

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

JUDICIARY COMMITTEE

Monday, May 10, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Chris Griffin, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Chris Griffin, Lois Delmore, Edmund Gruchalla, Patrick R. Hatlestad, Kathy Hogan, Robert Kilichowski, Joyce M. Kingsbury, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Lisa Wolf, Steven L. Zaiser; Senators Jim Dotzenrod, Stanley W. Lyson, Dave Nething, Curtis Olafson, Mac Schneider

Others present: See [Appendix A](#)

It was moved by Representative Delmore, seconded by Representative Wolf, and carried on a voice vote that the minutes of the February 11, 2010, meeting be approved.

REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

Chairman Griffin called on Mr. Alvin A. Jaeger, Secretary of State, for testimony regarding the Revised Uniform Limited Liability Company Act. Mr. Jaeger provided information ([Appendix B](#)) regarding the concerns that he and others, including Mr. William L. Guy III and Ms. Clara Jenkins, have with the Revised Uniform Limited Liability Company Act. He said Mr. Guy believes this legislation is too important to be enacted without careful consideration. He said one of the controversial elements of the revised Act is the allowance for a date of creation, which is not the date when the documents were filed with the Secretary of State or on a later specified date. He said there are concerns that this date could actually be a date before the filing with the Secretary of State, which could cause a concern for those individuals who rely on the public record and for the filing offices that certify the information. Another concern, he said, is that the revised Act enables the creation of a limited liability company for any purpose whether it is for profit or nonprofit reasons. He said this proposal conflicts with the state's current statutory structure. He said because of the concerns that the revised Act has raised in various states, the National Conference of Commissioners on Uniform State Laws is considering revisions to the revised Act during its summer 2010 meeting, with final approval of those revisions scheduled for the summer of 2011. He said the revised Act has been adopted in Iowa, Idaho, Nebraska, and Wyoming.

In response to a question from Senator Dotzenrod, Mr. Jaeger said having separate chapters in the North

Dakota Century Code for for-profit and nonprofit limited liability companies has been helpful to the Secretary of State's office. He said he recommended the separation, and the Legislative Assembly approved the concept.

In response to a question from Representative Delmore, Mr. Jaeger said he is hopeful that the uniform law commissioners will take the states' concerns into account when making revisions. He said the filing procedures in the revised Act would be very different than the state's current procedures.

It was moved by Representative Klemin, seconded by Senator Nething, and carried on a voice vote that the Judiciary Committee recommend to the Legislative Management to continue the study of the Revised Uniform Limited Liability Company Act during the 2011-12 interim.

UNIFORM DEBT-MANAGEMENT SERVICES ACT STUDY

Chairman Griffin called on Mr. Timothy Karsky, Commissioner, Department of Financial Institutions, for the presentation of information regarding debt-management services and a bill draft based upon the Uniform Debt-Management Services Act. Mr. Karsky said as per the request of the Judiciary Committee at the last meeting, his office prepared draft legislation for the committee to review. He said he used the Uniform Debt-Management Services Act as a starting point but made revisions to the uniform Act using laws and bills of several other states. He said the draft legislation is a very rough draft, and if the committee decides to go ahead with this legislation, additional changes will be necessary. He reviewed the draft legislation ([Appendix C](#)). He said because it is unclear as to the number of full-time equivalent (FTE) positions that will be necessary to implement this legislation, his department's budget to the Governor will not include the funding for those FTE positions. He submitted written testimony ([Appendix D](#)).

In response to a question from Senator Olafson, Mr. Karsky said because only nonprofit debt services companies are currently regulated in the state and because those companies only are required to be registered rather than licensed, there has not been a regulation on the fees charged by these companies. He said the 15 percent settlement fee contained on page 24 of the bill draft is based upon the fee allowed in Illinois' pending legislation.

In response to a question from Representative Klemin, Mr. Karsky said he would provide to the committee information regarding the origins of the language included in the draft legislation as well as information regarding any changes that were made to the uniform Act in preparing the draft legislation. He said the uniform Act was very wordy and unclear. He said laws from other states were included in the draft legislation to make the legislation more workable for North Dakota consumers.

