

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

JUDICIARY COMMITTEE

Wednesday, September 16, 2009
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, Robert Kilichowski, Joyce M. Kingsbury, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Jasper J. Schneider, Lisa Wolf, Steven L. Zaiser; Senators Stanley W. Lyson, Dave Nething, Curtis Olafson, Mac Schneider

Member absent: Senator Jim Dotzenrod

Others present: Carolyn Nelson, State Senator, Fargo

Representative Shirley Meyer and Senator David O'Connell, members of the Legislative Management, were also in attendance.

See attached [appendix](#) for additional persons present.

Chairman Griffin welcomed committee members and called on committee counsel to review the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

At the request of Chairman Griffin, committee counsel presented a memorandum entitled [Revised Uniform Limited Liability Company Act - Background Memorandum](#).

Chairman Griffin called on Mr. Alvin A. Jaeger, Secretary of State, for testimony regarding the Revised Uniform Limited Liability Company Act. He said this study is important because of the complexity of the Uniform Act and to ensure that the Uniform Act is modified to include the provisions applicable to North Dakota practices and procedures. He said as of September 16, 2009, there are 11,400 limited liability companies registered with the Secretary of State's office. He said the Secretary of State's office, together with the State Bar Association of North Dakota, would like to review the Uniform Act and prepare a bill draft for the consideration of the committee. He said Mr. William L. Guy, III, has indicated that a procedure similar to that followed for the Uniform Partnership Act could be followed in reviewing the Revised Uniform Limited Liability Company Act. He submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Schneider, Mr. Jaeger said Ms. Clara Jenkins from his office and

Mr. Guy, who were both involved in the drafting of the limited liability company law currently in effect, are the experts in this area and will work together to ensure that the necessary modifications are made to the Uniform Act to include provisions applicable to North Dakota practices and procedures.

Chairman Griffin called on Senator Carolyn Nelson for comments regarding the study of the Revised Limited Liability Company Act. She said when making significant changes to the state's limited liability company laws, it is important to review the impact those changes will have on other state laws.

UNIFORM LAW RECOMMENDATION

Chairman Griffin called on Mr. Jay E. Buringrud, Commissioner, North Dakota Commission on Uniform State Laws, for testimony regarding the recommendations of the commission. He said the North Dakota Commission on Uniform State Laws meets during the annual meeting of the National Conference of Commissioners on Uniform State Laws to determine which uniform or model acts to recommend to the next session of the Legislative Assembly. He said as the result of its meeting in 2009, the commission recommends the Uniform Real Property Transfer on Death Act for introduction during the 2011 legislative session. He said the Uniform Real Property Transfer on Death Act allows an owner of real property to pass the property simply and directly to a beneficiary on the owner's death without probate. He said the property passes by means of a recorded transfer-on-death deed.

In response to a question from Representative Meyer, Mr. Buringrud said the purposes of uniform laws are to avoid federal preemption and to provide for uniformity among the states.

In response to a question from Representative Delmore, Mr. Buringrud said under the Uniform Real Property Transfer on Death Act, property can be transferred to any person. He said the definition of person in this Act is similar to the definition of person in the North Dakota Century Code. He said, however, the provisions of the Act apply only to transfers of real property by individuals.

In response to a question from Senator Olafson, Mr. Buringrud said the purpose of the Act is to keep the real property out of probate.

In response to a question from Senator Nething, Representative Klemin said the role of the Judiciary

Committee with regard to this recommendation of the North Dakota Commission on Uniform State Laws is to review the recommended Acts and to take comments and testimony on the recommendations. He said the commission will introduce the recommended Acts in the upcoming legislative session. He said this process differs from the committee's study of the Revised Uniform Limited Liability Company Act. He said that Act comes before the Judiciary Committee as the result of a study resolution passed during the 2009 session. He said if the Judiciary Committee decides to recommend the Revised Uniform Limited Liability Company Act, the Judiciary Committee will make a recommendation to the Legislative Management for introduction of that Act to the Legislative Assembly in 2011.

UNIFORM DEBT-MANAGEMENT SERVICES ACT STUDY

At the request of Chairman Griffin, committee counsel presented a memorandum entitled [Uniform Debt-Management Services Act - Background Memorandum](#).

