1 - 49 slot machines and no table games;

Group B = licensee with 50 - 249 slot machines and/or 1 - 4 table games;

Group C = licensee with 250 or more slot machines and/or 5 or more table games;

Slot Route Operator = a licensed operator who places slot machines on another licensed retailer's property.

The Division has established minimum internal control procedures for each group of licensees. Internal control procedures ask the casinos, "How do you account for the money you take in?" These internal controls include accounting procedures, reporting procedures, and personnel policies. Licensees have the option of adopting the Division's internal control procedures or they may establish their own internal control procedures which must be approved by the Division.

The Division is responsible for ensuring that casinos pay the correct taxes, that customers are paid the correct winnings, and that casinos are not used for illegal purposes such as money laundering. Done correctly, internal control procedures ensure that the money gets from the patron into the tax revenue.

Colorado Gaming Regulation § 47.1-1610 describes the minimum requirements that licensees must establish in order to use their own alternative internal control procedures. Such procedures must be designed to ensure that:

1. Assets are safeguarded and accountability over assets is maintained;
2. Liabilities are properly recorded and contingent liabilities are properly disclosed;
3. Financial records including revenue, expenses, assets, liability, and equity are accurate and reliable;

4. Transactions are performed only in accordance with Generally Accepted Accounting Standards, the Commission's rules and regulations, and management's stated policies which cannot be inconsistent with such standards, rules, and regulations;
5. Transactions are recorded adequately to permit proper reporting of gaming revenue and of fees and taxes;
6. Access to assets is permitted only in accordance with management's specific authorization;
7. Recorded accountability for assets is compared with actual assets at reasonable intervals and appropriate action is taken with respect to any discrepancies; and
8. Functions, duties, and responsibilities are appropriately segregated and performed in accordance with sound practices by competent qualified personnel.

The practical application of the above criteria means that the casinos must have precise procedures that employees must follow for such casino operations as the cashier's cage, count rooms, slot machines, blackjack tables, poker tables, the pit area, the surveillance programs, and for such transactions as drop and count procedures. Licensees must, at all times, follow and comply with its system of internal control. Each retail licensee must prepare a financial statement, which includes all data relevant to the consideration of the gaming tax, each fiscal year. Group C licensees must submit a financial statement prepared by a Certified Public Accountant.

## **Compliance Checks**

A team of approximately 4 - 5 auditors and investigators call upon a casino to conduct a compliance check - no previous notice is given to the casino. Compliance reviews are a check of the control environment of the casino at a particular moment in time. They are not in-depth reviews of continuing operating procedures of the casino. These reviews are helpful in measuring how a licensee is operating. Colorado's approach to minimum internal control procedures is to enumerate what each control should be. As a contrast, Nevada has a list of Minimum Internal Control Standards that must be approved by the State Gaming Control Board.

The compliance review team uses a "Minimum Compliance Checklist" to check to see if casinos are following their internal control procedures. (See Appendices for a copy of a "Minimum Compliance Checklist"). As the checklist demonstrates, internal control procedures are very detailed. Since their inception, the internal controls procedures have been revised twice. Currently, there is a panel made up of industry representatives and Division auditors and investigators that is reviewing the minimum internal control procedures. It is recommending that changes be made. The Division's goal is to do a compliance check at least once a year.

After the compliance check, the Division sends the casino a notification letter that describes any violations. The casino has 15 days in which to respond to the Division's findings. These responses may be to disagree outright with the finding, agree with the findings and state how they are fixing the violation, or disagree with the findings and show how other internal control measures were sufficient.

## **Disciplinary Procedures**

The Division tracks whether the violation is repetitive. If it is, a warning letter is sent. A warning letter may be sent for other reasons besides a compliance check violation. As part of the warning letter a complaint is included. Casinos have 10 days in which to respond to a warning letter. They may offer an explanation for the violation, or state that the violation has been remedied. The Division is supposed to return to the violating casino soon after the response to make sure the violation has been corrected. The complaint stays in a casino's file for approximately 1 year even if there is no resultant penalty. The auditing section only began issuing warning letters last year. During fiscal year 1994, the auditing section issued 8 warning letters. For fiscal year 1995, the auditing section, so far, has issued 9.

