

HB

272

**Judiciary
Committee**

**Thursday
March 23, 2006
8:30 AM**

**Butrovich Room
#205**

1

HB 272

Card Rooms & Operations

**(companion to SB 165
previously heard in
Committee)**

Prepared on March 22, 2006
 Prepared by Dick Tremaine
 Prepared for CSHB 272(FIN) version Y.A
 Page 1 of 2

DRAFT COMPARISON OF CSHB 272(FIN)AM TO NON-BANKED CARD ROOM ACTIVITY IN OTHER STATES*

	<u>Montana</u>	<u>Washington</u>	<u>California</u>	<u>Alaska</u>
Total Population: Census 2000 ¹	902,195	5,894,121	33,871,648	626,932
Number of card rooms ²	270	68	96	<i>maximum of 172</i>
Total non-banked tables ³	335	195	1,376	<i>unknown</i>
Most non-banked tables per room ⁴	6	9	243	<i>unknown</i>
Owner license application fee ⁵	\$150	\$0	\$500	<i>\$25,000</i>
Annual fee per table ⁶	up to \$500	up to \$1,060	up to \$3,700	<i>\$10,000</i>
Occupational license fee ⁷	\$75 then \$25	\$175 then \$84	\$250	<i>to be determined</i>
Bond amount ⁸	\$0	\$0	\$0	<i>\$500,000</i>
Maximum wager ⁹	Pot limit \$300	Per person per hand \$100	none	<i>to be determined</i>
Maximum rake ¹⁰	none	\$10 per player per hour	none	<i>to be determined</i>
Municipal population limit ¹¹	unknown	unknown	unknown	<i>1 card room per municipality or 30,000</i>
Other limits on card rooms ¹²	500 hands per day	15 tables, 10 players per table	1996 levels	<i>to be determined</i>
Gross receipts ¹³	\$5.1 million	\$31.6 million	\$563 million	<i>unknown</i>
State distribution ¹⁴	\$89,796	unknown	\$3,868,350	<i>unknown</i>

* Montana, Washington and California are the only states that have legalized commercial non-banked card rooms that are not in casinos or racetracks. Information presented does not include any municipal taxes, fees or restrictions.

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Page 2 of 2

Notes:

¹ U.S. Census 2000.

² Montana calls establishments that are operated by contractors card rooms (43) but all establishments that have non-banked card rooms as of March 31, 2005 are included here. Washington has banked, non-banked and combination card rooms but only the non-banked and combination card rooms as of June 30, 2004 are included here. California card rooms (which are non-banked only) are restricted in number and size by a moratorium holding local restrictions on maximum number and size to 1996 levels. Number provided by Division of Gambling Control April 2005. In Alaska, the Department of Commerce, Community, and Economic Development, Division of Community Advocacy lists 164 municipalities. Of these, a maximum of 10 card rooms would be possible in the only two municipalities with populations over 60,000: Anchorage - 8, Fairbanks North Star Borough - 2.

³ In Montana the number of tables licensed is as of March 31, 2005. In Washington this is the number of non-banked tables only as on June 30, 2004. In California this is the total number of tables as of April 2005. In Alaska, the bill does not limit the total number of tables.

⁴ In Montana the number of tables is not directly limited but card rooms are limited to 500 hands per day so the most tables at any establishment as of March 31, 2005 is 6. In Washington card rooms are limited to 15 tables total and the most non-banked tables at an establishment as of June 30, 2004 is 9. There are no state-imposed limits on number of tables in California and the largest card room as of April 2005 is the Commerce Casino in Los Angeles with 243 tables. In Alaska, the bill does not limit the number of tables per card room.

⁵ In Montana the fee does not cover the cost of investigations and is required only for card room contractors. As of March 31, 2005 there were 35 card room contractors operating 43 of the 270 card establishments. In California the fee does not cover the cost of investigations. In Washington and Alaska the fee would be used to cover investigation costs and any additional investigation costs would be paid by the licensee. Washington charges a single license fee based on the number of tables and this fee is listed in this spreadsheet under "Annual fee per table."

⁶ In Montana the first table is \$250 and any additional tables are \$500 per table. In Washington, annual fees are \$3,650 for the first five tables and \$1,060 for each additional table. In Washington this is the only license fee required by a card room owner and is used to cover investigation costs. In California, the per-table fee depends on both the number of tables and gross revenues of the establishment. The minimum per-table fee is \$250 for card rooms with 5 or less tables and under \$200,000 in gross revenue. The maximum per-table fee is \$3,700 for card rooms with over 70 tables. In Alaska the per table fee would be \$10,000.

⁷ The card dealer license fee for Montana is \$75 for the initial license and \$25 for renewals. For Washington the occupational license fee is \$175 for the initial license and \$84 for renewals. For California the card room work permit fee is \$250 except for temporary employees it is \$25. In Alaska, the department would set biannual occupational license fees after receiving recommendations from the advisory board.

⁸ There is no bond requirement in California, Montana or Washington. In Alaska there would be a cash bond of \$500,000 required of all licensed owners.

⁹ Montana limits pots to \$300. Washington limits the number of players to 10, and limits the wager per round to \$25 and the total wager per hand to \$100 for non-banked card rooms. California does not limit wagers. In Alaska, the department would set wager limitations after receiving recommendations from the advisory board.

¹⁰ Of the three states only Washington limits the rake, with a limit of \$10 per hour or \$1 per player per hand or the lesser of \$5 or 10% of total wagers per hand. In Alaska, the department would set any rake limitations after receiving recommendations from the advisory board.

¹¹ In Alaska, we assume that the bill refers to the Federal Census of 2000 and the definition of municipalities includes boroughs.

¹² Montana limits the number of hands allowed per day to 500. Washington has a 15 table limit in card rooms (includes banked and non-banked tables) and specifies that no more than 10 players may play at a table. California restricts the number and size of card rooms by a moratorium holding local restrictions on maximum number and size to 1996 levels. In Alaska, the location and maximum number of potential card rooms is limited in the bill, and other restrictions might be set by the department after receiving recommendations from the advisory board.

¹³ Gross receipts for Montana are from 2003 as reported by the American Gaming Association. Gross receipts for Washington are annualized based on data for the quarter ended June 30, 2004. Gross receipts for California are from 2002 as reported by the American Gaming Association. Alaska gross receipts are unknown as they are dependent upon many of the factors listed on this spreadsheet that are to be determined.

¹⁴ Montana's state distribution reflects the sum of card table permit fees (\$66,500), card dealer license fees (\$18,496) and card room contractor fees (\$4,800) for fiscal year 2004. California's state distribution reflects table fees (but not application fees) for 2003. For Washington we do not have estimates for total state distribution. Alaska total state distribution is unknown as it would be dependent upon many of the factors listed on this spreadsheet that are to be determined.

Sources:

California Division of Gambling Control; Montana Gambling Control Division; Washington State Gambling Commission; U.S. Census Bureau Census 2000; American Gaming Association "2004 State of the States"; Alaska Department of Commerce, Community, and Economic Development, Division of Community Advocacy

ALASKA STATE LEGISLATURE

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Legislative Council

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Community and Regional Affairs
Judiciary
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REPRESENTATIVE PETE KOTT DISTRICT 17 - EAGLE RIVER

Sponsor Statement for

House Bill 272

An Act relating to card rooms and card room operations

The growing popularity of poker is obvious to who have recently surf TV channels. Many networks, from ESPN to the Travel Channel, are regularly televising Texas Hold 'em tournaments and enjoying sky rocketing ratings and subsequent advertising revenues. Men and woman, old and young are joining the poker trend, which shows no signs of slowing. Due to this growth in interest, the intent of HB 272 is to allow social card games to be played in a tightly controlled public environment. Alaska can address the trend and bring this popular pastime into compliance with the safety and revenue laws of the state.

Under HB 272 card rooms would be limited to boroughs with a population of 30,000 or more and only one card room establishment per 30,000 people. These card rooms would be limited to players 21 years of age or older, and they would only offer non-banked card games such as poker, cribbage, rummy, etc.

In addition to the taxable revenue generated by the card rooms, food and drink purchases, and table charges, the establishments would also pay \$10,000 per table annually to the state and would be required to hold quarterly tournaments to benefit a non-profit educational institution or group. As part of the licensing procedure, the card room operators would also be responsible for covering the administrative cost of licensing and subsequent enforcement through a \$25,000 application fee.

In addition to the revenue and job creation, regulated card rooms would allow for players to enjoy their hobby in a safe regulated environment rather than playing in an unsavory, and often unsafe "back room." Currently many players, in addition to their friendly home game, play in underground games where the "house" takes in large profits with little assurance of "fair" play. Although not an everyday occurrence, players at these games have in the past been held up at gunpoint with little recourse because of the shady and illegal nature of the game.

By recognizing this trend and the fact that we already allow this type gaming in our homes, Alaska can address the issue head on and make card games a legitimate, safe, social activity that will increase revenue and job opportunities while minimizing the negative effects of underground gambling.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 272(FIN) am
 () Publish Date: 3/22/2006

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
 Title Card Rooms and Operations RDU Treasury and Tax
 Component Tax Division
 Sponsor Representative Kott
 Requester (S) Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES	*	*	*	*	*	*
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CHANGE IN REVENUES ()	*	*	*	*	*	*
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2006) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time	*	*	*	*	*	*
Part-time	*	*	*	*	*	*
Temporary	*	*	*	*	*	*

ANALYSIS: (Attach a separate page if necessary)

Revenue Discussion

This bill would legalize non-banked card rooms in Alaska with the caveat that the total number of owner's licenses issued in a municipality may not exceed one in municipalities with a population less than 30,000 and in larger municipalities the total population of the municipality divided by 30,000. A non-banked card room is one in which players compete against each other rather than against the house and the house has no stake in the outcome of a game. Poker, pan, rummy, bridge and cribbage are specified as the games that may be played in a non-banked card room.

The bill does not define the term "municipality" nor does it specify which census is to be used for establishing the population of larger municipalities. For our reference case, we used the definition of "municipality" in AS 29.71.800 (cities and boroughs) and the April 1, 2000 U.S. Cens (the decadal census). The Department of Commerce, Community, and Economic Development, Division

Prepared by: Larry Meyers & Dick Tremaine Phone 465-2320
 Division Tax Division Date/Time 3/22/06 11:45 AM
 Approved by: Jerry Burnett Date 3/22/2006
 Agency Revenue

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

BILL NO. CSHB 272(FIN) am

ANALYSIS CONTINUATION

of Community Advocacy lists 164 municipalities. Of these, The U.S. 2000 Census lists eight with populations over 30,000 but only two with more than 60,000 people. This would add eight more possible card rooms, a total of eight in Anchorage and two in the Fairbanks North Star Borough. In total, the bill would allow up to 172 card rooms throughout the state at this time. It is important to note that these estimates, including our reference case, would change based upon the formation or dissolution of municipalities and future census results.

There are five major reasons that we have not included a revenue or cost estimate on the first page of this fiscal note. First, while 172 card rooms are possible under the bill, many of the communities probably do not have a population or visitor base sufficient to support the required fees. However, this is not determinable based on any specific measure such as population or location. Second, the decision to open and operate a card room is a business decision. Third, under this bill the department is given authority to set many rules and regulations that will affect this business decision. These rules and regulations will be formulated after receiving recommendations from the five member governor-appointed advisory board created under this bill. Fourth, the fees imposed on card rooms in different states and localities vary widely and make comparisons to Alaska difficult. For example, the state of Montana charges a processing fee to cover the cost of determining whether to issue a license plus \$250 for the first table and \$500 for each additional table. Washington charges \$3,650 for up to 5 tables and \$1,060 per additional table up to a maximum of 15, plus any investigation costs exceeding the license fees. CSHB 272(FIN) imposes an owner's license fee of \$25,000 to apply for a five-year license plus an annual \$10,000 per table fee. Operators are also responsible for investigation costs that exceed the portion of the \$25,000 fee that is assessed for the investigation, posting of a \$500,000 cash bond and biannual occupational licensing fees to be set by the department. Fifth, The bill stipulates that "all revenue received from card room activities under this chapter" will be transferred to a State Gaming Fund created within the general fund. The fiscal implications of this new fund including deposits and use of fund proceeds is not elucidated.

Based on several assumptions, we estimate that one card room in Alaska could generate about \$201,000 in fees for the state in the first year. During years 2 through 5, we estimate a card room in Alaska could generate between \$150,000 and \$167,000 in annual fees for the state. These estimates assume that the average card room will have 15 tables (15 is the maximum allowed in Washington and in California the average is 14.3). The card room is assumed to pay its owner's license fee in the first year with no transfer of ownership over the 5-year license period. This estimate also assumes an occupational licensing system similar to Washington, where annual licenses are \$175 initially and \$84 for renewals (for Alaska's biannual licenses this would translate into \$175+\$84=\$259 initially and \$84+\$84=\$168 for renewals). We assume that Washington's average of 6.7 card room occupational licenses per table will hold in Alaska and that after the first year, all of the licenses will be renewals. We assume that, like in Washington, all gaming employees will be covered but non-gaming employees such as bartenders will not require licenses. A significant variable affecting revenues would be the actual number of tables card rooms would have. This is difficult to estimate, as in California non-banked card rooms range from a single table to 243 in the Commerce Casino in Los Angeles with the average being 14.3 tables per card room. One or more very large card rooms in Alaska could significantly boost revenues.

One provision of this bill instructs the department to set maximum wagers for card rooms; this restriction along with any maximum rake could have an effect on the revenue generated by potential card rooms. In Washington, non-banked card room wagers are capped at \$25 per player per round, and rakes are capped at \$10 per player per hour or \$1 per player per hand or 10% of the pot up to \$5. Annual gross revenue to card rooms per non-banked table in Washington is \$162,000. In California, there are no maximums placed on rakes or wagers, and the annual gross revenue per non-banked table is about \$400,000.

This bill stipulates that card rooms must hold at least one card tournament per quarter with "gross proceeds" donated to a nonprofit group. There are many variables that would help determine the total amount generated for charities, including the number of card rooms, the number of tables and rules and regulations adopted by the department. Also, while "gross receipts" is defined in the bill "gross proceeds" is not so it is unclear if prizes or any expenses would be included in this calculation. In Michigan the average Texas Hold-Em tournament generates \$2,920 in revenue and \$1,099 in profit for charities, with a \$500 per person per day prize limit. Any prize limits in Alaska would be determined by the department and may influence the profitability of tournaments. In a 2005 article in the Boston Globe, card tournament supplier Mike Sheehy estimated that "A well-run tournament will attract up to 200 players, each of whom pays a \$100 entrance fee [...] A tournament of that size can offer pots of \$5,000 for the first-place player and a few thousand for the second and third and still generate \$10,000 for the charity after expenses."