Chairman Griffin called on Mr. Robert Entringer, Assistant Commissioner, Department of Financial Institutions, for comments regarding the Uniform Debt-Management Services Act. He said he and the Commissioner of Financial Institutions, Mr. Timothy Karsky, have been reviewing the Uniform Act. He said there is a concern about the "for-profit" and "not-for-profit" provisions in the Act. He said the agency that is responsible for administering this Act will need additional staff.

In response to a question from Senator Schneider, Mr. Entringer said the Attorney General's office registers consumer credit counseling services companies that do business in the state. He said any complaint regarding those services is received by the Attorney General's office.

In response to a question from Representative Klemin, Mr. Entringer said the Uniform Act has been discussed with the Attorney General's office. He said both agencies are willing to administer the regulation provided for in the Act. He said North Dakota currently does not allow for-profit consumer counseling and debt-management companies to operate in the state. He said there are concerns about what a not-for-profit credit counseling and debt-management service is and whether some companies may be using their not-for-profit status as a front. He said there are also concerns that some companies may be doing business in the state without being registered. He said the Uniform Act would impose requirements upon those companies.

Chairman Griffin called on Mr. Parrell D. Grossman, Consumer Protection and Antitrust Division, Attorney General's office, for comments regarding the Uniform Debt-Management Services Act. He said his discussions with Mr. Karsky indicated that the Department of Financial Institutions would be

the appropriate agency to administer the Uniform Act. He said he would assist in the drafting of the legislation. He said the reason more states have not enacted this Uniform Act may be due in part to the fact that many states have their own laws to address the regulation of debt-management services. He said debt-management or debt-settlement companies are a problem in some states. He said some of these companies lead consumers to believe the company can settle the debtor's debt for less than half of the debt owed. He said consumers are often advised to quit paying their bills. He said when the debt-settlement company cannot deliver what has been promised, the debtor suffers. He said the Uniform Act would regulate debt-settlement companies. He said the state currently regulates consumer credit counseling companies. He said there are about 25 consumer credit counseling companies registered in the state. He said the Uniform Act would meld current consumer credit counseling services laws with the debt-management regulations.

In response to a question from Representative Wolf, Mr. Grossman said the Department of Financial Institutions would have to determine the number of additional positions that would be necessary to implement the Act. He said in light of the rigorous registration requirements in the Act, he would estimate a need for at least one full-time investigator and at least one part-time attorney.

In response to a question from Senator Schneider, Mr. Grossman said his office has received few complaints regarding consumer credit counseling services or debt-management services in the state. He said there have been three to five enforcement actions per year against consumer credit counseling services. He said there has not been any recent complaint regarding debt-settlement or debt-management companies.

In response to a question from Representative Delmore, Mr. Grossman said allowing for-profit companies to operate debt-management services would create more enforcement issues. He said of the 25 consumer credit counseling service companies doing business in the state, only three to five of those companies are North Dakota businesses.

In response to a question from Representative Zaiser, Mr. Grossman said the state requirement for consumer credit counseling service companies that do business in the state is a bond requirement rather than a registration requirement. He said enforcement actions that have been taken against these companies were the result of the companies' failure to post a bond or contact the Attorney General's office. He said an estimated 15 to 20 companies may be doing business in the state without following the bond and registration requirements.

In response to a question from Representative Klemin, Mr. Grossman said the Attorney General's office and the Department of Financial Institutions will review the Uniform Act and make recommendations regarding some of the unanswered questions

regarding the administration of the Uniform Act. He said one question to be answered is whether to allow for the regulation of only nonprofit companies or to allow for the regulation of for-profit companies as well. He said the Uniform Act may be a proactive way to prevent problems before they get to North Dakota. He said the current law is murky as to whether the Attorney General has the authority to handle those abuses now.

In response to a question from Representative Zaiser, Mr. Grossman said public education is an important part of this process.

CHARITABLE GAMING AND RACING STUDY

At the request of Chairman Griffin, committee counsel presented a memorandum entitled [Charitable Gaming and Racing Administration - Background Memorandum](#).

Chairman Griffin called on Mr. Keith Lauer, Director, Gaming Division, Attorney General's office, for testimony regarding the charitable gaming study. He provided to the committee information regarding trends in charitable gaming activity since 1989. He said the charitable gaming industry has been fairly healthy. He said the trends indicate an increase in activity in 1992 when pull tab dispensing device rules were approved and in 2001 when the bet limits for the game of twenty-one were increased from \$5 to \$25. He said the enactment of smoking restriction laws in 2005 had a negative impact on bingo activity.

