

CASINO GAMING AND REGULATIONS IN THE UNITED STATES VIRGIN ISLANDS

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On November 3, 1995, the Governor of the United States Virgin Islands signed into law Bill No. 21-0027 establishing the Virgin Islands Casino and Resort Control Act of 1995.

The signing of the Legislation however, was the culmination of many years of discussion among the general public regarding the introduction of casino gambling to the Virgin Islands.

One of the earliest pieces of legislation regarding the legalization of the casino gambling in the U.S.V.I. was initiated by a St. Croix organization called Crucians for Casino Entertainment. In June of 1992, that organization released a draft of legislation it hoped would be adopted by the Virgin Islands Legislature to form the blue print for casino gambling in the Virgin Islands.

Though the discussion regarding casino gambling intensified following the release of the draft legislation, not much was done until November 1994 when a referendum was placed on the election ballot to allow the voters of both island districts i.e.; St. Croix and St. Thomas/St. John to decide whether casino gambling should be introduced in the islands.

The measure was defeated in the St. Thomas/St. John district but won approval in the St. Croix district. Following the passage of the referendum, a member of the 21st., Legislature introduced legislation to legalize casino gambling on St. Croix.

In the late evening of April 27, 1995 after a lengthy debate filled with rancor, the 21st. Legislature, on a vote of 9 to 6 approved Bill No. 21-0027 to legalize casino gambling on St. Croix. The Bill was signed into law by the Governor on May 8, 1995. This however, was not the end of the story.

Immediately after the signing of the legislation, the Bill's main sponsor, claimed that the Bill signed into law by the Governor was not the same legislation that was adopted by the Senate. He claimed that the document signed by the Governor contained several substantive and material omissions from the version that was approved by the

Legislature. The Senator stated that he might be forced to take legal action to have the provisions which were omitted included in the official version of the legislation.

Following the concerns which were raised by the bill's sponsor, the President of the Legislature directed the Legislature's Legal Counsel to review the legal transcript of the Legislative Session and prepare a package of amendments, if applicable, to reflect the concerns raised by the Bill's sponsor.

However, the drafting of the amendments to correct the earlier errors, in no way ended the debate. In fact the debate regarding the introduction of the casino gaming only intensified. Included in the legislation was a provision granting special concessions to Native Virgin Islanders, while the concept of granting these concessions was not necessarily opposed by a majority of the residents, what caused much concern and debate among the residents was the definition of a Native Virgin Islander. The definition of Native Virgin Islander in the original version of the legislation was : "Native Virgin Islander - not withstanding any laws to the contrary, " Native Virgin Islander shall be defined as any person born in the Virgin Islands prior to 1927; any person who is an offspring of parent (s) born in the Virgin Islands prior to 1927; or any person born outside the Virgin Islands to Native Virgin Islands parent (s) while that parent (s) was studying abroad; employed abroad or in active military service." This definition did not sit well with the tens of thousands of Virgin Islands residents who migrated to the Virgin Islands from other countries including many in the Caribbean or with their children who were in fact first generation Virgin Islanders.

That group felt disenfranchised and voiced their strong objection to the definition of Native Virgin Islander in the legislation.

When the Senate once again convened to consider the bill, the discussion was even more intense than at the first Session. This time however, the majority of the discussion centered on the definition of a Native Virgin Islander. The division in the Senate on the definition of Native Virgin Islander was so intense that the sponsor of the bill introduced

an amendment that would have repealed the entire bill if the definition of Native Virgin Islander as contained in the original version of the Legislation was deleted. At the end legislation creating the Virgin Islands Casino and Resort Control Act with an amended definition of Native Virgin Islander (The current definition eliminated the phrase “ prior to 1927”) and other amendments omitted in the original law, was passed by the Virgin Islands Legislature and signed into law by the Governor.

The Virgin Islands Casino and Resort Control Act of 1995, was intended to stimulate the economy of St. Croix especially the tourism sector and casino gambling was considered as an added incentive to the tourism product. The legislation allows for the issuance of six (6) casino licenses. However, a casino cannot stand alone and has to be part of a major hotel and convention facility. The different categories of casino licenses are as follows.