The costs of implementing this bill are not possible to estimate at this time. This is because we do not know the number, size, nor geographic locations of potential card rooms. We anticipate hiring at least several full time staff, including two teams of investigators which would ensure that teams could be available during all hours of card room operations. Also about \$60 in RSAs to Public Safety for fingerprint background checks would be required for each card room employee. If the card rooms have more than, say, ten or fifteen tables or spread beyond the major populations areas of the state, we would require additional staff and resources for investigation, regulation, and travel. Additionally, we do not include any additional costs that would be incurred by municipalities as a result of this bill.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 272
 (H) Publish Date: 4/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
 Title Card Rooms & Operations RDU Treasury and Tax
 Component Tax Division
 Sponsor Representative Kott
 Requester (H) L&C Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES	*	*	*	*	*	*
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CHANGE IN REVENUES ()	*	*	*	*	*	*
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 (see attached)

Prepared by: Larry Meyers & Brett Fried Phone 465-2320
 Division Tax Division Date/Time 4/1/2005
 Approved by: Jerry Burnett, Special Assistant to the Commissioner Date _____
 Agency Department of Revenue

FISCAL NOTE #1

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HB 272

ANALYSIS CONTINUATION

Revenue Discussion

This bill would legalize non-banked card rooms in Alaska, with the caveat that "the total number of owner's licenses issued in a municipality may not exceed the total population of the municipality divided by 30,000". A non-banked card room is one in which players compete against each other rather than against the house and the house has no stake in the outcome of a game. Texas Hold-Em poker is an example of a game that might be played in a non-banked card room. It is not clear if "the most recent federal census information" refers to the Decennial Census or the most recent estimate by the U.S. Bureau of Census for purposes of determining the number of card rooms allowed. We used the April 1, 2000 U.S. Census to determine that a maximum of 13 card rooms would be possible under this bill: 8 in Anchorage, 2 in the Fairbanks North Star Borough, 1 in Juneau, 1 in the Kenai Peninsula Borough and 1 in the Matanuska-Susitna Borough. If we were instead to use the July 1, 2004 annual estimates of population from the Census Bureau, then 15 card rooms would be possible: 9 in Anchorage, 2 in the Fairbanks North Star Borough, 1 in Juneau, 1 in the Kenai Peninsula Borough and 2 in the Matanuska-Susitna Borough. We assume the definition of "municipality" in AS 29.71.800, which includes first-class and home-rule cities and boroughs.

There are three reasons why we did not include a revenue or cost estimate on the front page of this fiscal note. First, the decision to open and operate a card room is a business decision that will be made by potential licensees. Second, under this bill the department is given authority to set many rules and regulations that will affect this business decision. Third, the fees imposed on card rooms in different states and localities vary widely and make comparisons to Alaska difficult. For example, the state of Montana charges a processing fee to cover the cost of determining whether to issue a license plus \$250 for the first table and \$500 for each additional table. Washington charges \$3,650 for up to 5 tables and \$1,060 per additional table up to a maximum of 15, plus any investigation costs exceeding the license fees. SB 165 imposes an owner's license fee of \$25,000 to apply for a five-year license plus an annual \$10,000 per table fee. Operators are also responsible for investigation costs that exceed the portion of the \$25,000 fee that is assessed for the investigation, and the department is authorized to set occupational licensing fees.

Based on several assumptions, we estimate that the maximum of 13 card rooms in Alaska would generate about \$2.5 million in fees for the state in the first year. During years 2-5, we estimate the maximum of 13 card rooms in Alaska would generate \$2.1 million in annual fees for the state. These estimates assume that there will be the maximum of 13 card rooms with an average of 15 tables each (15 is the maximum allowed in Washington and in California the average is 14.3). All card rooms are assumed to pay their owner's license fees in the first year and would not transfer ownership over the 5-year license period. These estimates also assume an occupational licensing system similar to Washington, where annual licenses are \$175 initially and \$84 for renewals. We assume that Washington's average of 6.7 gaming employees per table will hold in Alaska and that after the first year, two-thirds of the licenses will be renewals. We assume that, like in Washington, all gaming employees will be covered but non-gaming employees such as bartenders will not require licenses. Of course, a significant variable affecting revenues is the actual number of tables any individual card room would have. This is difficult to estimate, as in California non-banked card rooms range from a single table to 243 in the Commerce Casino in Los Angeles with the average being 14.3 tables per card room. One or more very large card rooms in Alaska could significantly boost revenues. California and Washington are useful comparisons because both states have data available specifically for non-banked card rooms.

This bill stipulates that card rooms must hold at least one card tournament per quarter with proceeds donated to a nonprofit group. There are many variables that would help determine tournament proceeds, including the number of card rooms, the number of tables, rules and regulations adopted by the department, and other factors. In Michigan the average Texas Hold-Em tournament generates \$1,099 in profit for charities, with a \$500 per person per day prize limit. Any prize limits in Alaska would be determined by the department and may influence the profitability of tournaments. In an article in the Boston Globe, card tournament supplier Mike Sheehy estimated that "A well-run tournament will attract up to 200 players, each of whom pays a \$100 entrance fee [...] A tournament of that size can offer pots of \$5,000 for the first-place player and a few thousand for the second and third and still generate \$10,000 for the charity after expenses."

Cost Discussion

The costs of implementing this bill are difficult to estimate because we do not know the number nor size of potential card rooms. Given the assumptions in our revenue discussion, we would anticipate \$448,600 in total costs with \$371,600 in personnel costs and related expenditures and \$77,000 in RSAs to Public Safety for fingerprint background checks. The personnel costs are for an Investigator IV, four Investigator III's and an Admin Clerk III. Based on the experience of other states and our own experience, this staff should be sufficient to investigate, license and regulate up to 13 card rooms with an average of 15 tables each. Also having two teams of investigators would ensure that teams could be available during all hours of card room operations (assumed to be 12:00 noon to 2:00 am). If the card rooms are larger on average than the assumed 15 tables we would require additional staff and resources for investigation and regulation. We did not include any additional costs that would be incurred by municipalities as a result of this Bill.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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State Capitol
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Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 21, 2005

SUBJECT: Card Rooms and Indian Gaming (HB 272)
TO: Representative Pete Kott
FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

You asked whether this bill would affect Indian gaming in Alaska. I do not think this bill will open the door to class three gaming.

The federal Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq., gives Indian tribes the authority to conduct gaming and gambling on Indian lands. The Indian Gaming Regulatory Act divides gaming into three classes:

- (1) Class I gaming includes social gaming for minimal prizes and traditional Indian gaming conducted at ceremonies or celebrations;
- (2) Class II gaming includes bingo, lotto, pull-tabs, punch boards, tip jars and non banking card games, as well as banking card games operated on or before May 1, 1988;¹ and
- (3) Class III gaming includes casino-type gambling, pari-mutual horse and dog racing, lotteries, and all other forms of gaming that are not class I or II gaming.

Class I gaming on Indian lands is within the exclusive jurisdiction of the tribes and is excluded from the provisions of the IGRA. Class II gaming on Indian lands is within the jurisdiction of the tribes but is subject to the provisions of the IGRA, including oversight by the National Indian Gaming Commission. For example, an Indian tribe seeking to conduct bingo games could choose to do so under the authority of state law or could do

¹ Class II gaming does not include:

- (i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or
- (ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

25 U.S.C. § 2703(b).

Representative Pete Kott

April 21, 2005

Page 2

so separately under a permit from the National Indian Gaming Commission. Class III gaming activities are lawful on Indian lands only if authorized by a tribal ordinance or resolution, the activities are conducted on lands located in a state that permits such gaming for any purpose by any person, organization, or entity, and the activities are conducted in conformance with a tribal-state compact entered into by the tribe and state.

The Act provides a framework for negotiation of a tribal-state compact -- the tribe requests the state to enter into negotiations; upon receiving such a request, the state "shall" negotiate with the tribe in "good faith" to enter into such a compact.

There has been a good deal of litigation involving the various provisions of the IGRA since its passage. Some of that has involved the definition of "Indian lands." Although Alaska has only one remaining reservation, it is not safe to assume that there are no other "Indian lands" in Alaska. There certainly are parcels that are held in trust by the United States that might qualify for purposes of IGRA.

This underscores the significance of the difference between class II and class III gaming. If the legislature permitted class III gaming in state law, it would pave the way for tribes to conduct class III gaming on Indian lands under federal law. However, HB 272 permits only non-banking card games, specifically poker, pan, rummy, bridge, and cribbage games. Poker falls under IGRA's definition of class II games. 25 C.F.R. 502.3; National Indian Gaming Commission Opinion dated June 17, 1999, Re: Game Classification Opinion - "Poker Club."² House banked card games, such as blackjack and baccarat, as well as player banked games, such as chemin de fer, are class III games, 25 C.F.R. 502.4; National Indian Gaming Commission Bulletin No. 95-1, April 10, 1995, but those types of games are not permitted in card rooms under HB 272.

KLK:med
05-284.med

² According to this National Indian Gaming Commission opinion, "Banking games, as commonly understood and defined in the NIGC regulations, are games in which the banker (usually the house) takes on, that is, competes against, all players, collecting from losers and paying winners. See 25 C.F.R. 502.11(c). Conversely, non-banking card games are games where players play against each other. Poker is the typical example of a non-banking card game." The opinion went on to conclude that the proposed poker club would constitute class II, rather than class III gaming: "[A]s proposed, the players in the Nation's Club would play against each other in a non-banking format, not against the house or other banker. Turning Stone and its dealers would not have an interest, financial or otherwise, in the outcome of any poker game. Thus, the poker games to be played at the Club qualify as non-banking card games."

Distributed by Rep. Pete Kott

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April 25, 2005

Perry Green
130 W. 4th Avenue
Anchorage, Alaska 99501

Re: Effect of HB 272/SB 165 (Card Rooms) on Indian Gaming in Alaska

Dear Mr. Green:

You have asked what effect, if any, the enactment of HB 272 or SB 165 would have on Indian gaming in Alaska. More specifically, you have asked me to address two questions:

(1) Would the enactment of HB 272 or SB 165 "open the door" to allow Indian tribes in Alaska to operate casino type gaming operations – referred to in the federal Indian Gaming Regulatory Act ("IGRA") as "Class III" games?

The answer is no. As discussed below, all of the card games authorized in HB 272 and SB 165 are Class II games for purposes of IGRA. IGRA authorizes Indian tribes to operate Class III games only if state law does not prohibit them. Alaska law currently prohibits all forms of Class III gaming, and nothing in either bill would authorize Class III games. So long as Alaska law continues to prohibit Class III games, IGRA would not authorize Indian tribes to operate them within Alaska

(2) Would the enactment of HB 272 or SB 165 "open the door" to additional Class II Indian gaming in Alaska, beyond what is already authorized under existing law?

The answer is no. As discussed below, Alaska currently allows certain organizations and entities to conduct various types of Class II gaming under AS 05.15, including bingo, pull tabs, raffles, lotteries and various lottery type "classics," such as ice classics, rain classics, and salmon classics, among others. In addition, Alaska's criminal code exempts players engaged in social gambling, including players in social card games, from the criminal prohibitions against gambling in the state. Because Alaska currently allows Class II gaming, including card games, IGRA would allow Indian tribes to operate the types of

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Class II card games allowed in HB 272 and SB 165 on Indian lands in Alaska – even if neither of those bills were enacted.

I. Brief overview of the Indian Gaming Regulatory Act.

The federal Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. 2701 et seq., provides authority for Indian tribes to conduct certain gaming operations on Indian lands.¹ There are three classes of games under the Act.

Class I games include social gaming for minimal prizes and traditional Indian gaming conducted at ceremonies or celebrations. Tribes may conduct Class I games on Indian lands without oversight by the Indian Gaming.

Class II games include bingo, lotto, pull-tabs, punch boards, tip jars and non-banking card games. Non-banking card games are games in which only the players may make wagers on the outcome, in contrast to "banked" card games such as blackjack, baccarat and chemin de fer, where the player effectively plays against the house or another banker and the house or banker collects money from losers and pays winners. Indian tribes may conduct Class II games on Indian lands if the tribe adopts an ordinance authorizing the activity and receives a permit from the Indian Gaming Commission. IGRA imposes various regulatory requirements on Class II gaming and restricts the uses of revenues from Class II gaming operations.

Class III games include casino type gambling, electronic or electromechanical facsimiles of any games of chance, slot machines, pari-mutuel horse and dog racing, and all other forms of gaming that are not Class I or Class II. For states located within the federal Ninth Circuit (including Alaska), Indian tribes may conduct a Class III game only if the state permits the particular type of game that the tribe seeks to operate. *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d 1250 (9th Cir. 1995). Class III games, if they are allowed by the state, may be conducted only in conformity with a negotiated tribal-state compact entered into by the tribe and the state.

II. Enactment of HB 272 or SB 165 would not "open the door" to Class III Indian Gaming in Alaska.

HB 272 and SB 165 are identical bills that would authorize, under various limitations, the operation of card rooms in Alaska for the purpose of playing one or more

¹ IGRA restricts Indian gaming to activities conducted on "Indian lands." This is a significant restriction, and is discussed briefly in Part IV of this opinion, beginning on page 4.

specified "non-banking" card games². The specified games are poker, pan, rummy, bridge and cribbage. Since the only games allowed under the bills are non-banking games, they would be considered as Class II games and not Class III games.

IGRA allows Class III Indian gaming activity only if the activity is "located in a State that permits such gaming for any purpose by any person, organization, or entity." Alaska currently does not permit any type of Class III gaming activity, and nothing in either HB 272 or SB 165 would constitute such permission. Kathryn L. Kurtz, Legislative Counsel, recently provided an opinion to Representative Pete Kott in which she concluded that HB 272 would authorize only Class II games and would therefore not provide a basis for any Class III Indian gaming in Alaska. (Memorandum from Kathryn L. Kurtz to Representative Pete Kott, April 21, 2005.) I agree with her analysis, and rather than repeat it here, I have attached a copy of her opinion to this letter.

III. Authority of Indian Tribes to Conduct Class II Card Games under Existing Alaska Law.

IGRA, in 25 U.S.C. 2710(b)(A), allows an Indian tribe to engage in Class II gaming on Indian lands within the tribe's jurisdiction if

such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law).

AS 05.15 currently allows charitable organizations and municipalities to conduct certain games that would be included within IGRA's definition of Class II games – specifically, bingo, pull tabs, raffles, lotteries and various lottery type "classics" such as the Nenana Ice Classic. Additionally, Alaska's criminal code exempts from prosecution for gambling offenses "a player in a social game." AS 11.66.200. "Social game" is defined in AS 11.66.280(9) as "gambling in a home where no house player, house bank, or house odds exist and where there is no house income from the operation of the game."