The next step the auditing section may take is recommending to the Commission to issue an "order to show cause" on why a licensee should not be subject to formal disciplinary remedies. Such an order requires licensees to respond to the Division's assertions. The licensees and the Division may enter into an agreement of "Assurance of Voluntary Compliance" or a stipulated agreement. An assurance of voluntary compliance does not require the licensee to admit guilt of any violation, so the licensee does not have to pay a fine or penalty. But they may have to pay for the cost of the investigation to the Division. If the licensee and the Division enter into a stipulated agreement, guilt is admitted and a fine or penalty may be assessed against the licensee.

The auditing section only began recommending to the Commission to issue "orders to show cause" in fiscal year 1994. During that year, only one was issued. During fiscal year 1995, the auditing section, so far, has recommended issuing 6 of them.

## **Financial Audit**

The auditing section also does a financial audit to review the licensee's internal control procedures and examination of the gaming revenue reporting. After the audit is completed, the Division then prepares a report for submission to the Commission. At the conclusion of each examination, and prior to submitting the report to the Commission, the Division must review the results of the audit with the licensee. If the licensee disagrees with the report, the licensee has 10 days to submit comments in writing as to why the report should not be submitted to the Commission. If the Division and the licensee cannot reach an agreement on the report, the Commission then considers both the Division's report and the licensee's response prior to its determination of its acceptance of the audit.

There is no statutory section or regulation that demands audits be done at particular time intervals. One of the criterion the Division uses to decide on whom to audit is a "risk and materiality" guideline. For the "risk" element the Division looks at the record of a casino's method of operation. In other words, the Division looks to see if the casino has a lot of compliance violations to assess its level of "risk." The "materiality" element of the auditing guideline looks at the amount of money a casino generates.

### ***Investigation Section***

The investigation section performs several functions for the Division. The Division maintains 3 offices in which investigators and auditors are assigned. There is one office in Central City, one in Cripple Creek, and one in Denver. The Division's investigators all have some sort of professional criminal investigation experience. The statute designates all investigators to be level II peace officers.

## **Duties of Investigators**

Investigators are involved from the beginning of the application process. They are charged with investigating the background of all applicants prior to licensure. Investigators only become involved with investigating the background of support license applicants if a problem shows up in the first cursory check.

They do a more in-depth investigation of key employees, operators, manufacturer/distributors, and retail licensees by personally interviewing them, checking on character witnesses, looking into their past business practices, investigating sources of funding, and scrutinizing the backgrounds of any person with an ownership interest of 5% or more. There are so many variables that go into investigating applicants that no average investigation time may be estimated.

After Nevada, Colorado has the toughest licensing standards in the nation. Its reputation throughout the country is strong. An indication of the thoroughness of the Division's background investigations is that, for the most part, other states will acknowledge a Colorado gaming license and give it credibility when an applicant applies for licensure in their respective states.

In the beginning, the investigation section was spending most of its time conducting background investigations on applicants. They now spend more of their time in enforcement activities and change of ownership applications. The Division has discovered that as the number of people gambling increases, the amount of crime increases. Last year there were approximately 600 criminal complaints filed.