In response to a question from Representative Koppelman, Mr. Parrell Grossman, Director, Consumer Protection and Antitrust Division, Attorney General's office, said although the state has fraud and false advertising laws in place, the uniform Act is designed to cover those areas and to protect the consumers from practices that may not be covered by current law. He said the state should have specific laws for the debt-management companies to follow. He said the topic of regulating debt-management companies is one of concern to consumer protection offices throughout the country. He said many of the states do not like the uniform Act because it does not provide enough consumer protection. He said the maximum fee of 15 percent of the consumer's savings is the general amount among those states with legislation in place. He said some unregulated companies charge the consumer 15 percent of the amount of the consumer's debt as their fee.

Representative Koppelman said the draft legislation is very restrictive. He said if the state is lacking the tools to regulate the debt-management industry, perhaps only those tools should be given.

In response to a question from Representative Koppelman, Mr. Grossman said the regulations in the bill do not apply to professions such as lawyers and accountants because those professions are already regulated and licensed by their respective licensing bodies. He said the restrictions on advertising in the draft legislation make the provider liable, not the advertiser. He said it is not the intent of this proposed legislation that the Attorney General or the Department of Financial Institutions would take action against an advertiser. He said there are reports of debt-management companies taking up to \$4,000 from a consumer without providing any debt-relief services. He said it is likely that there are legitimate debt-management companies. He said he hopes these legitimate companies will come forward and defend their practices.

Representative Klemin said this uniform Act was under consideration by the National Conference of Commissioners on Uniform State Laws for many years. He said the national conference recognized that there is a need for the regulation of the debt-management industry.

In response to a question from Representative Klemin, Mr. Karsky said the reciprocity provision in the uniform Act was not included in the draft legislation. He said the uniform Act only requires registration of

the debt-management companies; however, the draft legislation would require licensure.

In response to a question from Representative Griffin, Mr. Karsky said the uniform Act allows for the regulation of either for-profit or nonprofit companies or both. He said the draft regulation would regulate both types of companies. He said he will try to get information on the number of FTE positions that will be required to implement the legislation. He said he would also provide information on the status of similar legislation in other states. He said the language in the draft legislation regarding independent contractors is taken from the uniform Act.

In response to a question from Senator Lyson, Mr. Grossman said the role for local law enforcement in this process occurs when the companies engage in criminal activity rather than civil activity. He said dealing with the civil violations would more likely be handled at the state level.

In response to a question from Senator Schneider, Mr. Grossman said under the draft legislation, a company would have to be licensed to conduct business in the state. He said the consumer would still have the power to pursue a private cause of action even if the Attorney General would not pursue the case.

Mr. Grossman also provided to the committee information from the United States Government Accountability Office regarding fraudulent, abusive, and deceptive debt-settlement practices, a copy of which is on file in the Legislative Council office.

CHARITABLE GAMING AND RACING STUDY

At the request of Chairman Griffin, committee counsel presented a bill draft [\[10069.0100\]](#) regarding gaming taxes and allowable expenses. Committee counsel said the bill draft provides for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 58 percent for all organizations. She said the bill also consolidates all taxes into a flat rate of 3.16 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds.

Chairman Griffin called on Mr. Keith Lauer, Director, Gaming Division, Attorney General's office, for a presentation of information and testimony regarding the bill draft. Mr. Lauer said he conducted a survey of gaming organizations regarding charitable gaming in the state and any recommendations those organizations may have for changes. He said of the 326 licensed gaming organizations in the state, 48 responded to the survey, or about 15 percent. He said although 72 percent of respondents indicated that the current gaming tax return is easy to prepare, about one-half have some problems with the form or need adjustments. He said he used the survey results to assist him in preparing the bill draft. He provided a copy of the survey results ([Appendix E](#)).

Mr. Lauer said the amount of taxes collected in one quarter, or about \$1.9 million, is more than enough to cover the state's gaming administration costs for the biennium.

In response to a question from Representative Delmore, Mr. Lauer said the bill draft, as written, is revenue-neutral. He said under the bill draft, the state would continue to collect about \$15.4 million per biennium in gaming taxes. He said if the tax rate was reduced to 2 percent, the gaming taxes to the state would be reduced by about \$5 million. He said the bill draft would help the smaller organizations, most of which are now paying 4 percent to 5 percent of gross proceeds in gaming taxes. He said the bill draft would provide for a flat gaming tax rate of 3.16 percent.

