

MOCK-UP

PROPOSED AMENDMENT 3401 TO SENATE BILL NO. 367

PREPARED FOR SENATE COMMITTEE ON REVENUE AND ECONOMIC DEVELOPMENT
MAY 18, 2021

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of **green bold underlining** is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

Legislative Counsel's Digest:

Existing law provides for the imposition of an excise tax on admission to certain facilities where live entertainment is provided. (Chapter 368A of NRS) ~~Existing law exempts from that excise tax: (1) live entertainment provided by or entirely for the benefit of a nonprofit organization, if the number of tickets offered for sale or other distribution to patrons is less than 7,500; and (2) an athletic contest, event or exhibition conducted by a professional team based in this State and in which the team participates. (NRS 368A.200) This bill removes the exemption from the excise tax for such athletic contests, events or exhibitions. This bill also lowers the threshold at which the excise tax is imposed for live entertainment provided by or entirely for the benefit of a nonprofit corporation from 7,500 tickets offered for sale or other distribution to 5,000 tickets.~~ **Section 1 of this bill provides that the tax applies to a fee or charge that must be paid to reserve or guarantee the right to pay an additional fee or charge in exchange for admission to a facility where live entertainment is provided. Section 2 of this bill provides that the tax does not apply to live entertainment provided by or entirely for the benefit of a governmental entity.**

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1. NRS 368A.020 is hereby amended to read as follows:**

1 368A.020 1. Except as otherwise provided in this section,
2 “admission charge” means the total amount, expressed in terms of money,
3 of consideration paid for the right or privilege to enter or have access to a
4 facility where live entertainment is provided.

5 2. Except as otherwise provided in this section or NRS 368A.200 or
6 any other specific statute, the term includes, without limitation, ~~the~~ :

7 (a) An entertainment fee ; ~~the~~

8 (b) A cover charge ; ~~the~~

9 (c) A required minimum purchase of food, beverages or merchandise ;

10 ~~the~~

11 (d) A membership fee ; ~~and a~~

12 (e) A service charge ; ~~for any~~

13 (f) Any fee or charge that must be paid to reserve or guarantee the
14 right to pay, at the same time or in the future, an additional fee or charge
15 in exchange for admission to a facility where live entertainment is
16 provided; or

17 (g) Any other fee or charge that is required to be paid in exchange for
18 admission to a facility where live entertainment is provided.

19 3. The term does not include:

20 (a) The value of an admission to a facility provided to a patron on a
21 complimentary basis, unless the complimentary admission is associated
22 with a separate purchase that is required for the patron to enter or have
23 access to the facility; or

24 (b) A charge for the right or privilege of entering, or having access to,
25 a particular portion within a facility, that is in addition to a charge
26 described in subsection 1 or 2, including, without limitation, a charge for:

27 (1) Food, beverages or merchandise that is in addition to a required
28 minimum purchase of food, beverages or merchandise as described in
29 subsection 2; or

30 (2) Access to tables, seats, lounge chairs or particular areas near a
31 swimming pool.

32 4. Except as otherwise provided in this subsection, the term does not
33 include license or rental fees for luxury suites, boxes or similar products at
34 facilities with a maximum occupancy of at least 7,500 persons. If the
35 license or rental fee includes the admission of a certain number of patrons
36 to a facility where a live entertainment event is provided, the admission
37 charge is an amount equal to the lowest priced admission charge for the
38 live entertainment event multiplied by the number of admissions to the live
39 entertainment event included in the license or rental fee.

40 ~~Section 1.~~ **Sec. 2.** NRS 368A.200 is hereby amended to read as
41 follows:

42 368A.200 1. Except as otherwise provided in this section, there is
43 hereby imposed an excise tax on admission to any facility in this State
44 where live entertainment is provided and on the charge for live

1 entertainment provided by an escort at one or more locations in this State.

2 The rate of the tax is:

3 (a) Except as otherwise provided in paragraph (b), for admission to a
4 facility in this State where live entertainment is provided, 9 percent of the
5 admission charge to the facility.

6 (b) For live entertainment provided by an escort who is escorting one
7 or more persons at a location or locations in this State, 9 percent of the
8 total amount, expressed in terms of money, of consideration paid for the
9 live entertainment provided by the escort.

10 2. Amounts paid for:

11 (a) Admission charges collected and retained by a nonprofit religious,
12 charitable, fraternal or other organization that qualifies as a tax-exempt
13 organization pursuant to 26 U.S.C. § 501(c), or by a nonprofit corporation
14 organized or existing under the provisions of chapter 82 of NRS, are not
15 taxable pursuant to this section, only if the number of tickets to the live
16 entertainment which are offered for sale or other distribution to patrons,
17 either directly or indirectly through a partner, subsidiary, client, affiliate or
18 other collaborator, is less than 7,500. ~~15,000.~~

19 (b) Gratuities directly or indirectly remitted to persons employed at a
20 facility where live entertainment is provided are not taxable pursuant to
21 this section.

22 (c) Fees imposed, collected and retained by an independent financial
23 institution in connection with the use of credit cards or debit cards to pay
24 the admission charge to a facility where live entertainment is provided are
25 not taxable pursuant to this section. As used in this paragraph,
26 "independent financial institution" means a financial institution that is not
27 the taxpayer or an owner or operator of the facility where the live
28 entertainment is provided or an affiliate of any of those persons.