There are two alternative bases for concluding that IGRA would permit Indian tribes to operate the types of card games authorized under HB 272 and SB 165, even if neither bill were enacted. The first is that under the authorizing language quoted above, Alaska allows "such gaming" – that is, Class II gaming – of several types. It does not matter that Class II gaming activity is limited to charitable organizations and municipalities. Alaska need only authorize these games for "any purpose by any person,

² Both bills, at page 2, line 1, make it clear that the specified card games are "non-banking." The Senate Labor & Commerce Committee Substitute for SB 165 contains additional language to further emphasize that only "non-banking" games are allowed. The committee substitute, at page 2, lines 18 and 19, provides that wagers may be made only by a player with respect to his or her own game and that players may not make a wager on behalf of another individual.

organization or entity." As noted above, the Ninth Circuit Court of Appeals has ruled that for a Class III game, IGRA authorizes it only if state law permits the same type of game that the tribe seeks to operate.) The Court has indicated however, that for Class II games, a less stringent standard will be applied, and a tribe may operate a Class II game if the state permits any person, organization, or entity to operate any Class II game. *Sec. Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d at 1258 n. 4. Under this analysis, IGRA would authorize Indian tribes to operate Class II card games solely by virtue of current law authorizing charitable organizations and municipalities to operate certain Class II games.

Alternatively, it may be argued that the *Rumsey* analysis should not be applied so broadly where Class II card games are at issue. That is because IGRA makes a distinction in its definition of Class II games between bingo, pull tabs and other bingo-like games on the one hand, and card games on the other. Specifically, IGRA defines Class II card games as games that "are explicitly authorized by the laws of the State" OR that "are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games." 25 U.S.C. 2703(7)(A)(ii)(I) and (II). Current Alaska law meets that definition.

While current Alaska law does not "explicitly" authorize non-banking card games, it clearly does not "explicitly" prohibit them, because of the exemption in AS 11.66.200(b) from prosecution for players in social games. Moreover, since non-banking gambling is allowed in Alaska by players in homes, existing law allows for gambling on card games "at any location in the State."

Thus, Indian tribes are authorized under IGRA to operate non-banking card games under Alaska law as it exists today. Enactment of either HB 272 or SB 165 would not be required as a prerequisite to that authorization.

IV. Territorial Restrictions on Indian Gaming in Alaska.

Even though IGRA would authorize Indian tribes to conduct Class II card games in Alaska under existing state laws, there are additional restrictions in IGRA that may serve to minimize the proliferation of such gaming in Alaska. Indian tribes may conduct Class II and Class III gaming operations only on "Indian lands." Indian lands are defined in IGRA, 25 U.S.C. 2703(4), as:

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the

United States against alienation and over which an Indian tribe exercises governmental power.

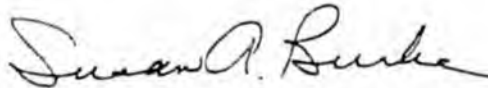
In Alaska, the only lands within an Indian reservation are those within the Metlakatla reservation. The Alaska Native Claims Settlement Act revoked all other reserves set aside for Native use and lands conveyed to regional and village Native corporations are held in fee simple by each corporation. Native corporation lands, then, do not fall within the definition of "Indian lands" because they are not within an Indian reservation, they are not held in trust by the United States, and they are not subject to any restrictions on alienation or sale.

Another category of lands that arguably might constitute "Indian lands" are various Alaska village town sites. While these lands were at one time held in trust, they have since been re-conveyed to the villages in fee simple and are now free of any prior restrictions on the sale of these lands. As a result, village town sites would not qualify as "Indian lands" for purposes of IGRA.

The last category of lands that may constitute "Indian lands" under IGRA are individual Native allotments. There are a number of parcels of land in this category scattered all over the state, and most, if not all, are held by individual Natives and are subject to federal restrictions against alienation. Thus, Native allotments would likely meet two of the three requirements needed to qualify as "Indian lands." What is less clear is whether Native allotments would meet the third requirement that the Tribe must "exercise governmental power" over the lands. This is a complex issue, however, and the result would depend on the facts surrounding the particular parcel in question and the extent to which a recognized tribe actually exercises any governmental powers within the boundaries of that particular parcel.

Please let me know if you have additional questions.

Very truly yours,



Susan A. Burke

SAB:ps

Enclosure

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MEMORANDUM

April 21, 2005

SUBJECT: Card Rooms and Indian Gaming (HB 272)

TO: Representative Pete Kott

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

You asked whether this bill would affect Indian gaming in Alaska. I do not think this bill will open the door to class three gaming.

The federal Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq., gives Indian tribes the authority to conduct gaming and gambling on Indian lands. The Indian Gaming Regulatory Act divides gaming into three classes:

- (1) Class I gaming includes social gaming for minimal prizes and traditional Indian gaming conducted at ceremonies or celebrations;
- (2) Class II gaming includes bingo, lotto, pull-tabs, punch boards, tip jars and non banking card games, as well as banking card games operated on or before May 1, 1988;¹ and
- (3) Class III gaming includes casino-type gambling, pari-mutual horse and dog racing, lotteries, and all other forms of gaming that are not class I or II gaming.

Class I gaming on Indian lands is within the exclusive jurisdiction of the tribes and is excluded from the provisions of the IGRA. Class II gaming on Indian lands is within the jurisdiction of the tribes but is subject to the provisions of the IGRA, including oversight by the National Indian Gaming Commission. For example, an Indian tribe seeking to conduct bingo games could choose to do so under the authority of state law or could do

¹ Class II gaming does not include:

- (i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or
- (ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

25 U.S.C. § 2703(b).

Representative Pete Kott

April 21, 2005

Page 2

so separately under a permit from the National Indian Gaming Commission. Class III gaming activities are lawful on Indian lands only if authorized by a tribal ordinance or resolution, the activities are conducted on lands located in a state that permits such gaming for any purpose by any person, organization, or entity, and the activities are conducted in conformance with a tribal-state compact entered into by the tribe and state.

The Act provides a framework for negotiation of a tribal-state compact -- the tribe requests the state to enter into negotiations; upon receiving such a request, the state "shall" negotiate with the tribe in "good faith" to enter into such a compact.

There has been a good deal of litigation involving the various provisions of the IGRA since its passage. Some of that has involved the definition of "Indian lands." Although Alaska has only one remaining reservation, it is not safe to assume that there are no other "Indian lands" in Alaska. There certainly are parcels that are held in trust by the United States that might qualify for purposes of IGRA.

This underscores the significance of the difference between class II and class III gaming. If the legislature permitted class III gaming in state law, it would pave the way for tribes to conduct class III gaming on Indian lands under federal law. However, HB 272 permits only non-banking card games, specifically poker, pan, rummy, bridge, and cribbage games. Poker falls under IGRA's definition of class II games. 25 C.F.R. 502.3; National Indian Gaming Commission Opinion dated June 17, 1999, Re: Game Classification Opinion - "Poker Club."² House banked card games, such as blackjack and baccarat, as well as player banked games, such as chemin de fer, are class III games, 25 C.F.R. 502.4; National Indian Gaming Commission Bulletin No. 95-1, April 10, 1995, but those types of games are not permitted in card rooms under HB 272.

KLK:med
05-284.med

² According to this National Indian Gaming Commission opinion, "Banking games, as commonly understood and defined in the NIGC regulations, are games in which the banker (usually the house) takes on, that is, competes against, all players, collecting from losers and paying winners. See 25 C.F.R. 502.11(c). Conversely, non-banking card games are games where players play against each other. Poker is the typical example of a non-banking card game." The opinion went on to conclude that the proposed poker club would constitute class II, rather than class III gaming: "[A]s proposed, the players in the Nation's Club would play against each other in a non-banking format, not against the house or other banker. Turning Stone and its dealers would not have an interest, financial or otherwise, in the outcome of any poker game. Thus, the poker games to be played at the Club qualify as non-banking card games."



Alaska Native Brotherhood Camp 2

May 3, 2005

The Honorable Pete Kott
Alaska State House of Representatives
State Capitol, Room 403
Juneau, Alaska 99801

RE: Finance Committee Substitute for House Bill 272 "An Act relating to card rooms and card operations."

Dear Representative Kott,

The Alaska Native Brotherhood Camp #2 and affiliated charitable gaming organizations have examined HB 272 "An Act relating to card rooms and card operations." After considering this legislation thoroughly and considering possible impacts on charitable gaming, we have concluded that there is no impact by the enactment of this law on charitable gaming permittees. Our organization has been involved with charitable gaming since before statehood. We would like it known that we are not opposed to the enactment of this law.

In the course of our review and in discussions with legislators, the question of the potential of Indian Gaming under the Federal law entitled the Indian Gaming Regulatory Act (IGRA) has arisen.

From our point of view as a state permitted charitable gaming qualified entity, we see no ability on our part to expand our bingo, pulltab and raffle program into the card room activities as a result of this law. Our organization and other organizations in the community such as the Filipino Community, the Moose Club, the Elks club, Eagles and other similar organizations are chartered as non-profit fraternal organizations under state law and are not eligible under IGRA.

With regard to Indian Tribes and Alaska Native tribes capability to have card rooms, these entities can engage in Bingo and related games played

as well as non-banking card games, if those games are otherwise lawful within states where tribes conduct those activities. Under HB 272, the following games are authorized: poker, pan, rummy, bridge and cribbage. These are considered non-house bank games. Therefore, these games do not fall into the Class III commercial casino style gaming operation and therefore, these games fall into the Class II non-commercial non-casino style gaming category. In this case, games that are determined Class II, Indian Tribes and Alaska Native tribes are free to offer it without a Tribal-State compact.

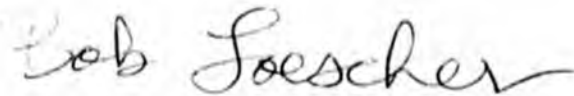
However, it should be noted that Indian Tribes and qualified Alaska Native tribes have a number of hurdles that they would have to overcome in order to proceed with card rooms in Alaska. First of all, a Tribal government in Alaska would have to have a proper tribal ordinance enacted by its members in order to proceed. Secondly, such tribal ordinance would have to be submitted to the National Indian Gaming Commission for its approval. Thirdly, such a card room would have to be located on Indian Trust Property i.e. an Alaska Native town site property or Indian allotment.

Based upon our existing knowledge, it would be very unlikely that we would see a proliferation of such card rooms in Alaska due to the limited number of parcels of property available at strategic locations near urban centers. Any such properties that would be available in rural Alaska are likely to be limited in accessibility as well. Therefore, the process and the need for strategically located properties most likely would inhibit Alaska Native tribes from embarking on the creation and operation of card rooms.

It should be noted here that I was a commissioner appointed by President Clinton on the National Gambling Impact Study Commission that provided a report to the President of the United States and to the Congress and the public on the current condition of all forms of gambling in America. In the course of the preparation of that report over a two and a half year period, the commissions undertook hearings and made field visits to all types of gambling establishments across America. Being the only Native American on that commission I was a part of a sub-committee that reviewed the status of Indian Gaming by taking testimony from 150 Tribal leaders, visiting many, many Indian casinos and meeting with gaming officials such as the National Indian Gaming Commission. I believe that the comments and observations we have provided here on HB 272 comports with the findings of that commission, IGRA and information available on opportunities available to Alaska Native tribes.

Again, we would like to go on record as expressing no opposition to the enactment of HB 272.

Sincerely,
ALASKA NATIVE
BROTHERHOOD CAMP 2

A handwritten signature in cursive script that reads "Bob Loescher".

Robert W. Loescher, Chairman
Legislative Affairs Committee

Cc: Andrew Ebona, President ANB Camp 2

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Local bars draw poker crowds

By DOUG O'HARRA
Anchorage Daily News

Published: May 5th, 2005
Last Modified: May 5th, 2005 at 05:49 AM

Chips chattered like castanets. The faint chinking sound penetrated rock music and the yammer of about 100 patrons inside the log-walled Peanut Farm tavern. The dealer laid another hand across the table.

It's poker and it's legal. Right here. And it's gaining fast in popularity all over town.

A bill now working through the Alaska Legislature would legalize licensed card rooms offering poker and some other card games for money. But hundreds of Anchorage residents already bet and bluff for fun in local bars with no money involved.

As players peeked at cards and fingered their stacks Tuesday night, poker impresario Stu Rosenthal scanned 10 impassive faces at a couple of square tables pushed together near a window overlooking Campbell Creek. "Fifty to go," he said, asking for the minimum bet.

With goatee and glasses, Rosenthal, 52, looks more like his day job: a ceramic artist of glazed vases. But he also runs Texas Hold 'Em poker tournaments at the bar and keeps things rolling for up to 50 competitors.

Aces showed in the middle. Knuckles rapped. No new bets.

The action settled on retired math teacher Steve Guthrie. Chewing gum fast, Guthrie seemed more interested in a baseball game on TV. He bet chips -- worth thousands if they'd been playing for

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Photo by Bob Hallinen / Ancho
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A bill now working through the Alaska Legislature would legalize licensed card rooms offering poker card games for money. But hundreds of Anchorage residents already bet and bluff for fun in local bars with no money involved.

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money -- like he didn't care much what happened.

"He's so hot, he doesn't even have to look at this cards," Rosenthal said.

Other players studied their hands. The reigning poker champ, who won a trip to Hawaii a couple months ago in the last 10-week tournament, folded. The guy in a leather vest and one of those tough-guy ponytails threw in his hand. So did the high school principal, the title insurance salesman, the asphalt quality control man, the college student.

"They're scared of you, man!" Rosenthal said

Guthrie smiled, raked the pot, and kept chewing.

Rosenthal used to run card rooms in California before he moved to Anchorage a few years ago. He thinks people shouldn't fear the closely regulated card rooms proposed by the bill -- assuming they mirror the friendly atmosphere of the no-money games now operating.

"I just want to convey how mainstream it is," he said. "It's not the sort of ominous, dingy, smoke-filled room where there are currents or undertones. ... These people would play for, like, a carrot -- first prize, a carrot."

The Peanut Farm began hosting the weekly games with sponsorship from Budweiser as a way to draw more business on Tuesdays, often a dead night, said bar manager Gary McCutcheon. Add in a dinner crowd bound for the Alaska Aces game across town, sunshine on the bar's outside deck - - and nine servers, six cooks and two bartenders were scrambling hard.

"On a night like this, we'll blast through 10 kegs of beer and 100 burgers," he said.

Rosenthal's dealers included a radio deejay, an Alaska Housing manager and Anchorage's official "Bud Girl" from the local beer distributor. Among the players was Gabe Sam, a land manager originally from the Interior village of Huslia. Legendary musher George Attla is his uncle, he said.

"So I'm the other Huslia Hustler -- of poker, that is," he said. "Tonight I'm going to win it all."

Sitting at Rosenthal's table, Jim Bailey, principal of West High School, laid a Maduro Romeo & Juliet cigar, still wrapped in cellophane, against

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his stacked chips. For luck, he explained later.

That's what the game's all about, he said. "And patience."

Tuesday's game began during the height of dinner hour amid deafening clamor by Aces fans. The stakes? A snazzy digital camera-binocular combo, plus seven seats in the championship tournament later in the month, with its grand prize of two tickets to Hawaii.

Players began with chips worth 2,000 pretend dollars and were eliminated when those were gone. There were five tables to start. Periodically, Rosenthal raised the minimum bets and reshuffled the players, gradually eliminating one table after another.

After four hours, nine players remained and the game moved to a round table in a quieter non-smoking room. While sports fans at the bar hooted and howled, the dealer dealt the cards. Bets began at 2,000, then jumped to 4,000.