Mr. Lauer also provided an analysis of gaming activity for the calendar year ending December 31, 2008. He said the amount wagered on charitable games for the year was \$265,805,193. He said this represents a 2.9 percent, or \$7,539,813, increase from calendar year 2007. He said all major game types had increases in the amount wagered in 2008, including pull tab dispensing devices, which increased 5.9 percent, or \$3,125,850; twenty-one, which increased 2.6 percent, or \$1,955,784; pull tab jars, which increased 2.5 percent, or \$2,158,677; and bingo, which increased .9 percent, or \$300,600. He said poker had the largest percentage decrease of 37.5 percent, or \$445,576, during calendar year 2008. He said about 79 percent of the amount collected from charitable gaming goes back to the players as prizes.

Mr. Lauer also provided information regarding the history of charitable gaming taxes. He said it is possible to simplify gaming taxes. He said a graduated tax for all gaming types is one possible way of simplifying the tax structure for the charitable organizations.

Mr. Lauer provided information regarding the top 20 gaming organizations in the state. He said 13 organizations in the state are paying the highest tax rate. He said an organization's allowable expenses is another area that could be streamlined. He said this would be especially helpful to the smaller organizations. He said anytime a process is

simplified, however, there will be winners and losers. He said he would work with the committee to draft legislation if the committee is interested in considering changes to the tax and allowable expense structure of charitable gaming. He provided written information, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Delmore, Mr. Lauer said animal groups, booster clubs, and convention and visitor bureaus are examples of public-spirited organizations. He said if an organization has insufficient funds after paying proceeds to the charity and paying taxes to the state, the organization has to make up the difference from other funding sources.

In response to a question from Senator O'Connell, Mr. Lauer said an estimated \$17.3 million will be deposited in the general fund from charitable gaming taxes in the current biennium. He said the state of North Dakota is the single largest charity or recipient of proceeds from charitable gaming.

Senator O'Connell said the state should only collect those taxes from charitable gaming which are necessary to cover administration and enforcement expenses.

In response to a question from Representative Klemin, Mr. Lauer said there has been a decrease in the number of charities over the years. He said without changes to the play of games, gaming activity tends to go flat. He said expenses continue to rise for the charities, especially with the increases in the minimum wage. He said it may be time to review the taxes that are collected by the state.

In response to a question from Senator Olafson, Mr. Lauer said an increase in the minimum bet limit for twenty-one may be one game change to consider. He said the old technology of stamps on pull tabs is another area to consider changing. He said the North Dakota charitable gaming industry is locked in to this old technology because the requirements are set in statute. He said the gaming industry has evolved and the statutes have not kept pace.

In response to a question from Representative Delmore, Mr. Lauer said excess expenses have been a problem for all charities not just the smaller charities.

In response to a question from Representative Zaiser, Mr. Lauer said 3 percent of taxes collected by the state is distributed to local jurisdictions in proportion to the taxes collected from licensed organizations within each city or county. He said the local jurisdictions can use those funds as they wish for covering the costs of enforcement efforts. He said the city of Fargo has elected to use those funds for a full-time gaming official.

Senator Nething said more of the money that is collected by the state should be used for gambling addiction programs. He said addressing gambling addiction issues should be part of any effort to reform the charitable gaming industry.

In response to a question from Representative Kretschmar, Mr. Lauer said there are about 2,000 gaming permits issued each year by local authorities.

In response to a question from Representative Koppelman, Mr. Lauer said state law does not impose a penalty for gaming conducted on private premises if the amount wagered per hand, game, or event does not exceed \$25. He said if gaming, such as a sports pool, is conducted by a bar or some other public place, the Gaming Division may be called to investigate.

In response to a question from Representative Griffin, Mr. Lauer said most of the regulations for charitable gaming are contained in administrative rules. He said the administrative rules have been streamlined over the years from over 300 pages to 105 pages. He said he would provide recommendations to the committee of those laws that could be streamlined.

In response to a question from Representative Klemin, Mr. Lauer said bar bingo is conducted in North Dakota; however, many local ordinances have restricted the game's hours of play. He said there are no prize level limits on bingo in statute or administrative rule.