29 3. The tax imposed by this section must be added to and collected
30 from the purchaser at the time of purchase, whether or not the admission
31 for live entertainment is purchased for resale. Each ticket for admission to
32 a facility where live entertainment is provided must show on its face the
33 admission charge or the seller of the admission shall prominently display a
34 notice disclosing the admission charge at the box office or other place
35 where the charge is made.

36 4. The tax imposed by subsection 1 does not apply to:

37 (a) Live entertainment that this State is prohibited from taxing under
38 the Constitution, laws or treaties of the United States or the Nevada
39 Constitution.

40 (b) Live entertainment that is governed by the Nevada Interscholastic
41 Activities Association pursuant to chapter 385B of NRS or is provided or
42 sponsored by an elementary school, junior high school, middle school or
43 high school, if only pupils or faculty provide the live entertainment.

44 (c) An athletic contest, event, tournament or exhibition provided by an
45 institution of the Nevada System of Higher Education, if students of such

1 an institution are contestants in the contest, event, tournament or
2 exhibition.

3 (d) Live entertainment that is provided by or entirely for the benefit of
4 a nonprofit religious, charitable, fraternal or other organization that
5 qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c), or a
6 nonprofit corporation organized or existing under the provisions of chapter
7 82 of NRS, only if the number of tickets to the live entertainment which
8 are offered for sale or other distribution to patrons, either directly or
9 indirectly through a partner, subsidiary, client, affiliate or other
10 collaborator, is less than 7,500. ~~15,000.~~

11 (e) Any boxing contest or exhibition governed by the provisions of
12 chapter 467 of NRS.

13 (f) Live entertainment that is not provided at a licensed gaming
14 establishment if the facility in which the live entertainment is provided has
15 a maximum occupancy of less than 200 persons.

16 (g) Live entertainment that is provided at a licensed gaming
17 establishment that is licensed for less than 51 slot machines, less than 6
18 games, or any combination of slot machines and games within those
19 respective limits, if the facility in which the live entertainment is provided
20 has a maximum occupancy of less than 200 persons.

21 (h) Live entertainment that is provided at a trade show.

22 (i) Music performed by musicians who move constantly through the
23 audience if no other form of live entertainment is afforded to the patrons.

24 (j) Live entertainment that is provided at a licensed gaming
25 establishment at private meetings or dinners attended by members of a
26 particular organization or by a casual assemblage if the purpose of the
27 event is not primarily for entertainment.

28 (k) Live entertainment that is provided in the common area of a
29 shopping mall, unless the entertainment is provided in a facility located
30 within the mall.

31 (l) Food and product demonstrations provided at a shopping mall, a
32 craft show or an establishment that sells grocery products, housewares,
33 hardware or other supplies for the home.

34 (m) Live entertainment that is incidental to an amusement ride, a
35 motion simulator or a similar digital, electronic, mechanical or
36 electromechanical attraction. For the purposes of this paragraph, live
37 entertainment shall be deemed to be incidental to an amusement ride, a
38 motion simulator or a similar digital, electronic, mechanical or
39 electromechanical attraction if the live entertainment is:

40 (1) Not the predominant element of the attraction; and

41 (2) Not the primary purpose for which the public rides, attends or
42 otherwise participates in the attraction.

43 (n) A race scheduled at a race track in this State and sanctioned by the
44 National Association for Stock Car Auto Racing, if two or more such races
45 are held at that race track during the same calendar year.

1 (o) An athletic contest, event or exhibition conducted by a professional
2 team based in this State if the professional team based in this State is a
3 participant in the contest, event or exhibition.

4 (p) Live entertainment that is provided by or entirely for the benefit
5 of a governmental entity.

6 5. As used in this section:

7 (a) "Affiliate" has the meaning ascribed to it in NRS 463.0133.

8 (b) "Maximum occupancy" means, in the following order of priority:

9 (1) The maximum occupancy of the facility in which live
10 entertainment is provided, as determined by the State Fire Marshal or the
11 local governmental agency that has the authority to determine the
12 maximum occupancy of the facility;

13 (2) If such a maximum occupancy has not been determined, the
14 maximum occupancy of the facility designated in any permit required to be
15 obtained in order to provide the live entertainment; or

16 (3) If such a permit does not designate the maximum occupancy of
17 the facility, the actual seating capacity of the facility in which the live
18 entertainment is provided.

19 (c) "Operator" includes, without limitation, a person who operates a
20 facility where live entertainment is provided or who presents, produces or
21 otherwise provides live entertainment.

22 ~~{Sec. 2.}~~ **Sec. 3.** Notwithstanding the provisions of NRS 218D.430
23 and 218D.435, a committee, other than the Assembly Standing Committee
24 on Ways and Means and the Senate Standing Committee on Finance, may
25 vote on this act before the expiration of the period prescribed for the return
26 of a fiscal note in NRS 218D.475. This section applies retroactively from
27 and after March 22, 2021.

28 ~~{Sec. 3.}~~ **Sec. 4.** This act becomes effective ~~{on July 1, 2021.}~~
29 upon passage and approval.