| <b>Colorado Division of Gaming<br/>Investigations and Enforcement</b> |             |             |             |             |
|---|-------------|-------------|-------------|-------------|
| <i>Activity</i>   | <i>1995</i> | <i>1994</i> | <i>1993</i> | <i>1992</i> |
| Offense Reports   | 221         | 575         | 381         | 133         |
| Incident Reports  | 215         | 661         | 693         | 254         |
| Contact Cards   | 144         | 593         | 469         | 353         |
| Patron Complaints/Dispute Investigations                              | 39          | 96          | 144         | 302         |
| <b>Arrests and Other Charges</b>                                      |             |             |             |             |
| Felony Charges  | 24          | 49          | 35          | 15          |
| Misdemeanor Charges   | 181         | 520         | 320         | 100         |
| Juvenile Filings  | 0           | 13          | 5           | 4           |
| Intelligence Reports Initiated by Division                            | 28          | 153         | 259         | 180         |
| Intelligence Reports Initiated by Others                              |             |             | 107         | 113         |
| Outside/Other Agency Assists  | 7           | 161         | 540         | 365         |
| Local Agency Gaming Arrest Cases                                      | 2           | 60          |             |             |
| Seizures of Equipment (Number)  |             |             | 0           | 2           |
| Seizures of Money (Dollars)   |             |             | \$20.00     | \$0.00      |
| <b>Licensing Investigations Completed</b>                             |             |             |             |             |
| Owner-Operator/Manufacturer-Distributor, New                          | 4           | 41          | 35          |             |
| Owner-Operator/Manufacturer-Distributor, Renewal                      | 10          | 81          |             |             |
| Change of Ownership or Business Structure                             | 6           | 34          |             |             |
| Key Employee, New   | 7           | 239         | 208         |             |
| Employee Backgrounds and Other  | 2           | 52          | 35          |             |
| New Support Licenses Approved   | 138         | 1834        | 2118        |             |
| Renewal Key and Support Licenses Approved                             | 146         | 2075        |             |             |
| Machine Inspections   | 826         | 11747       | 8798        |             |
| Compliance Inspections  | 8           | 60          | 164         |             |
| Training Delivered and Meetings by Division Personnel (Number)        |             | 50          | 33          |             |
| For Licensees and Public  | 4           | 5           | 3           |             |
| For other Government Agencies   | 0           | 24          | 6           |             |
| For Law Enforcement Agencies  | 2           |             |             |             |
| Training Attended/Received by Division Personnel (Person-Hours)       | 1135        | 1667        | 2361        | 2228        |



## *SUNSET ANALYSIS*

The Colorado Division of Gaming is scheduled to terminate on July 1, 1996 unless continued by the General Assembly. During this review, the Division must demonstrate that there is a need for the continued existence of the program and that the regulation it provides is the least restrictive consistent with the public interest.

The limited gaming industry is an important part of the Colorado economy. There are statistical summaries for each gaming city for October 1, 1991 through September 30, 1994 in the Appendices that show the number of casinos operating, devices in use, the AGP for each month, and the taxes paid monthly. There is inherent potential for corruption in the gaming industry as well as victimization of the consumers of that industry. Unregulated competition cannot protect patrons from general fraud in legalized gaming industries. Nor can it ensure that the tax revenue will be protected.

The Limited Gaming Control Commission is created by the Colorado Constitution. Even if the legislature were to recommend the termination of the Division, limited gaming and the Commission would still exist, and there would still be a need to regulate limited gaming. It is not logical to terminate a division only to have to recreate it. Therefore, the critical question is whether the regulation provided is the least restrictive consistent with the public interest.

The legislature has made it clear that it wants strict regulatory oversight of the limited gaming industry. It has declared, "[t]he success of limited gaming is dependent upon public confidence and trust that licensed limited gaming is conducted honestly and competitively; that the rights of the creditors of licensees are protected; and that gaming is free from criminal and corruptive elements; [p]ublic confidence and trust can be maintained only by strict regulation of all persons, locations, practices, associations, and activities related to the operation of licensed gaming establishments and the manufacture or distribution of gaming devices and equipment."

§ 12-47.1-102(1)(a),(b), C.R.S.

There is a tendency for a new regulatory agency to over-regulate, since an abundance of caution is expected. The Division acknowledges that in the beginning it was very aggressive in its application of the new law. No one knew what to expect, but after almost 4 years of regulation, the Division has developed a strong program that is generally praised by the industry. The Division is learning to strike that balance between strong regulation without being overburdensome.

The limited gaming industry believes that effective and fair regulatory oversight is necessary in order to protect the integrity of gaming in Colorado. They know it is important for the public to trust that slot machines and games are conducted honestly.