Gabe Sam lost to two pairs: kings and sevens. "Good game, Gabe," they called as he left.

Diane Burd, an Anchorage housewife, went all in and lost against her husband, Jim, an engineer with Conoco Phillips.

And then there were two: Jim Burd and Dan Lindblom, a 25-year-old asphalt inspector studying aviation at college. In a series of fast hands, the men traded enormous pots: 28,000, then 53,000. A dozen people stood around the table, applauding each new turn of the cards.

Finally the two men stared at the "flop," the cards in the middle everyone can use to make a good hand: a king, nine and seven.

"All in," said Lindblom, betting all his chips.

"What the hell, I'm with you," said Burd.

The dealer flipped over a five, then a three. Lindblom -- who had never played Texas Hold 'Em in public before -- threw down a pair of fives, giving him three of a kind and the game.

He shook hands with Burd and took the camera from Rosenthal.

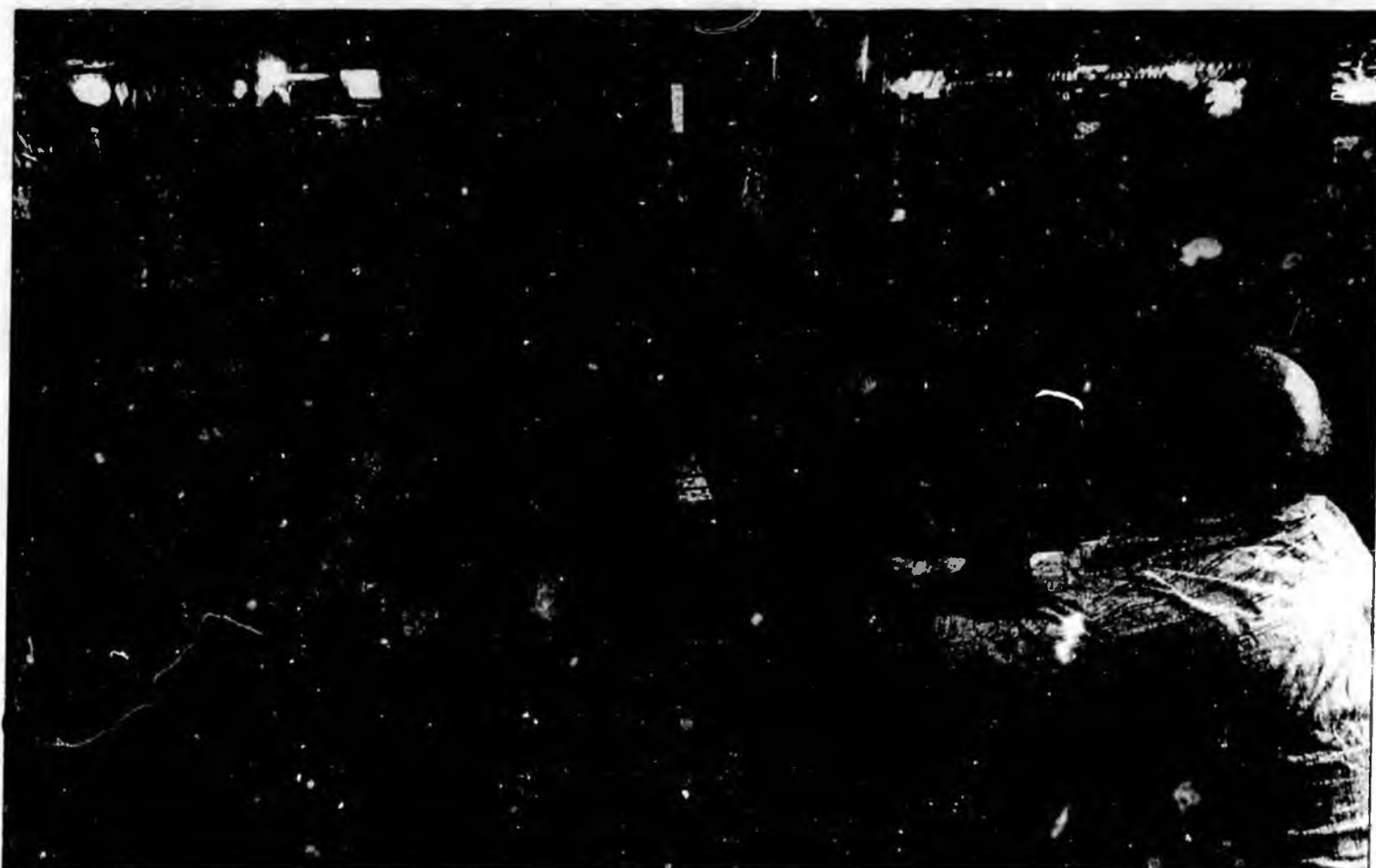
Lindblom said he'll be back. "Hawaii here I come."

Daily News reporter Doug O'Harra can be reached at do'harra@adn.com.

March 3, 2006

life

Fill up your evening at fun events



BILL ROTH / Anchorage Daily News

Poker players hone their skills in a Texas Hold 'em tournament at The Peanut Farm. Poker lovers will play for higher stakes — including a trip to Las Vegas, a gold and diamond bracelet and lunch with poker star Perry Green — during the Texas Hold 'em Alaska State Championship on Saturday at the Egan Center.

Show of hands

Fur Rondy tournament deals out poker for all levels of fans

By Casey Brogan
Anchorage Daily News

Getting into a friendly game of poker hasn't been this easy since the Gold Rush days. Most trends take a while to find their way north, but the epidemic of poker fever that has swept the nation didn't take long to infect Alaska, and it has players sweating bullets at bars all across Anchorage.

One of those players is likely to walk out of the Egan Center Saturday night with a boatload of prizes as Alaska's first state poker champion. But if you play your cards right, it could just as easily be you.

The inaugural Texas Hold 'em Alaska State Championship begins at 5 p.m. Saturday as part of Fur Rendezvous, and while there have been qualifying tournaments around town for months, a drawing will turn 12 lucky spectators into participants. Tickets to get in the door and into the drawing cost \$5.

"With all the popularity of Texas Hold 'em around town, we thought it would be perfect for Fur Rondy," event manager Susan Duck said Monday.

Anchorage bars have certainly found the Texas Hold 'em craze to be a good draw for poker-playing patrons.

Since Latitude 61 started hosting tournaments two years ago — and filling its parking lot — bars all across town have gotten in on the action, and seven of them, plus one in Fairbanks and one in Mat-Su, will have a dozen of their best players in the Fur Rondy tournament.

As a three-time winner of the World Series of Poker, Perry Green is Alaska's unof-

Texas Hold 'em Alaska State Championship

When: 5 p.m. Saturday

Where: Egan Center

How much: \$5 for spectators

Web: www.furrondy.net,
www.perrygreengreenpoker.com

ficial dean of the decks and an unabashed enthusiast of the game. He says poker's appeal is its combination of skill and luck.

"The best player always wins in chess. ... In poker, you can be a good player and beat a great player or you can be a mediocre player and sometimes get lucky enough to beat a great player."

Before heading to Las Vegas this summer for the 2006 World Series of Poker, Green plans to have lunch with Alaska's first state champion. But he doesn't want to venture a favorite.

"We have a lot of great players in Alaska," he said. "My favorite will be the one who wins it."

Becoming a good player requires practice, but with about two dozen Anchorage bars hosting tournaments on a regular basis, it isn't hard to find someplace to hone your skills. You might prefer to practice online from the comforts of home, but you certainly aren't going to get any better at reading someone's poker face online. Plus it's not as much fun.

"It's like a social event," said Latitude 61 manager Jeff Matosky. "Everybody knows each other."

A player in a recent Fur Rondy qualifying tournament, Ryan Doerner, 24, likes playing at the bars because it allows

Origins of Texas Hold 'em

The history of Texas Hold 'em is a bit murky, but it is believed to have originated in Robstown, you guessed it, Texas, sometime in the early 1900s. It became popular with ranch hands because play moves quickly and it allows a maximum number of players to participate using a single deck.

him to help his game without hurting his pocketbook.

"The best thing about coming to these games is that they're free. ... You're going to leave happy because you're not going to lose any money," Doerner said.

Many of the 140 players in the tournament will know each other and their tendencies, but it might be an unknown who comes out of the audience and ends up having lunch with Green.

If the prestige of becoming Fur Rondy's first state champion isn't enough to make you want to get into hand-to-hand combat with Alaska's best Texas Hold 'em players, maybe the tournament's prizes will. The winner will get the lion's share of loot that includes two tickets to Las Vegas, a gold and diamond bracelet, a men's or women's fur hat and a limited-edition Smith and Wesson .38-caliber pistol.

The doors open at 5 p.m., and the drawing to see which faces in the crowd become players at the tables will be at 5:30 p.m. Spectators get one raffle ticket with the purchase of their venue-entry ticket, but

Table talk

Some local watering holes where patrons can play poker

Latitude 61

4848 Old Seward Highway, 562-5701

8 p.m. daily

Peanut Farm

5227 Old Seward Highway, 563-3283

6 p.m. Tuesdays

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4801 Old Seward Highway, 561-9157

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► Daily News sports copy desk
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Green: Legal gambling in the cards

LOBBYING: State needs to tap into national craze; first step is commission.

By PAULA DOBBYN
Anchorage Daily News

(Published: August 30, 2005)

The man dubbed "Alaska's Poker Guru" pitched the Anchorage business community Monday on his efforts to legalize card rooms in the state.

Semiretired furrier Perry Green told an Anchorage Chamber of Commerce lunch audience that poker is a booming industry that Alaska should tap to diversify its oil-dependent economy.

"It's not shady," Green said. "It's a mainstream activity."

Green is a well-known gambler who has competed in such major tournaments as the World Series of Poker. In the past year, he has spent tens of thousands of dollars on lobbyists to try to persuade the Alaska Legislature to sanction legalized gambling, according to state financial disclosures. The efforts have failed so far, but Green said Monday that he's closer than ever to having enough support to get a bill passed.

"This Legislature has matured enough to see poker as a viable business," Green said.

Last year, he pushed for legislation to establish a state gaming commission that would have had the authority to license an international casino at a failed fish plant in South Anchorage. The casino bill narrowly passed the House but died in the Senate.

Green retooled his strategy this year. He got Rep. Pete Kott, R-Eagle River, and Sen. John Cowdery, R-Anchorage, to sponsor bills that would legalize card rooms in Alaska where people could play poker, cribbage and other games for money. The bill passed the House but bogged down in the Senate Judiciary Committee.

Meanwhile, sponsors of legalized video poker are collecting signatures to get an initiative on the 2006 fall ballot that would create a gaming commission. The panel would be able to authorize video poker, slot machines and other games without legislative approval.

On Monday, Green promoted what he considers the virtues of gambling, describing it as a billion-dollar industry that would bring the state millions in tax revenue and provide employment.

"This industry provides decent jobs," he said.

Not-for-profit card games and tournaments are a growing form of entertainment in bars, Green said.

"People are demanding it."

People play cards in their homes, and scores of illegal, underground games are held routinely, Green noted. All the legislation would do is bring into the open what's already happening and make it legal, in his view.

Cowdery, who attended the luncheon, agreed. Illicit activity often accompanies the illegal games, he said. The bill to legalize card games and impose restrictions on them would be good for the state, the senator said.

"It will take it out of the underground. This will clean up the whole thing," Cowdery said.

Sen. Hollis French, D-Anchorage, also attended Green's talk. A member of the Senate Judiciary Committee, French said he has reservations about legalized gambling and voted against the casino bill. The casino would have been in his district, and he opposed giving an exclusive gambling license to a single operator.

French said he opposes electronic gaming because the machines are addictive and mind-numbing, among other drawbacks. While he's open to the idea of card rooms, he said, he hasn't made up his mind whether he'll support Cowdery's bill.

A staunch opponent of legal, for-profit gambling is Rep. Harry Crawford, a Democrat who represents part of East Anchorage. Crawford said he watched his hometown of Shreveport, La., suffer after riverboat gambling was legalized. He doesn't want it to happen in Alaska.

"Studies show that for every dollar that we take in from gambling, we have to pay out three dollars in (social) services," Crawford said. The people hurt the most by gambling are those who can least afford it, he said, adding, "It doesn't add much to the state economy, and it takes so much with it."

Crawford said he can't imagine the Senate Judiciary Committee voting to legalize card rooms, which he described as a thinly disguised attempt to usher in casinos, electronic gaming and other forms of gambling.

While he's focused now on card rooms, Green hasn't given up on the idea of casinos in Alaska. He's also in favor of Internet gaming. Green mentioned in his talk that he recently won \$18,000 playing online poker.

Asked whether poker is about luck or skill, Green said his answer depends on whether he's winning or losing. So would he bet that the Legislature will approve card rooms next session?

Green wouldn't wager but described himself as "hopeful."

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Florida Raises Poker Stakes (A Little)

It is difficult to get a state to legalize a new form of gambling. But it is nearly impossible to get the stakes raised once the cards have been dealt.

Florida is the latest example of this political rule.

Racetracks in Florida, like racetracks everywhere, have been searching for years for a way to bring in more gambling dollars. Consistently denied the right to operate slot machines and video lottery terminals, the tracks turned to card games.

Banking Blackjack would have been best, but did not look like it could get through the State Legislature. But poker was a different (political) game.

In 1989, the Legislature decided that the government should not be wasting its time going after small-stakes games. In fact, the law literally called the games "Penny-ante" defined as "a game or series of games of poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah-jongg in which the winnings of any player in a single round, hand, or game do not exceed \$10 in value."

Over the years, penny-ante games were allowed to be played not only in people's homes, but also in mobile home parks and publicly-owned community centers.

So, in 1996, the Legislature passed a law that beginning January 1, 1997, licensed pari-mutuel facilities could open commercial cardrooms.

Great idea, with just one hitch: cardrooms were stuck with the same penny-ante limits: "The winnings of any player in a single round, hand, or game may not exceed \$10 in value. The fee charged by the cardroom for participation in the game shall not be included in the calculation of the limitation on the pot size provided in this paragraph."

Notice the club can charge a fee, which was a good thing, considering it had to supply not only the facilities but also a non-playing dealer.

The plan was to lobby first for penny-ante poker and then get the Legislature to raise the limits. It did not happen.

Imagine what those game were like. The total pot could not be more than \$10. I talked with players and operators who said if you had five players at a table, everyone would chip in \$2.00 and that was it, no raising, no more bets of any kind.

To get around the low limit, operators tried to expand the definition of "poker." I testified as an expert witness on behalf of the State that a game where each player got two cards and tried to get closer to 21 than his opponent was not poker.

We won, but even the State attorney thought the \$10 limit on pots for poker games was silly.

Every attempt to get the Legislature to raise the stakes failed; until this year, when a bill finally made it through both houses. In August, 2003, Gov. Jeb Bush (R.) decided to not veto the bill. He said limits placed last year on when cardrooms could operate made the bill acceptable. But Gov. Bush's main reason for letting the bill become law was, according to TheLedger.com, "It is changing, kind of, the rules of a poker game, taking away one thing and adding another and that really doesn't expand gambling."