In response to a question from Representative Griffin, Mr. Lauer said at 3.16 percent, about 80 percent of the gaming organizations would see a tax reduction while about 20 percent would see an increase. He said the survey results indicate that the gaming industry is overtaxed. He said to get the entire industry to support the tax rates in the bill draft, it is likely the rate would have to be lower than 3.16 percent.

In response to a question from Senator Nething, Mr. Lauer said the state collects about \$15.4 million in gaming taxes per biennium. He said the Attorney General's general fund appropriation for the Gaming Division is about \$1.8 million per biennium. He said about \$510,000 is paid to local law enforcement for gaming enforcement, and about \$6,000 is appropriated for the Gaming Commission's expenses. He said the state collects about \$80,000 from gaming stamps and is reimbursed about \$247,000 from the tribes for casino inspections.

In response to a question from Representative Delmore, Mr. Lauer said a reduction in the tax rate would result in more money for charitable purposes.

In response to a question from Representative Klemin, Mr. Lauer said there is not a simple way of establishing a two-tiered tax structure that would get the support of the gaming industry.

In response to a question from Senator Dotzenrod, Mr. Lauer said when charitable gaming began in 1977, the tax rate was about 3 percent of adjusted gross proceeds. He said in the late 1980s, the gaming taxes and the excise taxes were increased. He said to return to the collections of 1977, the tax rate would probably need to be less than 1 percent.

Chairman Griffin called on Mr. Marvin Knutson, Bison Booster Club, Milnor, for testimony regarding the bill draft. Mr. Knutson said with gross gaming sales of less than \$1 million per year, most quarters only result in a transfer of \$9,000 to \$11,000 to the Bison Booster Club. He said in light of the poor economy, this figure has dropped to \$5,500. He said the charitable organizations are looking for more income.

In response to a question from Representative Hatlestad, Mr. Knutson said the amount his organization pays to the Attorney General for taxes

each quarter is about the same amount as is transferred to the trust account for the charity.

Senator Olafson said it appears that the state is collecting about 10 times more than is needed to cover gaming administration costs.

LOTTERY REPORT

Chairman Griffin called on Mr. Randy Miller, Director, North Dakota Lottery, for the presentation of a report ([Appendix F](#)) regarding the operation of the lottery. Mr. Miller said the mission of the lottery is to maximize net proceeds for the benefit of the state by promoting entertaining games; providing quality customer service to retailers and players; achieving the highest standards of integrity, security, and accountability; and maintaining public trust. He said the lottery's fixed appropriation for the 2009-11 biennium is \$1.433 million for salaries and benefits for 9.5 FTE positions and \$2.150 million for operating expenses for a total of \$3.584 million. He said the lottery has a continuing appropriation for variable expenses of prizes, retailer commission, online gaming system vendor fees, and Multi-State Lottery Association game group dues. He said the appropriation funds eight FTE positions in the Lottery Division of the Attorney General's office, one FTE position in the Information Technology Division, and a .5 FTE position in the Finance and Administration Division. He said the appropriation funds three part-time draw operators. He said the lottery recently celebrated its fifth anniversary and enjoys broad public support in the play of its games. He said the lottery has achieved exceptional success in ticket sales and generating state general fund revenue. He said the challenge facing the lottery is to increase ticket sales and state general fund revenues each year in a very competitive market environment. He said the lottery's give-a-gift service provides players an opportunity to purchase lottery gift certificates for special occasions. He said for the fiscal year ended June 30, 2009, sales of gift certificates were \$1,559. He said the lottery's subscription service accounts for about 1.7 percent of total draw sales.

Mr. Miller said for the 2007-09 biennium, the lottery had operating revenue of \$44.03 million. He said for the 2009-11 biennium, the lottery projected sales of \$46.45 million and net proceeds of \$12.4 million. He said of those net proceeds, \$11.155 million would be deposited in the state general fund, \$400,000 to the compulsive gambling prevention and treatment fund, and \$845,000 to the Multijurisdictional Drug Task Force grant fund. He said through June 30, 2009, \$38.4 million, or 65.6 percent, of the prize expenses was payable to North Dakota players and \$20.1 million, or 34.4 percent, was payable to the Multi-State Lottery Association to fund prizes. He said for fiscal year 2010, \$7.9 million, or 83.4 percent, of the prize expenses was payable to North Dakota players and \$1.5 million, or 16.6 percent, was payable to the Multi-State Lottery Association to fund prizes.