Chairman Griffin called on Mr. Joe Richardson, Gaming Studio, Inc., Fargo, for testimony regarding the charitable gaming study. He said the Gaming Studio was a spinoff of a company called Great Gamble that he founded in 1982 as a licensed distributor of gaming products for North Dakota charitable gaming. He said while charitable gaming provides a visible community benefit and is monitored by civic-minded volunteers, it is restricted to vending that is the least secure and has the most expensive chances of any form of recreational gaming, including the commercial casinos and the state lottery. He said pull tabs cost organizations between 1.3 cents and 1.6 cents for each chance sold. He said the chance is used for less than eight seconds and is discarded or redeemed. He said the cost of handling the pull tabs is as much or more than the cost of buying the pull tabs. He said the need for new games that utilize technologies developed over the past few decades is clear; however, the process of introducing those new games requires new legislation for each new game. He said it is difficult to run a gaming business when each and every game must be approved by the Legislative Assembly. He said the Legislative Assembly should articulate values or parameters for new games and allow a committee or commission with gaming knowledge to find the best games that fit within those values. He provided written testimony and other information regarding refreshing gaming products with technological improvements, copies of which are on file in the Legislative Council office.

In response to a question from Representative Delmore, Mr. Richardson said that if given the parameters and values, he could provide to the committee examples of specific games.

In response to a question from Senator Olafson, Mr. Richardson said the outdated technology of pull tabs, the possibility of counterfeit tickets, and the cash handling involved are all reasons why paper pull tabs is not a secure game.

In response to a question from Senator Schneider, Mr. Richardson said he is not aware of any other state that authorizes a committee or commission to select games based upon set values or parameters. He said North Dakota and Minnesota are the leaders in charitable gaming. He said gaming practices are often borrowed from Nevada and adapted to the state's needs.

In response to a question from Representative Meyer, Mr. Richardson said he is not proposing a bar code system. He said a bar code system is based upon paper technology. He said other than the lottery, games should not be paper-intensive.

Chairman Griffin called on Ms. Karen Breiner, Charitable Gaming Association of North Dakota, for testimony regarding the charitable gaming study. She said there has not been any major change in the operation of charitable games in the state since 2001 when the bet limit for the game of twenty-one was increased. She said the charitable gaming industry is seeing a decrease in activity and is in need of a facelift. She said she would like the Legislative Assembly to consider a move to more electronic devices for conducting charitable gaming. She said electronic gaming is easier to audit and control and is a "greener" way to conduct gaming.

In response to a question from Representative Delmore, Ms. Breiner said she is not sure what the impact would be if the minimum bid for the game of twenty-one was increased from \$1 to \$2. She said she would offer suggestions at future meetings for charitable gaming changes. She said it might be helpful for the committee to see a manufacturer's demonstration of electronic gaming at a future meeting.

In response to a question from Representative Kretschmar, Ms. Breiner said there about 26 members in the Charitable Gaming Association of North Dakota.

In response to a question from Representative Griffin, Ms. Breiner said she would provide to the committee at a future meeting a comparison of the costs of paper versus electronic gaming. She said the main difference between the current gaming methods and electronic gaming is the use of paper and not the way the games are played or conducted.

Chairman Griffin called on Mr. Rick Stenseth, Charitable Gaming Association of North Dakota, for testimony regarding the charitable gaming study. He said he has been involved in charitable gaming in North Dakota for about 25 years. He said increases in the minimum wage have resulted in an increase in expenses for gaming, especially for the game of twenty-one. He said some of the other games rely on volunteers and are less labor-intensive. He said he would like to see more open rules for poker and an

increase in the minimum bet limit for the game of twenty-one.

Chairman Griffin called on Ms. Heather J. Benson, General Manager, North Dakota Horse Park, for testimony regarding the pari-mutuel racing study. She said North Dakota is home to a diverse cross section of pari-mutuel racing interests. She said these include two pari-mutuel licensed live racetracks, five walk-up simulcast wagering sites, and five licensed account wagering sites. She said live racing, which is a \$22 million per year industry in the state, is hosted at the Chippewa Downs track in Belcourt and the North Dakota Horse Park in Fargo. She said in 2009 the two tracks hosted a total of 23 race days that featured over 190 races, 500 horses, and awarded over half a million dollars in race purses. She said the live horse racing industry of North Dakota had an unprecedented year of gains in 2009. She said pari-mutuel wagering at the North Dakota Horse Park went up 48 percent in 2009 after seeing a 12 percent increase in 2008. She said the North Dakota Horse Park also saw an increase of 15 percent in horses for racing with all 412 stalls at the North Dakota Horse Park reserved over three weeks before racing began on July 24. She said overall revenue for the 2009 racing season at the North Dakota Horse Park was up over 23 percent over the 2008 season.