- (a) Tier I -requires a hotel with a minimum of 1500 sleeping units -1 license
- (b) Tier II- requires a hotel with between 300-1499 sleeping units -2 licenses
- (c) TierIII- requires a hotel with between 200-299 sleeping units-2 licenses and
- (d) Tier IV-requires a hotel with between 150-199 sleeping units -1 license

In order to ensure proper regulation and enforcement of legalized gambling in the Virgin Islands, the Casino and Resort Control Act established two regulatory bodies, the Casino Control Commission and the Division of Gaming Enforcement.

The original legislation signed into law called for a seven member Commission representing different disciplines, such as Banking and Finance, Accounting, Law and Economics. A later amendment reduced the size of the Commission to six (6) members and eliminated the requirement for representation of a special field. The law was further amended to require five (5) Commissioners, however, during the past two years, the Commission has operated with three members.

One of the main functions, of the Commission is the issuance of licenses to prospective investors and employees. The Commission has established vigorous standards to ensure that anyone who is issued a license as either an investor, a supplier of goods or services, or an employee be suitable to be associated with the industry. An investor applying for a casino license must be able to prove that he/ it has the financial background and resources, and also the financial stability, integrity and responsibility necessary to construct and manage a Casino/Hotel facility. Additionally, every applicant for a casino license or permit must be able to prove his good character, honesty and integrity. In order to evaluate these criteria, each applicant has to provide information pertaining to his family, habits, character, reputation, criminal and arrest record covering a ten (10) year period immediately preceding the filing of his application.

The Casino Control Commission also has to have a presence, through its inspectors and agents, at a casino at all times during the operation of the casino. This presence is necessary to certify revenues, receive complaint from patrons, examine records of revenue and conduct reviews of the operations.

The Commission is also responsible to collect all licensing and registration fees, conduct all hearings pertaining to civil violations of the casino laws or regulations and promulgate any regulation in its judgment it believes to be necessary to fulfill the policies of the Casino Act.

The Division of Gaming Enforcement (DGE) is the investigation and enforcement arm of the Commission. However, the DGE is not a part of the Commission, but a unit within the Virgin Islands Department of Justice. The DGE is headed by a Director who has to be an Assistant Attorney General appointed by the Governor and confirmed by the Virgin Islands Legislature. The main function of the DGE is to investigate the qualifications of each applicant before the Commission issues any license, permit or certification to that applicant. As stated previously everyone associated with the industry from the owner of the hotel/casino to the construction contractor to the supplier of goods

and services to the custodial worker, have to complete a disclosure form and be subjected to an investigation by the DGE.

Additionally, the DGE is required to investigate any violation the of casino laws or rules and regulations referred to it by the Commission and report its findings to the Commission or prosecute the violators before the Commission or the Territorial Court of the Virgin Islands. The DGE is also responsible for testing and maintaining the integrity of all gaming machines at a Casino.

The passage of legislation in no way ensured smooth sailing for the introduction of casino gambling in the Virgin Islands.

The Virgin Islands Casino and Resort Control Act of 1995, mirrored the New Jersey Casino Control Act. While the concept of strict control of the industry was welcomed in most quarters as a positive sign, it was widely believed that some modification had to be made to the New Jersey model in order for casino gambling to be successful in the Virgin Islands.

In an article entitled “ How not to Legalize Casinos” in the December 1996 edition of Casino Journal, Anthony Cabot, an intentionally renowned gaming attorney and author stated the following about the Virgin Islands Casino Industry.

“.....In contrast, the Virgin Islands borrowed a tried and true regulatory structure by adopting the New Jersey system almost verbatim. Whether the New Jersey system as originally adopted worked in New Jersey is a matter of considerable debate, but what is certain is that it will not work in the Virgin Islands. The difference between the two places is obvious. New Jersey has a multibillion-dollar gaming industry. It has the ability to support an expensive regulatory system both in terms of cost to the Government and to the regulators. The Virgin Islands however, may under perfect circumstances evolve into a market about 1/20th the size of New Jersey. The fixed regulatory costs imposed by the New Jersey system alone will likely make casino gaming unfeasible on the islands..... The Virgin Islands failed to take into account the fundamental differences between their

situation and New Jersey in adopting their gaming laws.... The Virgin Island's system is so burdensome and expensive that it may not attract any casino investors.....".The criticism of the casino law did not only come from international gaming experts but from the local residents who feared the legislation in its original form would not encourage investors to the islands.