In the process of researching this report, the Office of Policy and Research (“OPR”) talked to several members of the limited gaming industry and their representatives. While there was almost unanimous praise of the Director of the Division, and the investigatory section of the Division, they expressed some level of frustration with the auditing section.

The situation between the limited gaming industry and the auditing section of the Division apparently stems from a communication problem and an increase in auditing activity. Until last year, the auditing section was operating with less than a full staff. As a consequence, the section was not able to perform as many compliance checks or revenue audits as they currently are able to perform. While the casinos were accustomed to dealing with the investigation section, they were not accustomed to working with auditing oversight. Nor were the auditors used to dealing with the casino industry.

Because state law requires that only Colorado residents may become state employees, and Colorado has not had gaming for very long, a reasonable consequence is that entry-level auditors will not have much experience auditing gaming establishments. The auditors are in the midst of a learning curve.

Because of this situation, good communication between the Division and the industry is imperative. After talking with some casino representatives, it was clear that many of them did not understand the regulatory law and structure under which they did business. For example, many of them expressed a frustration that they had to use internal control procedures that were not really adaptable to their individual casino. They did not seem to be aware that they could request variances from those internal controls or the procedure by which to do so. Other casino representatives were confused as to the importance that should be placed on various letters and warnings issued by the auditing section.

The Division is aware of the concerns that have been expressed and they have been and are currently addressing them. Two methods the Division is using to resolve these problems are through industry training and exchanging information with other gaming officials. The auditing staff conducts training sessions for the industry in order to explain Division rules and procedures. And because the Division knows that its auditors are new to the gaming industry, and in an attempt to advance their training, the Division hosts educational seminars for gaming officials from around the nation. This gives gaming regulators a chance to share information. In fact, such a conference will be held in Colorado in August of 1995.

The Division cannot address the complaints of the industry without the cooperation of the industry. In the past, when the Director has heard that there might be a situation or problem between an auditor and a casino, and the Director has contacted the casino to find out what the problem is, he has been told that everything is fine and that there is no problem. This creates a frustration for the Division when it is trying to improve its performance.

The Division has demonstrated that it takes its statutory directive to safeguard the public's money and the tax revenue very seriously. At the same time, it has shown a flexibility in working with the industry that has strengthened the program rather than weakened it.

## *RECOMMENDATIONS*

### **Should Regulation of Limited Gaming by the Division of Gaming be Continued?**

This Sunset Review concludes that such regulation is necessary. Continuation of the Division is needed in order to regulate and supervise the limited gaming industry in Colorado. As stated in the Sunset Analysis section of this report, the legislature wants strict regulatory oversight of the limited gaming industry in order to ensure the integrity of the industry. The gaming industry also supports regulatory oversight in order to assure the consumer that their games are honest.

The Division works to ensure the integrity of limited gaming in Colorado by carefully investigating all of the participants before issuing a license, and by scrutinizing the operations of licensees.

In order to improve the job it is doing, the Division seeks input from the industry that it regulates. The industry has helped create some of the rules that have been promulgated, and their input is sought on how rules and procedures affect their businesses. The Division is sensitive to the fact that their actions have a real-world practical affect on licensees, while at the same time they recognize that their job is to protect the public and the tax revenue.

***Recommendation 1: The regulation of limited gaming by the Division of Gaming should continue.***

### **License Renewal for Support and Key Employees** §§ 12-47.1-501(d), (e) and 519(2), C.R.S.

Currently, all licenses must be renewed annually, and it must be done 120 days prior to the renewal date. The Division has found that annual license renewal for support and key employees is not necessary and creates more work for the licensees and the Division. The Division discovered that in most cases there were not many changes in the eligibility status of the licensee. With its new licensing system, the Division is able to investigate the background of licensees without subjecting the licensee to the renewal process.