Mr. Miller said a vital part of the lottery's mission is to maximize revenue for the state's general fund. He said to do this, the lottery must be innovative, energetic, and offer exciting and attractive games that add value to the lottery's product mix for players to play, license retailers that are in convenient locations to sell tickets, develop attractive point-of-sale items, have creative marketing promotions, provide quality customer service to retailers and players, and control operating expenses. He said during the 2009-11 biennium, the lottery has done or has plans to generate net proceeds of \$12.4 million, add the game Mega Millions to the games available to North Dakota players, relaunch the game of Wild Card 2, monitor the development of a national and a world game, expand the information available on the lottery's website, expand into social media by creating a lottery Facebook page, and continue to encourage players to be responsible in the amount they play.

In response to a question from Senator Olafson, Mr. Miller said it would be too cumbersome to extend debt setoff to private parties. He said when a player wins a prize in excess of \$599, the ticket must be redeemed at the lottery office. He said for winnings in excess of \$5,000, an e-mail is sent out to those agencies that participate in the lottery's debt setoff program. He said the participating agencies have 15 minutes to respond because the prize money is awarded to the player.

In response to a question from Representative Kingsbury, Mr. Miller said the development of a national or a world game is in the early stages of development. He said if the lottery decided to add one of these new games, it may transition out of one of its current games. He said Mega Millions was added to be able to compete with Minnesota retailers across the border.

In response to a question from Senator Nething, Mr. Miller said \$50,000 per quarter is deposited in the compulsive gambling prevention and treatment fund. He said this amount has increased since the inception of the lottery.

In response to a question from Representative Klemin, Mr. Miller said federal and state income tax is withheld from winnings in excess of \$5,000 at a federal tax rate of 25 percent and a state tax rate of 5.04 percent. He said the lottery has a security officer on staff to monitor retailer security efforts. He said the lottery terminals produce multiple receipts and have a voice acknowledgment of a winner. He said the majority of fraud problems in other states are related to the instant win tickets. He said there has been no indication that fraud is a problem in North Dakota.

In response to a question from Representative Kretschmar, Mr. Miller said the amount of expired prizes or nonredeemed winning tickets is \$1.729 million since 2004. He said the lottery continues to encourage people to check their tickets.

In response to a question from Representative Klemin, Mr. Miller said he would provide to the

committee information regarding the amount of state and federal taxes that have been paid.

RACING COMMISSION REPORT

Chairman Griffin called on Mr. Winston Satran, Director, Racing Commission, for the presentation of the biennial report and other information regarding the Racing Commission. Mr. Satran said the Racing Commission is working on its image in the state and on the national scene. He provided to the committee a copy of a letter ([Appendix G](#)) recently sent to the Ohio State Racing Commission regarding the status of account wagering in North Dakota. He also provided to the committee information ([Appendix H](#)) regarding an analysis of wagering in North Dakota's simulcast system as to harness tracks, greyhound tracks, and thoroughbred tracks.

Mr. Satran said Horse Race North Dakota will be accepting the loan proposal that was discussed at the committee's February 2010 meeting. He said Horse Race North Dakota has requested a \$50,000 grant from the Racing Commission if the loan is approved. He said within weeks, Horse Race North Dakota will have last year's debt paid. He said there will not be any racing in Fargo this summer. He said there will be four weeks of racing in Belcourt this summer. He said the board of directors at the Belcourt track has been very active in addressing its safety and facility issues.

Mr. Satran said the Racing Commission is considering licensing a totalizator company based in Australia. He said there are three totalizator companies in the United States; however, these companies operate using outdated computer systems. He said a company known as Media and Gaming from Australia is a cutting-edge totalizator company. He said the Racing Commission has licensed Media and Gaming because of its reliable system and its excellent leadership. He said licensing international account wagering will provide the funding necessary to fund live racing in the state.

Mr. Satran said based upon the gaming compacts with the tribes, the tribes are not permitted to receive any money from account wagering. He said to include the tribes in account wagering, the gaming compacts may need to be renegotiated before their expiration.