Was he correct?

The bill, HB 1059, eliminates the \$10 pot limit. But it replaces it with these new limits: "The cardroom operator may limit the amount wagered in any game or series of games, but the maximum bet may not exceed \$2 in value. There may not be more than three raises in any round of betting."

It will certainly change what was nothing more than a lottery into something resembling true, low stakes poker. But will it greatly expand the games.

My guess is yes.

Although there is a limit on bets and the number of raises per round, there is no limit on the number of rounds. Games like 7-Card Stud can get pretty expensive, but there is now every incentive to be inventive. I bet the first thing we see is the rules of Texas Hold'em being changed, so that there is a round of betting after the first down card and after each individual up card.

The lesson is: if you are fighting to legalize a new form of gambling, start with the stakes you want from the beginning. Your chances of getting the Legislature or voters to raise the limits once the law has been passed is about the same as your winning the World Series of Poker.

HB 1059

END

Professor I Nelson Rose is recognized as one of the world's leading authorities on gambling law. His website is www.GamblingAndTheLaw.com

Why All These Stupid Laws?

A LOOK AT WHAT'S BEEN HAPPENING ON THE LEGAL FRONT SINCE THE GULF COAST DEVASTATION

Several years ago when I visited the casinos in Biloxi and Gulfport, Mississippi I asked what I'm sure every tourist that visits the area asks: what's going to happen to these casino barges when the first self-respecting hurricane blows through? Katrina answer that question, and the answer is exactly what anyone smart enough not to split tens or double down with 12 would have expected. In fact, I suspect a hurricane with less fury than Katrina would have had much the same results, at least as far as the casinos were concerned.

This leads to the question, why would anybody put these casinos in arguably the most venerable place in America? The short answer is that's where the Mississippi legislature said they had to be. But this begs the question. Why would the politicians require such a thing? Many people who oppose motorcycle helmet laws, mandatory seat belt laws and other laws designed to protect us from ourselves argue that "you can't legislate against stupidity." They may have a point, but requiring gambling barges to be unprotected in the Gulf of Mexico is "legislating stupidity." How can you defend that?

Perhaps the Mississippi legislature feels that if casinos are going to make money from people gambling they should take some risk themselves. However, if there is anything casino owners know how to do, it's lay off risk. I suspect the financial burden of the destroyed gambling barges will be borne by insurance companies (read that as you and me) and taxpayers (that's you and me again).

Mississippi politicians are not alone in putting illogical and arbitrary restrictions on legalized gambling. In New York State you cannot have slot machines, but "Video Gaming Devices" are fine. What's the difference, you ask? Well, slot machines have slots and Video Gaming Devices have slits. But today's slot machines also have slits so you can slip those hundred dollar bills in, but the Video Gam-



IT'S BEEN SAID THAT USING GAMBLING TAXES TO FINANCE THE COST OF GOVERNMENT IS A TAX ON THE STUPID. ANY POLITICIAN HAS TO LOVE THAT.

have a slit for a casino debit card. You purchase the card from the casino, and if you run out of money there will be a casino employee there to sell you more debit before you can say, "It's about time I get home anyway."

In Illinois, casinos cannot operate 24 hours a day. Twenty-two is fine, but not 24; and in Canada, casinos can stay open all night and be on dry land, but they can't play craps. Every other game anyone can come up with is there - but no craps in Canada.

In Missouri you can only purchase \$500 worth of chips every two hours. On the surface this seems like a way to keep people from getting carried away in the moment and losing more than they can afford. But that's just the surface, the reality is that it accomplishes very little. First, the rule doesn't prohibit a player from purchasing more than \$500 in two hours, but rather the casino divides the day into two hours intervals, say 12 o'clock to 2 o'clock, 2 o'clock to 4 o'clock and so forth. You can't purchase more than \$500 worth of chips in any interval. So you can buy \$500 worth of chips at a minute before 2, and another \$500 a few minutes later after 2. But that's it until 4 o'clock, right? Wrong. Most Kansas City casinos are two

riverboats docked on different sides of a pier. Legally these are different casinos. So after you buy your \$1,000 worth of chips on one boat, walk across the pier and do it all again. Just in case your timing is off, the other boat measures two-hour intervals on the odd hours. If this isn't enough, you can drive five minutes to another casino and start with a clean slate.

Why all these strange rules?

Gambling offers politicians two things they can't resist. First, free money. Casinos create jobs, pay taxes, bring money into town and ask very little in government services. It's been said that using gambling taxes to finance the cost of government is a "tax on the stupid." Any politician has to love that. Money without angry e-mails from the Taxpayers' Union.

The only objections occasionally come from social or religious reformers. And this gives politicians the other thing they can't resist—an opportunity to be self-righteously against evil, things like gambling and other weaknesses of the flesh.

Of course, to get the free money politicians have to legalize gambling, and to oppose evil they have to be against it. For most of us this would be a problem, and that's why we are not politicians. These restrictive laws allow politicians to play both sides. They can get the free money by legalizing gambling, while boasting to their constituents about how they stood up to the gambling interest.

I can hear the Mississippi State Senator reviling gambling as the scourge of the land (no mention of the

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water), or the Illinois legislator promising his Bible Belt constituents that no one in Illinois will ruin their family's lives by gambling all day and all night—22 hours a day should do it. The Missouri congressperson can reassure her constituents that no one will lose a week's salary in a few hours in a Missouri casino (at least not without walking across the pier).

I'm sure that when the full story of the devastation, both human and financial, in the wake of Hurricane Katrina is told, the unnecessary loss of the Gulf Coast casino will be one of the less consequential sacrifices due to political demagoguery, it just happens to one I can personally relate to. ♣

Stephen Custer is an expert in statistics and probability theory and has taught at several universities. He currently lives in Las Vegas where he applies these skills at the blackjack and poker tables. He is the author of a new book, 21 a journey: Memoirs of a Professional Gambler, a chronicle of his yearlong journey across America playing blackjack. For more information, or to contact the author, visit www.21ajourney.com.

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An Unconstitutional Anti-Gambling Statute

A violation of Fourth Amendment protection against unreasonable search and seizure?

In a couple of previous columns, I discussed some legal points connected with a recent poker bust in South Carolina, in which some people holding a poker tournament in their apartment-complex recreation room were arrested. I pointed out that the South Carolina statute they were charged under has no counterpart in any other state, and is constitutionally suspect. If a statute prohibits a substantial amount of constitutionally protected behavior, the whole statute is invalid and cannot be used to prosecute anyone, even someone who engages in behavior that is not constitutionally protected.

Here is part of the statute in question:

"SECTION 16-19-40. UNLAWFUL GAMES AND BETTING. If any person shall play at any tavern, inn, store for the retailing of spirituous liquors or in any house used as a place of gaming, barn, kitchen, stable or other outhouse, street, highway, open wood, race field or open place at (a) any game with cards or dice, (b) any gaming table, commonly called A, B, C, or E, O, or any gaming table known or distinguished by any other letters or by any figures, (c) any roley-poley table, (d) rouge et noir, (e) any faro bank (f) any other table or bank of the same or the like kind under any denomination whatsoever or (g) any machine or device licensed pursuant to Section 12-21-2720 and used for gambling purposes, except the games of billiards, bowls, backgammon, chess, draughts, or whist when there is no betting on any such game of billiards, bowls, backgammon, chess, draughts ..." (the rest of the statute discusses penalties).

You can see that the statute attempts to ban many nongambling games, as well as gambling games. This is shown by the name of the section ("unlawful games and betting" rather than "unlawful gambling"), the fact that the words "used as a place of gaming" appear in the middle of the statute (modifying only "store" and "house") rather than at the beginning, and most importantly, by the part that specifies which nongambling games are legal (implying that there are other nongambling games that are illegal).

This statute makes one wonder if the government can go

this far in the pursuit of morality. It appears in this statute that we are somehow being denied a fundamental right. In any law case that might be appealed and go to a higher court, such as a state Supreme Court or the U.S. Supreme Court, it is necessary that an argument be used in front of such a body that was brought up in the initial trial. So, we must find out which right is being violated, and where in our Constitution the particular fundamental right is stated or implied.

All of the cases used in this column are U.S. Supreme Court cases. According to the U.S. Supreme Court, a fundamental right is "implicit in the concept of ordered liberty" such that "neither liberty nor justice would exist if they were sacrificed" (*Palko v. Connecticut*, 1937). In *Moore v. East Cleveland* (1977), the court used the term "deeply rooted in this nation's history and tradition." Is playing games with cards or dice important enough to fit such a lofty description?

It would be nice if there were something in the First Amendment to pin our hopes on, as that law is considered to be the essence of a free society: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Unfortunately, the right to assemble is directly connected to the part about petitioning the government, and probably does not include assembling to play card games. The South Carolina statute does look like it might infringe on our freedom of religion, as there are some social fundamentalist religions that frown on cards and dice, and they may have foisted their view into the law. However, it seems better to look elsewhere in the Constitution for a clearer and more suitable place to claim that one of our basic rights is being stomped on by the statute in question.

I believe the right place to look for a Constitutional infringement on our rights is the Fourth Amendment, which reads: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches

and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Of course, the police had a warrant to bust the poker game. Does this mean the players were not protected by the Fourth Amendment?

Fortunately, the Fourth Amendment is interpreted to mean more than just a warrant needs to be issued in order for an invasion by the police to be reasonable. Here are some quotes from the U.S. Supreme Court in an unrelated case, *Lochner v. New York*, 1905. "It must, of course, be conceded that there is a limit to the valid exercise of the police power by the state." "Is this a fair, reasonable, and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary, and arbitrary interference with the right of the individual to his personal liberty ...?" In the 1923 case *Meyer v. Nebraska*, Justice McReynolds explained the word "liberty" by writing, "Without doubt, it denotes not merely freedom from bodily restraint, but also ... to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

I think the answer to that question of whether this particular South Carolina statute is an unreasonable interference with personal liberty must be that although it is reasonable to

raid a place where there is illegal gambling, it is not reasonable to raid a place because people are playing a nongambling game with cards or dice. Otherwise, you could not play even bridge or Monopoly with your family and friends. Imagine the police breaking down a door and raiding such a game.

Ever since the 14th Amendment was passed after the Civil War, our federally guaranteed constitutional rights also must be acknowledged and observed by all state and local laws. In the 1949 case *Wolf v. Colorado*, the Court said, "The security of one's privacy against arbitrary intrusion by the police — which is at the core of the Fourth Amendment — is basic to a free society. It is therefore implicit in the concept of liberty and as such is enforceable against the states through the Due Process Clause" (of the 14th Amendment). In *Ker v. California* (1963), the Court said that federal constitutional standards of reasonableness of searches "is the same under the Fourth and 14th Amendments," meaning the states are bound by federal standards in this area. In the famous 1963 case *Gideon v. Wainwright*, there is a part that reads, "Any state conduct which is grossly unfair denies due process of law."

A statute forbidding the playing of nongambling card games is an overreach of the state's power to enforce morality. It might be argued that the part of the South Carolina law that is constitutionally suspect is not enforced by the police. However, nonenforcement is irrelevant, as per *Epperson v. Arkansas*, the evolution case discussed in my previous column.

The South Carolina statute also should be voided for vagueness. In *Papachristou v. Jacksonville* (1972), the Court, in striking down a city vagrancy law, said, "A law is void for vagueness if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute." The Court additionally said the Jacksonville law "makes criminal activities which by modern standards are normally innocent" and "puts unfettered discretion in the hands of the Jacksonville police." These are exactly the things the South Carolina law forbidding games with dice or cards does! All you need to do is change the word "Jacksonville" to "South Carolina."

I believe that South Carolina has a law violating our Fourth Amendment protection against unreasonable search and seizure. It is the only state in the nation that tries to forbid nongambling games that use dice or cards. The statute in question cannot legally be used to enforce gambling violations. It is facially invalid, meaning no one can be prosecuted under it. The net result is that the state of South Carolina will have the opportunity to bring its gambling laws into the 21st century. ♠

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South Carolina Gambling Laws

Archaic laws likely to be tested in South Carolina

In my last column, I described how a group of men from South Carolina, mostly businessmen, were playing in a friendly poker tournament in their apartment-complex recreation room and were busted by the police. Their lawyer, Jeff Phillips (himself a poker player), told me they were charged under Section 16-19-40 of the SC Penal Code. The statute they were charged under is unique in state law. This is an anti-gambling statute that is combined with a portion that forbids nearly all games played with dice or cards, whether or not any wagering is involved. No other state in the nation attempts to regulate the mere playing of games, as opposed to gambling. Here is the statute, which was passed by the South Carolina Legislature on Dec. 18, 1802, in much the same form as it exists today. I received this information about the statute date over the phone from the Coleman-Koresh Law Library reference desk in Columbia, the capital city of South Carolina. Note part (a).

"SECTION 16-19-40. UNLAWFUL GAMES AND BETTING. If any person shall play at any tavern, inn, store for the retailing of spirituous liquors or in any house used as a place of gaming, barn, kitchen, stable or other outhouse, street, highway, open wood, race field or open place at (a) any game with cards or dice, (b) any gaming table, commonly called A, B, C, or E, O, or any gaming table known or distinguished by any other letters or by any figures, (c) any roley-poley table, (d) rouge et noir, (e) any faro bank, (f) any other table or bank of the same or the like kind under any denomination whatsoever or (g) any machine or device licensed pursuant to Section 12-21-2720 and used for gambling purposes, except the games of billiards, bowls, backgammon, chess, draughts, or whist when there is no betting on any such game of billiards, bowls, backgammon, chess, draughts, or whist or shall bet on the sides or hands of such as do game, upon being convicted thereof, before any magistrate, shall be imprisoned for a period of not over thirty days or fined not over one hundred dollars, and every person so keeping such tavern, inn, retail store, public place, or house used as a place for gaming

or such other house shall, upon being convicted thereof, upon indictment, be imprisoned for a period not exceeding twelve months and forfeit a sum not exceeding two thousand dollars, for each and every offense."

Here is another South Carolina statute (not used in this case) that is even more outrageous, forbidding all games on the Sabbath. This one was passed in 1799, and at that time pertained only to Sullivan Island in South Carolina, until later extended to be statewide.

"SECTION 16-19-70. KEEPING GAMING TABLES OPEN OR PLAYING GAMES ON THE SABBATH. Whoever shall keep or suffer to be kept any gaming table or permit any game or games to be played in his house on the Sabbath day, on conviction thereof before any court having jurisdiction, shall be fined in the sum of fifty dollars, to be sued for on behalf of, and to be recovered for the use of, the State."

As you see, the first statute declares playing any games using cards or dice unlawful (whist and backgammon are exempted). The second statute states that you cannot permit any game or games to be played in your house on the Sabbath. These laws are so offensive that they make you wonder how they could exist in the United States of America. I would like to take you through the legal reasoning process that shows they are not constitutional, and that the poker players cannot be convicted of a crime under the statute that they violated.