Section 12-47.1-519(2), C.R.S. requires that an application for renewal of a license shall be filed with the commission no later than 120 days prior to the expiration of the current license. This requirement was originally included to allow the Division an adequate time to re-investigate the background of licensees to see if they were still eligible for licensing. The Division has found this time requirement to be onerous for support and key licensees and unnecessary for the Division.

***Recommendation 2: Section 12-47.1-501, C.R.S. should be amended to change the renewal cycle for support and key licenses from annual to every 2 years. Section 12-47.1-519, C.R.S. should be amended to allow the Commission to set the renewal time frame for support and key licenses.***

**Amend  
Statute to  
Clarify When  
Tax Return or  
Report is Due**

Under § 12-47.1-604(1), C.R.S., the language is confusing as to when a tax return or report is considered late in remittance to the Division. It declares, “Any person who fails to file a return or report required by this article, which return or report includes taxable transactions, **within fifteen days following the date the return or report is due** is subject to the payment of an additional amount assessed as a penalty. . . .”

The words that are in bold in the above paragraph should be deleted and substituted with the words **on or before the date it is due as prescribed in § 12-47.1-602, C.R.S.** This should clarify when a report or return will be considered late.

***Recommendation 3: Section 12-47.1-604(1), C.R.S. should be amended to reflect the changes discussed above.***

## **Slot Machines and Shipping Notices**

**§ 12-47.1-803(1),  
C.R.S.**

The language of this statutory section has created unnecessary paperwork on the part of licensees and the Division. The statute requires, "Any machine licensed pursuant to this section shall be licensed for a specific location, and movement of the machine from that location shall be reported to the commission within twenty-four hours after such movement." The intent of this section is to allow the Division to track the location of slot machines, especially as they come into the state and move between casinos.

However, the above stated language requires casinos to fill out a report to the Division even when they move slot machines from the gaming floor to the basement. The Division does not need to know this information within 24 hours. Nor do they necessarily need to receive this information as paperwork. A goal of the Division is to continually update and simplify its data gathering methods. The statute should be flexible enough to allow the Division to update its procedures. A more practical solution would be for the Commission to set, by rule, the time and manner by which casinos must report such movement.

***Recommendation 4: Amend § 12-47.1-803(1), C.R.S. to allow the Commission to set, by rule, the time and manner by which casinos must report the movement of slot machines.***

## **Duplication of Retail and Operator Licenses**

Because the definitions of retail gaming license and operator license overlap, approximately 98% of retail licensees must also apply for and purchase an operator license. This is an unnecessary duplication and expense to retail licensees. The qualifications for obtaining an operator license are no more stringent than qualifying for a retail license; therefore, there is no reason to require the retail applicants to also obtain an operator license.

***Recommendation 5: Amend § 12-47.1-501(1)(c), C.R.S. to exempt retail gaming licensees from also having to obtain an operator license.***

## **Duties of the Director of the Division of Gaming**

The statute unduly restricts the Director's ability to pursue interests outside of gaming. It requires that the Director "devote his entire time and attention to the duties of his office and shall not be engaged in any other profession or occupation." § 12-47.1-203(1), C.R.S. This is an extreme requirement that is not practically possible. One may assume that the legislature did not mean for the Director to actually devote all of his or her time and attention to his or her office to the exclusion of other aspects of his or her life. Even if the intent was for that requirement to be read in conjunction with the prohibition from engaging in any other profession or occupation, the restriction would still be unreasonable. For example, if the Director wants to sell household products to friends and relatives, he or she would be prohibited from doing so under current law.

There is no reason to restrict the Director's use of personal time to pursue an outside profession unless that outside profession conflicts with the duties as the Division Director. The statute should be amended to allow the Director the ability to pursue another part-time profession that does not conflict with his or her duties as the Director of the Division.

***Recommendation 6: Section 12-47.1-203(1), C.R.S. should be amended to read "The director shall not be engaged in any other profession or occupation that presents a conflict of interest to his or her duties as director of the division of gaming."***

**Denial of  
Application  
Under § 12-  
47.1-520,  
C.R.S.**

Under § 12-47.1-520, C.R.S., an applicant who has been denied a license by the Commission may not reapply for licensure for at least 1 year. Any person who has been denied twice may not reapply for at least 3 years. There is no provision in the statute that places a restriction on when licensees who have had their licenses revoked may reapply.