Mr. Satran said because there are no funds available for the Fargo track and because the Belcourt track is not suitable, there will not be any harness racing in North Dakota this season. He said the Racing Commission will allow the horsemen to go out of state for two races this summer in order to qualify for race funds. He said the Racing Commission will continue to work on repairing its image in the state and on the national scene. He said the Racing Commission is working on better relations with the horsemen. He said the Racing Commission is also working hard to return racing to Fargo.

In response to a question from Representative Delmore, Mr. Satran said the primary reason for no racing in Fargo this year is finances. He said Horse

Race North Dakota is still working to pay off suppliers and vendors from last year. He said account wagering money available to the Racing Commission has diminished in the last eight years. He said the Racing Commission gave \$585,000 to Fargo last year. He said the Racing Commission is working to restore racing to Fargo in 2011.

Chairman Griffin called on Mr. Joe Richardson, Gaming Studio, Inc., Fargo, for testimony regarding electronic gaming. Mr. Richardson said "neighborhood" gaming differs from destination casino markets. He said neighborhood gaming requires more gaming sensitivity than destination gaming. He said North Dakota charitable gaming is at its lowest since 1987, and bingo is at its lowest in over 20 years. He said the pull tab system used in North Dakota is the most expensive and least secure type of game of any game operated in the state. He said pull tabs is a transparent game, one for which the players know how many have won and how many winners remain. He demonstrated an electronic game using the Nokota Gaming System. He said this system is a finite-based system rather than continuum-based system, such as a slot machine.

Mr. Richardson provided information ([Appendix I](#)) to the committee regarding his proposal. He also provided to the committee a copy of proposed legislation ([Appendix J](#)).

In response to a question from Representative Zaiser, Mr. Richardson said people may not want to play games that appear to be too complex. He said it is important to limit the top prizes in a game to prevent players from losing their willpower.

CRIMINAL OFFENSES AND PENALTIES STUDY

At the request of Chairman Griffin, committee counsel presented a bill draft [[10070.0100](#)] regarding the penalties for crimes for which a monetary amount triggers the level of penalty. Committee counsel also distributed copies of comments ([Appendix K](#)) received from interested persons regarding the bill draft.

Chairman Griffin called on Mr. Ladd Erickson, McLean County State's Attorney, Washburn, for testimony regarding the criminal offenses and penalties study. Mr. Erickson said most of the penalties and the dollar amounts that trigger the penalties were set in the 1970s and 1980s. He said when preparing the bill draft, with the exception of North Dakota Century Code Section 12.1-21-04, which is in Section 3 of the bill draft, he focused on those statutes for which a monetary amount triggers the level of penalty. He said the change to

Section 12.1-23-09 was included to change "honestly" to "reasonably." He said the use of the term "reasonably" is more consistent with jury instructions and other crimes. He said most of the increases in the monetary amounts in the bill draft are double the current amounts. He said the proposed changes will result in a more efficient use of government services, including the use of indigent defense attorneys and the State Crime Laboratory.

In response to a question from Representative Delmore, Mr. Erickson said he primarily focused on the valuations in the bill draft and not on the number of offenses.

In response to a question from Representative Klemin, Mr. Erickson said his changes to Section 12.1-21-04 were an attempt to address some of the current problems with this section. He said most terrorism cases would be prosecuted under federal laws.

COMMITTEE DISCUSSION

Senator Nething requested that a new bill draft regarding charitable gaming taxes and expenses be prepared which changes the allowable expense limit from 58 percent to 60 percent and changes the tax rate from 3.16 percent to 1 percent.

Representative Hatlestad requested that Mr. Lauer provide to the committee information on the fiscal impact of setting the gaming tax rate at 1 percent, 1.5 percent, 2 percent, and 2.5 percent.

Representative Klemin said Section 3 of the criminal penalties bill draft should be redrafted as a separate bill for the next meeting. He said the committee should receive information regarding the terrorism statutes of other states.

Representative Gruchalla said the committee should receive information from the Department of Human Services regarding gambling addiction services and statistics.

Chairman Griffin said the debt-management services bill draft prepared by Mr. Karsky will be drafted in Legislative Council format for the next meeting.

No further business appearing, Chairman Griffin adjourned the meeting at 2:45 p.m.

Vonette J. Richter
Counsel

ATTACH:11