Ms. Benson said walk-up simulcast wagering, also known as off-track betting, has seen a continued downward trend over the past 5 years to 10 years. She said these sites are typically located in bars or casinos and offer live video feed and live wagering on racetracks across North America. She said these sites, operated through charities and with what is known as a service provider, were once in nearly every city with a population of more than 10,000. She said only five sites remain with locations in Fargo, Grand Forks, Bismarck, Belcourt, and Williston. She said total handle in years past exceeded the \$10 million mark, but current 2009 estimates call for year-end totals of less than \$5 million.

Ms. Benson said 2009 House Bill No. 1551 provided for a significant tax break for what is known as account wagering. She said before passage of House Bill No. 1551, North Dakota was home to only two active account wagering licenseholders. She said since the bill became effective on July 1, 2009, the total number of licensed account wagering service providers has increased to five with several more actively applying for a license. She said account wagering handle in 2008 was approximately \$30 million. She said in 2010, with the addition of the new sites, it is expected to exceed \$200 million.

Ms. Benson said the pari-mutuel wagering industry in the state is in the midst of great change. She said changes in tax law, administrative rule, leadership, and business relationships mean there is more room for positive growth, but it also means that those involved in the industry must be prepared for the change. She said areas ready for change and improvement include the relationships between

charities and simulcast service providers for walk-up wagering, the relationships between charities and simulcast service providers for account wagering, and the long-term stability of live racing in North Dakota. She provided written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Meyer, Ms. Benson said the charity has three days to pay winnings to a player. She said there is little in statute on account wagering. She said she would prefer more regulation of account wagering in statute rather than administrative rule.

In response to a question from Representative Zaiser, Ms. Benson said the increases in 2008 and 2009 are due in part to increases in marketing and promotion. She said the North Dakota Horse Park has been in business for seven years. She said seven years is often seen as the "tipping" point for a racetrack.

In response to a question from Representative Klemin, Ms. Benson said she would like to see a change that would eliminate the risk to the charity. She said under current procedures, the entire monetary risk is with the charity. She said she would like to spread the monetary risk with the service provider. She said there is no protection for the charity. She said the simulcast site, which is the charity, is ultimately responsible for paying the bettor because the contract is between the bettor and the site. She said one option would be for the charity to be a service provider. She said for account wagering she would like to see the service providers be on the bank account that holds the money. She said there is a need for additional protection for account wagering, and the issue should be explored further.

In response to a question from Representative Koppelman, Ms. Benson said her horse has been chosen by Disney to play the part of Secretariat in an upcoming Disney movie. She said the horse will be returned to her after filming.

CRIMINAL OFFENSES AND PENALTIES STUDY

At the request of Chairman Griffin, committee counsel presented a memorandum entitled [Criminal Offenses and Penalties Study - Background Memorandum](#).

Chairman Griffin called on Mr. Terry Traynor, North Dakota Association of Counties, for testimony regarding the criminal offenses and penalties study. He said the North Dakota Association of Counties is working with the North Dakota State's Attorneys Association to identify areas in need of change and recommendations for changes, with particular emphasis on the theft offenses.

Representative Gruchalla said it is important that penalties be reviewed periodically to determine whether the penalties continue to be appropriate.

Representative Klemin said it is important to consider the impact of changing penalties.

Representative Koppelman said the committee may wish to hear from the Commission on Legal Counsel for Indigents regarding this study.

COMMITTEE DISCUSSION

Chairman Griffin said the committee's direction regarding the Revised Uniform Limited Liability Company Act will depend upon whether the State Bar Association of North Dakota decides to form a task force to review the Act.

Chairman Griffin said the committee will hear from the Attorney General and the Agriculture Commissioner regarding the administration of racing and the involvement of those agencies in racing.

Chairman Griffin said he would work with Representative Meyer regarding future meeting dates of the Judiciary Committee and the Judicial Process Committee.

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

Vonette J. Richter
Committee Counsel

ATTACH:1