Revocation of a license is a more serious action than a denial of an application. Revocation only takes place after the licensee has been accused of violating the statute, an administrative hearing has been held, and the violation established. Therefore, the statute should be amended to include revocation of a license as a reason to prevent reapplication for a certain period of time. At the same time, the Commission should have the authority to look at the facts in each case and decide if prohibiting someone from reapplying is an appropriate remedy.

***Recommendation 7: Amend § 12-47.1-520, C.R.S. to include revocation of a license as a reason to restrict a person's opportunity to reapply for licensure, unless otherwise provided in the revocation order.***



*APPENDICES*

## Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

## **Division of Gaming Statute**

**12-47.1-201. Division of gaming - creation.** There is hereby created, within the department of revenue, the division of gaming, the head of which shall be the director of the division of gaming. The director shall be appointed by, and shall be subject to removal by, the executive director of the department of revenue. The division of gaming, the Colorado limited gaming control commission created in section 12-47.1-301, and the director of the division of gaming shall exercise their respective powers and perform their respective duties and functions as specified in this article under the department of revenue as if the same were transferred to the department by a type 2 transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.; except that the commission shall have full and exclusive authority to promulgate rules and regulations related to limited gaming without any approval by, or delegation of authority from, the department.

**12-47.1-202. Function of division.** The function of the division is to license, implement, regulate, and supervise the conduct of limited gaming in this state as authorized by section 9 of article XVIII of the state constitution.

**12-47.1-203. Director - qualification - powers and duties.** (1) The director shall be qualified by training and experience to direct the work of the division; and, notwithstanding the provisions of section 24-5-101, C.R.S., the director shall be of good character and shall not have been convicted of any felony or gambling-related offense. The director shall devote his entire time and attention to the duties of his office and shall not be engaged in any other profession or occupation. The director, as administrative head of the division, shall direct and supervise its administrative and technical activities. In addition to the duties imposed upon the director elsewhere in this part 2, it shall be the duty of the director:

(a) To supervise and administer the operation of the division and limited gaming in accordance with the provisions of this article and the rules and regulations of the commission;

(b) To attend meetings of the commission or to appoint a designee to attend in the director's place;

(c) To employ and direct such personnel as may be necessary to carry out the purposes of this article, but no person shall be employed who has been convicted of a felony or gambling-related offense, notwithstanding the provisions of section 24-5-101, C.R.S. The director, with the approval of the commission, may enter into agreements with any department, agency, or unit of state government to secure services which the director deems necessary and to provide for the payment for such services and may employ and compensate such consultants and technical assistants as may be required and as otherwise permitted by law.

(d) To confer with the commission as necessary or desirable, but not less than once each month, with regard to the operation of the division;

(e) To make available for inspection by the commission or any member of the commission, upon request, all books, records, files, and other information and documents in the director's office;

(f) To advise the commission and recommend to the commission such rules and regulations and such other procedures as the director deems necessary and advisable to improve the operation of the division and the conduct of limited gaming;

(g) With the concurrence of the commission or pursuant to commission requirements and procedures, to enter into contracts for materials, equipment, and supplies to be used in the operation of the division;

(h) To make a continuous study and investigation of the operation and the administration of similar laws which may be in effect in other states or countries; of any literature on gaming which from time to time may be published or available; and of any federal laws which may affect the operation of the division, the conduction of limited gaming, or the reaction of Colorado citizens to limited gaming with a view to recommending or effecting changes that would serve the purposes of this article;

(i) To furnish to the state treasurer and the commission a monthly report which contains a full and complete statement of the division's revenue and expenses for each month. All reports required by this paragraph (i) shall be public, and copies of all such reports shall be sent to the governor, the speaker of the house of representatives, the president of the senate, the minority leaders of both houses, and the executive director of the department of revenue.