The due process clause of the 14th Amendment to the Constitution not only guarantees us procedural due process, but substantive due process. This means that the lawmaking ability of a state is not unlimited. The ability of a state to make laws is restricted in order to guarantee fundamental fairness, justice, and liberty. States are not permitted to enact laws without having a legitimate governmental interest in regulating or prohibiting an activity. In the 2003 Patrick case, the U.S. Supreme Court said, "If the substance, meaning, or effect of a law or action of a government infringes upon a fundamental right to liberty, then the state must show that its infringements are necessary to achieve some compelling governmental interest." One of our fundamental rights is

Quick reference to South Carolina's unlawful games and betting laws

Who:	Any person
What:	Any game with cards or dice
When:	Any time or place
Where:	Any place

guaranteed by the Fourth Amendment to the Constitution, which states in part, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..." The due process clause has also been utilized to recognize unenumerated rights like the right to privacy.

A state is allowed to pass laws against gambling in order to further the legitimate state interest of protecting morals. A law against playing any game that uses cards or dice is an overly long stretch by the state in protecting morals, and is highly unlikely to pass a constitutionality test. Laws like the statutes above look like they reflect a superstrict view of morality held by a few small religious groups such as the Puritans two or three centuries ago, and are still being inflicted by the state of South Carolina upon our world of the 21st century. This may bring the First Amendment protection against the establishment of a state religion into the picture.

Here are some legal points that work in favor of the poker players.

1. If a statute has a substantial part of it that is unconstitutional, the whole statute is invalid. Even if the part of it that pertains to your particular activity passes muster, you cannot be convicted under it.

2. You have standing with the court to challenge the statute even if your rights were not violated, as long as there

is a substantial chance that someone else's might be. The 1973 U.S. Supreme Court case of *Broadrick v. Oklahoma* departs from traditional rules of standing by allowing litigants to challenge a statute, "not because their own rights of free expression are violated... but because of the possibility that third parties engaging in activities protected by the First Amendment might be chilled from such activity."

3. An unconstitutional statute does not have to actually be used to prosecute anyone for it to be invalidated. In the case of *Epperson v. Arkansas*, in which a teacher, Susan Epperson, challenged a state statute making it unlawful to teach any theory of evolution or adopt or use a textbook that teaches evolution, the Supreme Court specifically noted, "There is no record of any prosecutions under the statute. It is possible that the statute is presently more of a curiosity than a vital fact of life." Then it said, "Nevertheless, it is our duty to decide the issues presented." We must conclude that even if no one in South Carolina has ever been arrested for violating the unconstitutional part of these statutes (which in a statute this old would be impossible to prove), it is still valid to take issue with the statute as a whole.

As you see, I believe the Greenville poker players have an excellent chance to win their case. Even if they lose on the first round, an appeal should be considered. In that event, court costs would be much higher, and it would be reasonable to support their efforts with a special fund from the poker community. However, I am guessing it will not come to that. What often happens in these raids is that the charges are dropped and the case never goes to court. In such a case, one wonders why the police run the risk of a raid in the first place, since there is the risk that a police officer or a player could be injured. In my home state of Michigan about 30 years ago, three people were shot, one fatally, in one of these raids because the players thought the game was being hijacked.

A police tactic more common than one would think is, "We will drop the charges if you do not try to recover what was seized in the raid." (In these cases in which charges are never pressed, you have to wonder if the raids are mainly police fundraisers, and whether the methods for tracking what was seized always accurately account for the full amount.) Poker players often go for that deal, but I sure hope no one in South Carolina does. ♠

Bob Ciaffone has authored four poker books, Middle Limit Hold'em Poker (available at CardPlayer.com), Pot-limit and No-limit Poker, Improve Your Poker, and Omaha Hold'em Poker. Ciaffone is available for poker lessons: e-mail thecoach@chartermi.net. His website is www.pokercoach.us, where you can get his rulebook, Robert's Rules of Poker, for free

Attorney General Opinion

FORMAL OPINION	No. 93-5
of	AG Alpha No. LE HR AGATR
GALE A. NORTON Attorney General	April 21, 1993

This is a response to a request from Representative Lewis Entz concerning the General Assembly's authority to legislatively permit certain forms of gambling.

QUESTION PRESENTED AND CONCLUSION

Does the Colorado Constitution prohibit the General Assembly from enacting legislation to legalize gambling?

The Colorado Constitution prohibits the General Assembly from enacting legislation to authorize lotteries, but it does not prohibit the General Assembly from enacting legislation to authorize forms of gambling which are not lotteries. The prohibition against lotteries applies to slot machines and blackjack. It does not apply to poker; therefore, this game could be legalized.

ANALYSIS

Applicable provisions.

Article XVIII, section 2 was part of the original Colorado Constitution, adopted in 1876. At that time, it read as follows:

Section 2. Lotteries prohibited. -- The general assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state.

The lottery provision of the Constitution has since been amended to allow the General Assembly to authorize certain forms of lotteries. In **Bills v. People**, 113 Colo. 326, 157 P.2d 139 (1945) the court indicated that the terms lottery and gift enterprise were "synonymic" and used interchangeably in the Constitution and statutes. The phrase "gift enterprise" was deleted in 1959. 1959 Colo. Sess. Laws p. 867.^{FN1}

The Article XVIII prohibition against legislatively authorized lotteries was the basis of an unsuccessful challenge to parimutuel wagering on dog and horse races. This type of wagering was legalized when, in 1948, the voters approved "An Act Authorizing, Regulating and Providing for Licensing the Racing of Horses and Other Animals with Parimutuel Wagering" that the General Assembly had submitted as a referendum. The Supreme Court rejected the constitutional challenge in **Ginsberg v. Centennial Turf Club**, 126 Colo. 471, 251 P.2d 926 (1952). Later, however, in 1978, the conduct of Sweepstakes races at the same facilities was found to be prohibited by Article XVIII, Section 2. **In re Interrogatories of the Governor Regarding the Sweepstakes Races Act**, 196 Colo. 353, 585 P.2d 595 (1978).

Section 2 of Article XVIII, as amended in 1980, now provides that

[t]he general assembly shall have no power to authorize lotteries for any purpose, except that the conducting of such games of chance as provided [therein] shall be lawful on and after January 1, 1959, and the conducting of state supervised lotteries ... shall be lawful on and after January 1, 1981.

It also provides that the authority to conduct particular lottery games be limited to certain non-profit licensees and the games be

[r]estricted to the selling of rights ... in the specific kind of game of chance commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random and in the specific game of chance commonly known as raffles, conducted by the drawing of prizes or by the allotment of prizes by chance.

Id.

Article XVIII was again amended in November of 1990, when the voters granted the three mountain communities of Central City, Blackhawk and Cripple Creek the authority to permit "limited gaming." Section 9 of Article XVIII, provides **inter alia**:

(1) Any provision of section 2 of this Article XVIII or any other provision of this constitution to the contrary notwithstanding, limited gaming in the City of Central, the City of Blackhawk and the City of Cripple Creek shall be lawful as of Oct. 1, 1991.

(4) (b) "Limited gaming" means the use of slot machines and the card games of blackjack and poker, each game having a maximum single bet of five dollars.

Meaning of "lottery".

For purposes of your request, the critical term in Section 2 is "lottery." Because state-authorized lotteries were a very common means for states to raise money in the nineteenth century, and because abuses apparently became common also, most states banned lotteries in the last decades of that century. By 1885, twenty nine states had banned lotteries. **Greater Loretta Improvement Assoc. v. State**, 234 So. 2d 658 (Fla. 1970); **State v. Brotherhood of Friends**, 274 P.2d 787, 794-95 (Wash. 1952).

Consequently, what constitutes a lottery has historically been the subject of much litigation. And, because in that litigation courts have approached the question from different directions, the determinations as to what does and does not qualify as "lottery" vary significantly. Generally, however, there is agreement that while all lottery is gambling all gambling is not lottery, **Ginsberg v. Centennial Turf Club**, *supra*, and that principle is most germane to this inquiry.

In Colorado, the Supreme Court has provided the following description of "lottery":^{FN2}

[A] lottery is present when consideration is paid for the opportunity to win a prize awarded by chance.

In re Interrogatories of Governor Regarding Sweepstakes Races Act, 196 Colo. at 357, 585 P.2d at 598. According to this formulation, a particular gambling scheme is a "lottery" whenever three essential elements are present: consideration, prize, and chance. The type of scheme involved is immaterial.

The "chance dominant" test.

Not surprisingly, most litigation concerning lotteries has involved the third element: chance.^{FN3} In determining whether this element is present within the meaning of constitutional and statutory provisions relating to lotteries, courts have adopted two distinct approaches.

Certain jurisdictions have embraced the "pure chance" doctrine. Under this approach, for a scheme to be a lottery, it must be one solely based on chance. The exercise of any skill by a participant in the scheme removes the scheme from within the definition of a lottery. See **Braddock v. Family Finance Corp.**, 95 Idaho 256, 506 P.2d 824 (1973).

The majority of courts, however, have adopted the "dominant factor" doctrine under which a scheme is a lottery when chance dominates the distribution of prizes, even though the distribution maybe affected to some extent by the exercise of skill or judgment. **E.g., Roberts v. Communications Inv. Club**, 431 A.2d 1206, 1211 (RI 1981). Colorado has adopted this

approach: "Article XVIII, Section 2 is violated if chance is the controlling factor in the award." **In re Interrogatories of Governor, supra**, 196 Colo. at 356, 585 P.2d at 598.

In an analysis of the "dominant factor" doctrine the supreme court of Alaska, in **Morrow v. State**, 511 P.2d 127 (Alaska 1973), set forth a four-part test to determine whether skill dominates over chance: 1) whether without skill it would be impossible to win the game; 2) whether the general public, not experts, have the capacity to solve the problems presented; 3) skill must control the final result, not just one part of the larger scheme -- where skill does not destroy the dominant effect of chance, the scheme is a lottery and 4) the participants must be informed of the criteria used in selecting winners.

Consequently, the determination of which gambling game is exempt from the lottery prohibition must be made by applying the "dominant factor" test to the specifics of each game to see whether chance or skill dominates.

Specific games analyzed.

For purposes of this opinion, the games which constitute "limited gaming" within the meaning of the Colorado Constitution, Article XVIII, section 9(4)(b) have been analyzed. These games are slot machines, blackjack, and poker. Colorado courts have never been asked to determine whether any of these games constitutes a lottery. However, under the "chance dominant" test, it appears that slot machines are lotteries because chance clearly dominates; blackjack is probably a lottery because chance plays a large part but some skill is necessary; and poker is probably not a lottery because skill plays a larger, perhaps dominant role.

Slot machines.

Games played through slot machines have generally been perceived to be games where chance dominates and therefore have been categorized as lotteries. E.g., **State ex rel. Evans v. Brotherhood of Friends**, 41 Wash. 2d 133, 297 P.2d 787 (1952).^{FNA}

Blackjack.

The game of blackjack (or twenty-one)^{FNS} presents a situation where both skill and chance are present. In a formal Attorney General's Opinion issued on August 4, 1983, this office concluded that, because chance appears to dominate, blackjack is a "lottery." Very few courts have addressed this particular question, but those that have been in accord with this conclusion. See **State v. Eisen**, 16 N.C. App. 532, 192 S.E. 2d 613, 616 (1972) ("In ... blackjack ... we think the element of chance clearly dominates the element of skill; certainly the element of chance is present in such a manner as to thwart the exercise of skill or judgment").

Poker.

The game of poker^{FN6} is more problematic. The Supreme Courts of Montana and Oregon have decided that poker is a game of skill "with one player pitting his skills and talents against those of other players." **Gallatin County v. D & R Music Vending**, 208 Mont. 138, 141, 676 P.2d 779, 781 (1984); **State v. Coats**, 158 Or. 122, 74 P.2d 1102, 1106 (1938). But the Supreme Court of Ohio has held that it is a game of chance. **Mil's Jennings of Ohio, Inc. v. Department of Liquor Control**, 70 Ohio St. 2d 95, 435 N.E. 2d 407, 409 (1982).

The tension inherent in those decisions is reflected in some of our own supreme court's pronouncements on the subjects of lotteries and poker. In **Bills v. People, supra**, 113 Colo. at 332, 157 P.2d at 142, the court found that the essential evil of lotteries is the cultivation and stimulation of the spirit of gambling. Later, in **In re Interrogatories of Governor, supra**, 196 Colo. at 357, 585 P.2d at 598, the court explained the intent of the framers of the Colorado Constitution to rid this state of that evil:

The framers of our constitution prohibited lotteries in the broadest terms at the time Article XVIII Section 2 was enacted. In so doing, they were seeking to suppress and restrain the spirit of gambling which is cultivated and stimulated by schemes whereby one is induced to hazard his earnings with the hope of large winnings.

These statements suggest that our constitutional prohibition against lotteries must be broadly interpreted -- perhaps broadly enough to include poker.

However, our supreme court has also stated:

There is no prohibition in our Constitution which prevents the legislature, or the people from authorizing certain forms of gambling. It unquestionably is true that all lotteries and gift

enterprises are forms of gambling, but it does not follow that all gambling is a "lottery" or "gift enterprise" as these terms are defined in law. **No one would contend that a game of poker, in which money is bet upon the relative value of the cards held by the participants constitutes a lottery,** but it most certainly is a form of gambling.

Ginsberg v. Centennial Turf Club, supra, 126 Colo. at 477, 251 P.2d at 929 (emphasis added). Although it is dicta in **Ginsberg**, the characterization that poker is not a lottery has recently been cited by the court in **Charnes v. Central City Opera House**, 773 P.2d 546, 551 (Colo. 1989).

While the call is a close one, I conclude that poker, as narrowly defined in Section 12-47.1-103(22), is a game in which skill, not chance, dominates, and that legislative authorization of certain forms of poker would not be prohibited by Article XVIII Section 2.^{FN7} That is not to say that on a case-by-case basis some forms of poker could be construed as more akin to games of chance, or a "lottery." Of course the fact that poker is not constitutionally prohibited in all cases does not mean that it is legal; the prohibitions of Article 10 of Title 18 still apply. **See generally People v. Wheatridge Poker Club**, 194 Colo. 15, 569 P.2d 324 (1977). Poker remains illegal unless and until the Legislature acts to change the criminal statutes.

GALE A. NORTON
Attorney General

JOHN J. KRAUSE
Assistant Attorney General

CONSTITUTIONAL AMENDMENTS
CONTEST
GAMBLING

Colo. Const. Art. XVIII, Section 2
Colo. Const. Art. XVIII, Section 9

LEGISLATIVE BRANCH
House of Representatives

Colorado's constitutional law on lotteries does not prohibit the legislature from authorizing certain forms of gambling.

Definitions, 25 U.S.C. 2703 [SEC. 4]

For purposes of this chapter--

(1) The term "Attorney General" means the Attorney General of the United States.

(2) The term "Chairman" means the Chairman of the National Indian Gaming Commission

(3) The term "Commission" means the National Indian Gaming Commission established pursuant to section 2704 of this title.

(4) The term "Indian lands" means--

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which--

(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and

(B) is recognized as possessing powers of self-government.