The Commission aware of the concerns expressed but ever mindful of the task ahead, began drafting rules and regulations for the gaming industry during the early months of 1998. However, it soon became evident that major amendments, had to be made to the legislation if the Virgin Islands were to attract casino investors. In March 1997, in an effort to make the law more "investor friendly", major amendments were made to the existing law. At the Commission's first meeting following the adoption of the amendments, the Commission reduced portions of the various licensing fees.

The following were some of the changes made to the original licensing fee structure:

	FROM	TO
Tier I License	\$900,000	\$800,00
Tier II License	\$500,000	\$350,000
Tier III License	\$250,000	\$150,000

By 1997 with the rules and regulations in place, and a new fee structure adopted, the CCC appeared to be ready for business. However, casino business was not yet ready for the Commission or the Virgin Islands. Though many different investors contacted the Commission and expressed interest in developing a Hotel/Casino Complex on St. Croix, nothing was finalized. In the meantime the residents of St. Croix who had approved a referendum in 1994 paving the way for the establishment of casino gambling were becoming frustrated. There was mounting criticism of the Commission. The size and budget of the Commission, the salary of the Commissioners were frequent topic of criticism on local talk shows and in local newspapers.

The following except from a Letter to the Editor in the St. Croix Avis on Tuesday May 13, 1997 by John Ellis regarding the lack of working police cars was typical of the criticism levied against the Commission “..... we recently renovated the beautiful Casino Control Commission building, we have Commissioners making beaucoup bucks, but for the longest time, no casino, can't we quit paying them until they can show product?”

In another article titled, “Casino Commission wants \$1.2 million which appeared in the May 1997 issue of Caribbean week, the author wrote, “The Territory’s Casino Control Commission has sent Government House a proposed fiscal year 1998 budget of U.S. \$ 1.2 million, which it says will be offset by gross revenue taxes from two casinos....” he went on to say... “But few people except, apparently the Casino Commission expect even the smallest possible hotel, 150 rooms to be built in fiscal 1998, which starts October 1, 1997...”.

Moreover, the public believed that it was the duty of the CCC to market the industry and they demanded that the Commission engage in marketing in order to attract casino development. The Commission had to painstakingly explain to the general public that marketing was not the role of the Commission and it would be a conflict of interest if the Commission engaged in marketing to the investors it would have to regulate.

In 1998, however, the CCC fortunes began to change. In March of 1998, the CCC received the first license application. However the application was not for the construction of a casino, but for a license to supply goods to the industry from a manufacture of gaming equipment.

In early May 1998, the Virgin Islands was abuzz when Michael Jackson visited the Territory and toured various sites for a proposed Hotel Casino Complex. Unfortunately that project never materialized.

Finally, on Tuesday, May 26, 1998, Treasure Bay Gaming and Resort Inc. filed the first casino license application with the CCC to commence casino gambling on St. Croix.

Two months later, Black Hawk Gaming and Development Inc. of Colorado filed a Casino license application with the Commission.

The Commission, which for years had only heard promises from potential investors, now had two casino license applications within a two month period. On December 2, 1998, The CCC issued its first casino license to Treasure Bay VI Corporation, a subsidiary of Treasure Bay Gambling and Resort Inc. to operate a Tier IV Casino in the Virgin Islands.

The first casino on St. Croix was scheduled to open in mid December of 1999, unfortunately like everything else surrounding casino gambling on St. Croix this was not to be. In November of 1999 Hurricane Lenny passed through the Virgin Islands causing severe damage to the casino structure under construction, resulting in a further delay of the opening of the casino. However, on March 14, 2001 approximately 5 years after the passing of the Casino Act, The Divi Carina Bay Casino officially opened for business. The casino opened with 295 slot machines, 1 Crap table, 2 Roulette wheels and 9 black jack tables. Operating hours were from 12:00 noon to 4:00 am on weekdays and 12:00 noon to 6:00 am on weekends. The wait was finally over and many individuals throughout the islands expressed their satisfaction with the Casino.