(j) To annually prepare and submit to the commission, for its approval, a proposed budget for the succeeding fiscal year, which budget shall set forth a complete financial plan for all proposed expenditures and anticipated revenues of the division. For the fiscal year commencing July 1, 1991, the director shall prepare a proposed budget and shall submit it to the commission for approval by the commission at the earliest feasible time.

(k) To take such action as may be determined by the commission to be necessary to protect the security and integrity of limited gaming;

(l) To perform any other lawful acts which the commission may consider necessary or desirable in order to carry out the purposes and provisions of this article;

(m) To annually prepare and submit to the commission, for its approval, a proposed budget for the ensuing fiscal year, which budget shall present a complete financial plan setting forth all proposed expenditures and anticipated revenues of the division.

**12-47.1-204. Investigator - peace officers.** (1) All investigators of the division of gaming, and their supervisors, including the director and the executive director, shall have all the powers of any peace officer to:

(a) Make arrests, with or without warrant, for any violation of the provisions of this article, article 19 of title 18, C.R.S., or the rules and regulations promulgated pursuant to this article, any other laws or regulations pertaining to the conducting of limited gaming in this state, or any criminal law of this state, if, during an officer's exercise of powers or performance of duties under this section, probable cause is established that a violation of any said law or rule or regulation has occurred;

(b) Inspect, examine, investigate, hold, or impound any premises where limited gaming is conducted, any devices or equipment designed for or used in limited gaming, and any books and records in any way connected with any limited gaming activity;

(c) Require any person licensed pursuant to this article, upon demand, to permit an inspection of such person's licensed premises, gaming equipment and devices, or books or records; and to permit the testing and the seizure for testing or examination purposes of all such devices, equipment, and books and records;

(d) Serve all warrants, notices, summonses, or other processes relating to the enforcement of laws regulating limited gaming;

(e) Serve distraint warrants issued by the department of revenue pertaining to limited gaming;

(f) Conduct investigations into the character, record, and reputation of all applicants for limited gaming licenses, all licensees, and such other persons as the commission may determine pertaining to limited gaming;

(g) Investigate violations of all the laws pertaining to limited gaming and limited gaming activities;

(h) Assist or aid any sheriff or other peace officer in the performance of his duties upon such sheriff's or peace officer's request or the request of other local officials having jurisdiction.

(2) Criminal violations of this article discovered during an authorized investigation or discovered by the commission shall be referred to the appropriate district attorney.

(3) The investigators of the division and their supervisors, including the director of the division and the executive director of the department of revenue, shall be considered a peace officer, level II as defined in section 18-1-901 (3) (I) (III), C.R.S.

(4) Nothing in this section shall be construed to prohibit local sheriffs, police departments, and other local law enforcement agencies from enforcing the provisions of this article, and the rules and regulations promulgated pursuant to this article, or from performing their other duties to the full extent permitted by law. All such sheriffs, police officers, district attorneys, and other local law enforcement agencies shall have all the powers set forth in subsection (1) of this section.

**12-47.1-205. Division of gaming - access to records.** The division of gaming, for purposes of this article, shall have full authority to procure, at the expense of the division, any records furnished to or maintained by any law enforcement agency in the United States, including state and local law enforcement agencies in Colorado and other states for the purposes of carrying out its responsibilities pursuant to this article. Upon request from the Colorado bureau of investigation, the division shall provide copies of any and all information obtained pursuant to this article.

**12-47.1-206. Repeal of division - review of functions. Unless continued by the general assembly, this part 2 is repealed, effective July 1, 1996, and those powers, duties, and functions of the director specified in this part 2 are abolished. The provisions of section 24-34-104 (5) to (12), C.R.S., concerning a windup period, an analysis and evaluation, public hearings, and claims by or against an agency shall apply to the powers, duties, and functions of the director of said division.**

## **Organizational Chart**

**Colorado Statistical Summaries**













**Internal Control Minimum Compliance Checklist**







