(6) The term "class I gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

(7)(A) The term "class II gaming" means--

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)--

(l) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that--

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term "class II gaming" does not include--

(i) any banking card games including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(C) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

(D) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on October 17, 1988, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after October 17, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(E) Notwithstanding any other provision of this paragraph, the term 'class II gaming' includes, during the 1-year period beginning on December 17, 1991, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands in the State of Wisconsin on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requested the State, by no later than November 16, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(F) If, during the 1-year period described in subparagraph (E), there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such judicial decision.

(8) The term "class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

(9) The term "net revenues" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

(10) The term "Secretary" means the Secretary of the Interior.

National Indian Gaming Commission

March 23, 1998

Philip Shea, Es.
Shea & Wilks
200 Wells Fargo Plaza
100 W. Washington Street
Phoenix, AZ 85003-1805

Dear Mr. Shea:

This letter responds to your inquiry as to whether the National Indian Gaming Commission regards non-banked poker games in Arizona as Class II card games under the Indian Gaming Regulatory Act (IGRA). For the reasons outlined below, I conclude that non-banked poker games are Class II card games and therefore subject to tribal and federal regulation only.

I understand that disagreement has arisen in Arizona between gaming tribes and the Arizona Department of Gaming (Department). The Department asserts that poker games played at Arizona reservations are illegal as operated inasmuch as they constitute gambling operated as a "business for benefit" contrary to Arizona law. The Department argues that because Tribal poker games do not comply with this provision of Arizona's gambling laws, that such noncompliance transforms poker into a Class III game that is lawful only if operated pursuant to a tribal-state compact. The Department does not argue that the card games are banked card games, nor does the Department assert that the games are being played contrary to State laws regarding hours or periods of operation or limitations on wagers or pot sizes.

The IGRA provides that Indian tribes have jurisdiction over Class II gaming, subject to oversight regulation by the NIGC. Pursuant to the IGRA, Class II gaming includes on-banking card games, such as poker, if such card games:

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State, and are played at any location in the State, but only if such card games are played in

conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

25 U.S.C. § 2703 (7)(A)(ii)

The issue of whether the "business for benefit" provision of state law applies to Indian tribes in Arizona raises the question of the extent to which the IGRA assimilates state law. It is our view that the IGRA preempts the application of all State law operating requirements save for those specified in the statute—pot size, hours, and wagers. The principle which applies to the issue is that enunciated by the court in United States v. Sisseton-Wahpeton Sioux Tribe, 397 F.2d 358, (8th Cir. 1990):

"we believe that the legislative history [of IGRA] reveals that Congress intended to permit a particular gaming activity, even if conducted in a manner inconsistent with state law, if the state merely regulated, as opposed to completely barred, that particular gaming activity. "

Id. At 365. Thus, the classification of poker depends on whether the game is explicitly authorized or not explicitly prohibited by the laws of Arizona.

Gambling in Arizona is governed by the statutes at Chapter 33, Title 13, Arizona Revised Statutes, §§ 13-3301 through 13-3312. Arizona permits gambling under several circumstances, such as social, regulated, and charitable gambling. A.R.S. § 13-3302. Section 13-3304 prohibits "benefiting from gambling," but excepts from its provisions "amusement or regulated gambling," and provides that "benefiting from social gambling as a player is not unlawful under this section." Section 13-3303 makes it a crime to promote gambling, but excepts from its provisions activities associated with "amusement, regulated, or social gambling." Card games are not mentioned in the Arizona statutes. In fact, the statutes do not identify any particular forms of gambling; instead they are aimed at regulating the circumstances under which gambling may legally occur in Arizona. Poker is, therefore, permitted in Arizona.

The next step in the analysis is to determine whether poker is "played at any location in the State," pursuant to 25 U.S.C. § 2703(7)(A)(ii). Because poker is "not explicitly prohibited by the laws of the State," Poker is a class II game if it is played at any location in the state, subject to limits on hours or periods of operation and wagers or pot sizes. The Gila River Indian Community submitted ample evidence to show that poker is played in Arizona. Such evidence consists primarily of advertisements for charity functions at which poker games were offered, as well as an affidavit from a private investigator who witnessed poker tables at several events around the State. Importantly, the Department does not disagree that poker is played lawfully in the State of Arizona.

The only remaining consideration is whether poker is being "played in conformity with the laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games" 25 U.S.C. § 2703 (7)(A)(ii). As indicated above, card games are not specifically mentioned in Arizona's gambling statutes. We are aware, therefore, of no laws or regulations establishing the limitations referred to in the IGRA.

As pointed out by the court in the *Sisseton* decision, the legislative history of IGRA supports this view, and reveals a Congressional intent to authorize only specific limited state law restrictions on Class II card games. The Senate Report accompanying the bill ultimately enacted as the IGRA, S. 555, discusses the section which requires non-banking card games to conform with state regulations on periods of operation and wagers or pot sizes:

Subparagraphs (I) and (II) [of 25 U.S.C. § 2703 (7)(A)(ii)] are to be read in conjunction with [25 U.S.C. § 2710] sections (a)(2) [which provides that class II gaming shall be within the jurisdiction of the Indian tribes] and (b)(1)(A) [which provides that an Indian tribe may engage in class II gaming if it is located within a State that permits such gaming for any purpose] to determine which particular card games are within the scope of class II. No additional restrictions are intended by these subparagraphs. The Committee notes that, while existing law does not require that Indian card games conform with State law, it agreed to adoption of bill language to provide that these card games be operated in conformity with laws of statewide application with respect to hours or periods of operation, or limitations on wagers or pot sizes for such card games.

S.Rep. No. 446, 100th Cong., 2nd Sess. at 9 (1988), *reprinted in* U.S.C.C.A.N. 3071, 3979. (Emphasis added). Furthermore, the Senate Report states that:

Class II continues to be within tribal jurisdiction but will be subject to oversight regulation by the National Indian Gaming Commission; card game must be played under state-mandated hours and pot limits, if any.

S. Rep., *supra* at 7. Thus, Congress intended that non-banking card games did not have to conform with state law requirements other than those expressly stated. As long as the card games are explicitly authorized or not explicitly prohibited by the laws of the state, tribes may operate them, subject to the limits on hours and periods of operation, and wagers and pot sizes.

Therefore, because poker is a class II game in Arizona, I conclude that tribes may operate poker subject to tribal and NIGC regulation and any state regulation concerning hours or periods of operation and wager sizes.

Please be advised that this legal opinion is advisory in nature only and that it may be superseded, reversed, revised or reconsidered by the NIGC. Furthermore, if there are any changes made to the game as described, such changes might materially alter our conclusion.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/Penny Coleman

Penny Coleman

Deputy General Counsel



INTERNATIONAL MASTERS OF GAMING LAW

NEWS

May 16, 2005

The Iowa Racing & Gaming Commission's six month licensing process has been completed. Yesterday, the Commission voted to issue four new "excursion gambling boat" licenses. These casinos will not cruise, nor even float, but still will bear a resemblance to a riverboat.

Licenses were granted in Palo Alto (Emmetsburg in the northwest lakes region), Worth (near the Minnesota border along I-35), Black Hawk (Waterloo/Cedar Falls) and Washington (south of Cedar Rapids/Iowa City along Hwy 218 "Avenue of the Saints") counties.

The license recipients are:

Worth County - Peninsula Gaming, operator of the Dubuque Diamond Jo and the New Evangeline Downs racino,

Black Hawk County - Isle of Capri,

Washington County - Catfish Bend, operator of the boat in Burlington/Ft. Madison, Iowa and

Palo Alto County - Wild Rose Entertainment, a new entry into gaming, whose principals are Gary Kirke and Dr. Michael Richards of Des Moines.

POKER LAW BRIEFS

Week ending 3 26.05

North Dakota

A bill that would have allowed Internet poker sites to obtain a license and offer online poker from North Dakota was soundly defeated by the North Dakota legislature on a 44-3 vote. The defeat came after the bill was handily endorsed by the North Dakota House of Representative in this state with a bicameral legislature. Much of the opposition surfaced after the United States Department of Justice

penned a letter to the State Attorney General stating that such activity would violate Federal law. This is a dubious proposition and raises serious questions as to the propriety of the enforcement branch of the Federal government interjecting itself in state politics to influence state policy. 3.26.05

Connecticut

A bill pending in the Connecticut legislature that would allow bars and restaurants to hold poker and card tournaments has met resistance after the state attorney general questioned whether it would violate the compact between the state and the Mashantucket Pequot and Mohegan tribes. 3.24.05

Maryland

A bill in the Maryland legislature would allow churches, veterans groups, fraternal and civic groups and volunteer fire companies to hold card games once every year to raise funds. A copy of the bill is found here: <http://images.ibsys.com/2005/0324/4315753.pdf>
3.25.05

Virginia

Police in Fairfax Virginia have embarked on a campaign to eliminate poker games. Two recent raids have resulted in 37 arrests with felony charges brought against the operators and misdemeanor charges brought against the players. 3.23.05

Louisiana

The Louisiana state police arrested two bar owners and three dealers in relationship to Texas Hold'em games played there. The State liquor officials and bar owners have different views as to the legality of such games where the bar does not take a rake. The State takes the position that the games are illegal because they indirectly profit the bar owners through increased liquor sales. 3.23.05.

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INTERACTIVE LAW BRIEFS

United States Congress

Despite that billions will be bet in office pools and on the Internet in this week's NCAA tournament, former Nebraska head football coach and current congressman Tom Osbourne has reintroduced a bill that would prohibit wagering on college sports. This would really only

impact Nevada sports books because the other 98% of all wagering on College sports is already illegal in the United States. In essence, Congressman Osbourne is deciding that sending US dollars off-shore or into the hands of criminal enterprises is better than regulated gambling.

3.26.05

North Dakota

A bill that would have allowed Internet poker sites to obtain a license and offer online poker from North Dakota was soundly defeated by the North Dakota legislature on a 44-3 vote. The defeat came after the bill was handily endorsed by the North Dakota House of Representative in this state with a bicameral legislature. Much of the opposition surfaced after the United States Department of Justice penned a letter to the State Attorney General stating that such activity would violate Federal law. This is a dubious proposition and raises serious questions as to the propriety of the enforcement branch of the Federal government interjecting itself in state politics to influence state policy. 3.26.05

Illinois and Georgia

You know that it was inevitable despite how slowly the lottery bureaucracy works. The state lotteries are going online. Both Georgia and Illinois have pending legislation that would allow their state lotteries to start selling lottery tickets online. Hmmm... first online lottery tickets, then online Powerball, then online VLTs...the possibilities are staggering. 3.26.05

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Missouri Revised Statutes

Chapter 313 Licensed Gaming Activities Section 313.800

August 28, 2005

Definitions--additional games of skill, commission approval, procedures.

313.800. 1. As used in sections 313.800 to 313.850, unless the context clearly requires otherwise, the following terms mean:

- (1) "Adjusted gross receipts", the gross receipts from licensed gambling games and devices less winnings paid to wagerers;
- (2) "Applicant", any person applying for a license authorized under the provisions of sections 313.800 to 313.850;
- (3) "Bank", the elevations of ground which confine the waters of the Mississippi or Missouri Rivers at the ordinary high water mark as defined by common law;
- (4) "Capital, cultural, and special law enforcement purpose expenditures" shall include any disbursement, including disbursements for principal, interest, and costs of issuance and trustee administration related to any indebtedness, for the acquisition of land, land improvements, buildings and building improvements, vehicles, machinery, equipment, works of art, intersections, signage, signalization, parking lot, bus stop, station, garage, terminal, hanger, shelter, dock, wharf, rest area, river port, airport, light rail, railroad, other mass transit, pedestrian shopping malls and plazas, parks, lawns, trees, and other landscape, convention center, roads, traffic control devices, sidewalks, alleys, ramps, tunnels, overpasses and underpasses, utilities, streetscape, lighting, trash receptacles, marquees, paintings, murals, fountains, sculptures, water and sewer systems, dams, drainage systems, creek bank restoration, any asset with a useful life greater than one year, cultural events, and any expenditure related to a law enforcement

officer deployed as horse-mounted patrol, school resource or drug awareness resistance education (D.A.R.E) officer;

(5) "Cheat", to alter the selection of criteria which determine the result of a gambling game or the amount or frequency of payment in a gambling game;

(6) "Commission", the Missouri gaming commission;

(7) "Dock", the location in a city or county authorized under subsection 10 of section 313.812 which contains any natural or artificial space, inlet, hollow, or basin, in or adjacent to a bank of the Mississippi or Missouri Rivers, next to a wharf or landing devoted to the embarking of passengers on and disembarking of passengers from a gambling excursion but shall not include any artificial space created after May 20, 1994, and is located more than one thousand feet from the closest edge of the main channel of the river as established by the United States Army Corps of Engineers;

(8) "Excursion gambling boat", a boat, ferry or other floating facility licensed by the commission on which gambling games are allowed;

(9) "Fiscal year" shall for the purposes of subsections 3 and 4 of section 313.820 mean the fiscal year of a home dock city or county;

(10) "Floating facility", any facility built or originally built as a boat, ferry or barge licensed by the commission on which gambling games are allowed;

(11) "Gambling excursion", the time during which gambling games may be operated on an excursion gambling boat whether docked or during a cruise;

(12) "Gambling game" includes, but is not limited to, games of skill or games of chance on an excursion gambling boat but does not include gambling on sporting events; provided such games of chance are approved by amendment to the Missouri Constitution;

(13) "Games of chance", any gambling game in which the player's expected return is not favorably increased by his or her reason, foresight, dexterity, sagacity, design, information or strategy;

(14) "Games of skill", any gambling game in which there is an opportunity for the player to use his or her reason, foresight, dexterity, sagacity, design, information

or strategy to favorably increase the player's expected return; including, but not limited to, the gambling games known as "poker", "blackjack" (twenty-one), "craps", "Caribbean stud", "pai gow poker", "Texas hold'em", "double down stud", and any video representation of such games;

(15) "Gross receipts", the total sums wagered by patrons of licensed gambling games;

(16) "Holder of occupational license", a person licensed by the commission to perform an occupation within excursion gambling boat operations which the commission has identified as requiring a license;

(17) "Licensee", any person licensed under sections 313.800 to 313.850;

(18) "Mississippi River" and "Missouri River", the water, bed and banks of those rivers, including any space filled by the water of those rivers for docking purposes in a manner approved by the commission but shall not include any artificial space created after May 20, 1994, and is located more than one thousand feet from the closest edge of the main channel of the river as established by the United States Army Corps of Engineers;

(19) "Supplier", a person who sells or leases gambling equipment and gambling supplies to any licensee.

2. In addition to the games of skill referred to in subdivision (14) of subsection 1 of this section, the commission may approve other games of skill upon receiving a petition requesting approval of a gambling game from any applicant or licensee. The commission may set the matter for hearing by serving the applicant or licensee with written notice of the time and place of the hearing not less than five days prior to the date of the hearing and posting a public notice at each commission office. The commission shall require the applicant or licensee to pay the cost of placing a notice in a newspaper of general circulation in the applicant's or licensee's home dock city or county. The burden of proof that the gambling game is a game of skill is at all times on the petitioner. The petitioner shall have the affirmative responsibility of establishing his or her case by a preponderance of evidence including:

(1) Is it in the best interest of gaming to allow the game; and

(2) Is the gambling game a game of chance or a game of skill?