Currently the Divi Carina Bay Hotel / Casino Complex employs approximately 335 individuals and during the first full year of operations the Casino had taxable gross revenues of \$13.5 million dollars and paid the Government over \$1 million in gross revenue taxes and an additional \$188,155.00 in licensing and registration fees.

The tax imposed on the casino is a graduated tax. During the first two years of operations the casino pays 8% tax per annum on gross revenues. During the 3rd and 4th years the figure increases to 10% per annum and for each succeeding year the casino is required to pay a tax on gross revenues of 12%.

In addition to the tax on gross revenues, the casino pays a yearly fee of \$250 for each slot machine in operation.

The revenues derived from taxes on gross revenue goes into a special Government fund and is distributed to various Government agencies and departments.

As I stated earlier, the Division of Gaming Enforcement is responsible for maintaining the integrity of all slot machines in the casino. Before any slot machine can be used for gaming in a casino in the Virgin Islands, that machine is first tested by the DGE or its agent and the computer chip which controls the pay odds is approved for use and sealed in the machine with a tamper resistant tape by an official of the DGE. Moreover, anytime one of these computer chip in the machine has to be replaced, an official of the DGE has to be present to verify that the tamper resistant tape was not broken prior to the removal of the computer chip, and before the machine is allowed back into service, the new chip has to be tested and sealed by the DGE. To further maintain the integrity of the system, the casino has to notify the DGE of any jackpot win of \$25,000.00 or greater and allow the DGE to verify the winning combination and inspect the machine before a payout is made. It is a violation of the rules and regulation if the DGE is not notified and the DGE will file a complaint against the casino with the CCC for such a violation.

In addition to the Divi Carina Bay Casino, the CCC has two active license applications which are being investigated by the DGE one for Queen Ann Hotel and Casino and the other for Golden Gaming, LLC.

While the CCC urged patience during the years that it took for the Virgin Islands to have its first Hotel / Casino, other forms of gambling where being considered. Primarily, legislation to allow the Virgin Islands Lottery System to introduce video lottery was discussed as early as 1997. This form of gambling which many in the industry refers to as the "crack cocaine" of gambling was vehemently opposed by the Casino Control Commission and prospective casino/hotel investors who felt that the introduction of Video Lottery Terminals (VLT) would undermine the Casino Hotel Industry. On the other

hand, the proponents of VLT talked about the instant revenue, without much overhead which would be generated from the introduction of VLT. After much discussion, plans for the introduction of VLT were shelved while the Virgin Islands concentrated on its first casino. However, the VLT debate recently resurfaced with the passage of legislation authorizing the Director of the Virgin Islands Lottery System to introduce Video Lottery Terminals as another form of gambling in the Virgin Islands. Again the debate on the introduction of VLT was very intense and in the end, the Governor vetoed the legislation. It is widely believed though that the proponents of VLT have not given up and are still trying to have VLT introduced to the island's gambling mix.

Another form of gambling being considered by the Virgin Islands Legislature is Internet Gambling. There is currently a bill in the Virgin Island Legislature which seeks to make the Virgin Islands a cite for setting up Internet Servers. Internet gambling has been in operation in many jurisdictions outside the United States. Notably in Australia and in many countries in Latin America and the Caribbean. However, it is widely believed that current United States laws make that type of gambling illegal in the United States. By enacting legislation, the Virgin Islands intends to be on the starting line to get into a gambling market which appears to be very lucrative if it can overcome the current legal impediments. The draft legislation which was introduced in the Virgin Islands Legislature on May 7, 2001 was held in committee for further discussion and refinement.

By most accounts, the introduction of casino gambling on St. Croix is a starting point in improving St. Croix tourism industry. However, there is much work to be done, before St. Croix becomes a formidable tourist destination.