All testimony shall be given under oath or affirmation. Any citizen of this state shall have the opportunity to testify on the merits of the petition. The commission may subpoena witnesses to offer expert testimony. Upon conclusion of the hearing, the commission shall evaluate the record of the hearing and issue written findings of fact that shall be based exclusively on the evidence and on matters officially noticed. The commission shall then render a written decision on the merits which shall contain findings of fact, conclusions of law and a final commission order. The final commission order shall be within thirty days of the hearing. Copies of the final commission order shall be served on the petitioner by certified or overnight express mail, postage prepaid, or by personal delivery.

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National poker craze drawing attention of law enforcement

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By Charisse Jones, USA TODAY

NEW YORK — A few evenings a month, Carl Skutsch used to head to the 14th Street Playstation in Manhattan

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Cheryl Hines and Anthony Anderson compete on Bravo's original series *Celebrity Poker Showdown*

By Paul Drinkwater, Bravo/nbcumv.com

Despite its name and the free Oreos and pretzels, there was no electronic game in sight. Instead, Skutsch, a history teacher at the School of Visual Arts here, and a motley crew of investment bankers, cab drivers and retirees gathered in the non-descript office space and played poker — mostly Texas Hold 'Em.

Then in May, the Playstation was shut down, one of several underground poker clubs raided and closed by New York police last year. "I miss that world," says Skutsch, 42. "Every night a lot of the same faces would be around so people knew each other. There was a certain respect in the air."

In the past five years, poker has become a national craze. Hands are dealt on the Internet, and TV shows such as *Celebrity Poker Showdown* on Bravo draw huge audiences. A "royal flush" is becoming as familiar a sports phrase as a "Hail Mary."

With poker's growing popularity has come greater

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scrutiny by law enforcement agencies, and arrests and crackdowns are taking place from Baltimore and New York to Monterey, Calif. In October, a business group in San Jose was warned that it would break the law if it hosted a poker tournament to raise money for a library

It isn't illegal in most states to play poker at home among family and friends, but running a game and making a profit is often a crime, says I. Nelson Rose, a professor at Whittier Law School in Costa Mesa, Calif., and an expert on gambling laws. "There are different sets of laws for players as opposed to the operators. Most of the time, players are not breaking the law. Most of the time the operators, if they are running it for profit, are."

A surge in popularity

Poker has become so ubiquitous that some may not realize that they are committing a crime. In what Baltimore police said was the largest such raid in their city since 1932, 75 people were cited in November for playing in a poker game advertised in the local newspaper.

Gambling is illegal in Maryland unless the proceeds go to charity and the operator has a permit, says Patricia Deros, assistant state's attorney for Baltimore. The state's attorney ultimately did not prosecute the players, but the game's two operators and 13 dealers and employees were charged with running a gambling operation. In a separate incident in November, a Baltimore city police officer was among five people charged with participating in or running a poker game.

Among other recent arrests

- In December, police in Fairfax County, Va., charged two men, including an off-duty police officer, with operating an illegal poker game in a home. It is legal to play poker in Virginia, but it is a crime to operate a gambling establishment, charge an entrance fee or take a cut of the pot.
- A man was charged in February in Atwater, Calif., with running an illegal poker tournament in his sports bar. Seven others were charged in September in Monterey and Seaside, Calif., with illegally running poker tournaments and sports betting pools, according to a spokesman for the California state attorney general.
- About seven illegal poker clubs were closed down last year in New York City, says chief police spokesman Paul Browne. Some of the shuttered clubs were targeted after shootings occurred or weapons were found there. "If there's an incident or incidents that involve violence, then those locations are going to come to the top of the pile in terms of enforcement," he says.

Some lawmakers and fundraisers say it's time for the laws that penalize playing or profiting from poker to catch up with the times. "Changes in the law always trail changes in society," Rose says. "The laws dealing with gambling date from an era when there was a complete prohibition."

Fundraiser for a library

Rich De La Rosa, president of the Almaden Business Association in San Jose, said donors were pledging \$100 each to play in a Texas Hold 'Em tournament that was to raise money for the children's section of the Almaden library.

The group had already raised \$17,000 and the October fundraiser was only two days

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away when an agent with the state Department of Justice called De La Rosa

"He left me a message ... telling me what we were doing was illegal, and if we didn't cease and desist we'd be cited," De La Rosa says. "I honestly thought somebody was pulling our leg."

Under California law, "controlled games" such as poker can be played only in tribal casinos, licensed card rooms or private homes, says Nathan Barankin, spokesman for the state attorney general.

California State Assemblyman Alberto Torrico, however, has introduced legislation to allow non-profit organizations to host "casino night" fundraisers. There would be several restrictions: No cash prizes would be permitted, and 90% of the proceeds would have to go to a charitable cause.

New York state Sen. John Sabini is pushing to allow bars or restaurants to host poker tournaments offering prizes such as Yankees tickets or a trip to Las Vegas.

Because players spend money on food and drinks, businesses would earn more, and "that would trickle down to the state," Sabini says.

If gambling laws are relaxed, society should help those whose playing gets out of control, says Keith Whyte, executive director of the Washington, D.C.-based National Council on Problem Gambling.

Much as Carl Skutsch loves the game, he has mixed feelings about changing the laws that currently restrict it.

"I'm not entirely sure I want to see New York plastered with gambling joints on every corner," says Skutsch, who still plays poker with friends every Friday.

"I think it works that you have this no man's zone where it's not exactly legal but if you keep it low profile you won't get bothered."

After all, that's part of the excitement. "This secret world of card players," he says, "is a little bit of a thrill."

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MEMORANDUM

April 19, 2005

SUBJECT: Sectional Analysis of HB 272, relating to Card Rooms
(Work Order No. 24-LS0916\A)

TO: Representative Pete Kott
Attn: Mike O'Hare

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Intent language.

Section 2. Adds a new chapter providing for the regulation of card rooms.

Article 1. Card Games and Card Rooms.

Sec. 05.18.010. Notwithstanding the state laws criminalizing gambling, permits the operation of a card room by a licensed owner in accordance with the chapter. Permits the playing of non-banking poker, pan, rummy, bridge, and cribbage games in card rooms.

Sec. 05.18.020. Gives employees of the department of revenue the right to be present in a card room.

Sec. 05.18.030. Permits wagering on card games, under regulations adopted by the department. Limits wagering to those present in the room, prohibits wagering using negotiable currency, requires the purchase of tokens or chips from the owner of the card room.

Sec. 05.18.040. Prohibits persons under 21 years of age from being in card rooms, and from wagering on card games in card rooms.

Article 2. Administration.

Sec. 05.18.110. Authorizes and requires the department of revenue to administer and enforce the chapter.

Sec. 05.18.120. Requires the department to collect license fees, and to penalize non-criminal violations of the chapter. Gives the department access to premises held by a licensed card room owner.

Sec. 05.18.130. Requires the department to adopt licensing standards for licenses related to card rooms, sets certain standards, and requires the department to obtain certain information from applicants. Provides for hearings for individuals aggrieved by department actions related to licensing.

Sec. 05.18.140. Requires governor to appoint a five member card room advisory board to make recommendations on policy and licensing to the department.

Sec. 05.18.150. Authorizes the department to impose penalties on licensees and suspend licenses for violations of the chapter.

Sec. 05.18.160. Provides a process for licensees to complain to the department about unnecessarily disruptive investigations of card operations.

Sec. 05.18.170. Provides a process for transfer of licenses.

Sec. 05.18.180. Provide for suspension of an owner's license for card room health or safety issues.

Sec. 05.18.190. Provides for public access to records relating to license applications and information licensees are required to provide.

Article 3. Licenses.

Sec. 05.18.200. Provides for the issuance of licenses to own a card room and conduct card games. Specifies information required on the application, the application fee, and disqualifications.

Sec. 05.18.210. Lists factors for the department to consider in evaluating an application for an owner's license.

Sec. 05.18.220. Specifies the annual per table license fee and the bond requirements for licensed owners.

Sec. 05.18.230. Requires licensed owners to hold quarterly card tournaments to benefit nonprofit educational institutions.

Sec. 05.18.240. Specifies that an owner's license has a five year term.

Sec. 05.18.250. Permits the department to revoke an owner's license if the licensee has begun regular operations more than 12 months after the license application is approved, if the department determines that revocation is in the best interests of the state.

Sec. 05.18.260. Permits an owner to renew an owner's license for an additional five year term, provided the requirements of the section have been met, the license fees paid, and the bond kept in force. Requires the department to conduct a complete investigation of the owner's compliance with the chapter every five years, and permits the department to investigate compliance at any time. Costs of investigations are to be borne by the licensed owner.

Sec. 05.18.270. Permits a licensed owner to operate a training school for occupational licensees.

Sec. 05.18.280. States that an owner's license is a revocable privilege and not a property right.

Sec. 05.18.290. Requires the department to identify the card room related occupations that are to be licensed under the chapter. Require that the department limit each occupational licensee to managing card operations for one licensed owner.

Sec. 05.18.300. Sets forth requirements for issuance of an occupational license; establishes two year validity of occupational license.

Sec. 05.18.310. Establishes minimum qualifications for an occupational license.

Sec. 05.18.320. Sets out the requirements for an application for an occupational license.

Sec. 05.18.330. Lists grounds for rejection of an application for an occupational license.

Sec. 05.18.340. Lists grounds for suspending, revoking, or restricting an occupational license.

Sec. 05.18.350. States that the chapter does not prohibit a licensed owner from contracting with a school approved by the department for the training of occupational licensees.

Sec. 05.18.360. Provides that training of occupational licensees may take place at a card room or a school.

Sec. 05.18.370. Specifies that the department may issue an occupational license to a convicted felon, notwithstanding sec. 05.18.310, if the department determines that the individual has been rehabilitated, and outlines the criteria for making that determination.

Article 4. Crimes.

Sec. 05.18.400. Lists actions related to card rooms that constitute class A misdemeanors and class C felonies.

Sec. 05.18.410. Creates a presumption that a person possessing a cheating device intended to use that device.

Article 5. General Provisions.

Sec. 05.18.500. Creates the state gaming fund to receive all revenues from card room activities under the chapter.

Sec. 05.18.900. Definitions.

Section 3. Changes the definition of "gambling" in AS 11.66.280 for purposes of Alaska's criminal statutes to exclude card room activities authorized under AS 05.18.

Section 4. Provides that the office of administrative hearings shall conduct all adjudicative administrative hearings required under AS 05.18.

KLK:med
05-276.med

HB 272 - "An Act relating to card rooms and card operations."

Possible gross sales & employee information for card room operations

\$4 Rake	5	10	15	25	50	100	150
Tables	5	10	15	25	50	100	150
\$90/hr avg	\$450.00	\$900.00	\$1,350.00	\$2,250.00	\$4,500.00	\$9,000.00	\$13,500.00
9hrs/day avg table use	\$4,050.00	\$8,100.00	\$12,150.00	\$20,250.00	\$40,500.00	\$81,000.00	\$121,500.00
Yearly Sales*	\$1,478,250.00	\$2,956,500.00	\$4,434,750.00	\$7,391,250.00	\$14,782,500.00	\$29,565,000.00	\$44,347,500.00

*exclusive of non-card game operations

Avg # Employees Per Table	4.5	4.5	4.5	4.5	4.5	4.5	4.5
Total Number of Employees	22.5	45	67.5	112.5	225	450	675

Types of Employees

Dealer (Minimum Wage + Tips)	\$250-300/day *
Cashiers (part-time)	\$10/hr *
Janitorial/Maintenance	\$8/hr *
Security	\$10/hr *
Brushperson	\$10/hr *
Shift Manager	\$45,000/yr *
Card Room Manager	\$65,000/yr *
	*Plus Benefits

Resolution of the Presbytery of Alaska
Adopted September 23, 2005 at Sheldon Jackson College in Sitka, Alaska

The Presbytery of Alaska, sincerely believing that the social costs associated with gambling seriously exceed any benefits that gambling provides to society, hereby declares its opposition to the expansion of legalized gambling within the State of Alaska. We therefore oppose laws which would increase gambling within the state, including those which would permit "for profit" card rooms, casinos, video gambling systems, or governmentally operated gambling programs.

The Presbytery instructs the Stated Clerk to communicate this action to the member churches of the Presbytery, encouraging them to support efforts against expanding gambling.

The Presbytery further requests the Stated Clerk to communicate this position to the appropriate members of the Alaska State Legislature and the Governor of the State of Alaska.

Background

The Presbyterian Church (U.S.A.) has a long history of opposition to all forms of gambling as an abdication of stewardship. In 1950 the 162nd General Assembly of the PCUSA described gambling as "an unchristian attempt to get something for nothing or at another's expense." In 1975 the 187th General Assembly of the PCUS adopted a statement calling upon its members "to exert influence on local, state and national legislative bodies to oppose all forms of legalized gambling, e.g., lotteries, bingo, pari-mutuel betting, dog racing, horse racing, betting on sports games, casino games and numbers." In 1992 the 204th General Assembly of the PCUSA issued a statement which petitioned civic and government leaders to resist state sanctioned gambling and the false promises for fiscal benefits from such and encouraged state councils of churches and related public policy advocacy groups to be active in resisting the spread of legalized gambling.

In October 2003, the Presbytery of Alaska declared its opposition to the practice of video poker in the State of Alaska, whether it be publicly or privately operated.

The Alaska State Legislature currently has two bills (House Bill 272 and Senate Bill 165) under consideration which could permit the operation of "for profit" card rooms within the state. The house bill was approved by the State House and was sent to the State Senate for their consideration. Both bills are currently in the Senate Judiciary Committee and will remain available for consideration during 2006. The State House of Representatives created a task force which is exploring the creation of a State Gaming Commission.

**Written Remarks of Guy Warren, Stated Clerk Presbytery of Alaska
To The Senate Judiciary Committee
On HB 272 - Card Rooms and Operations
March 23, 2006**

Good Morning, my name is Guy Warren, and I am the Stated Clerk of the Presbytery of Alaska. I thank the committee for this opportunity to speak on this bill.

The Presbytery of Alaska consists of the 15 member churches of the Presbyterian Church U.S.A. from Yakutat in the north to Metlakatla in the south.

The national body of the Presbyterian Church U.S.A. has on several occasions publicly spoke against increased legalized gambling. Likewise our local organization has issued resolutions opposing increased legalized gambling, including a resolution approved last fall. A copy of this resolution has been included with my written remarks.

We believe that approval of this bill will represent a significant step towards situations which will not be in the best interest of the state government or the citizens it serves. It will increase the social problems we face, and it will be the next step in a progression to ever increasing gambling, which will further increase these social problems.

While some hold that the approval of this legislation will eliminate illegal gambling, we believe that the experience seen in other localities would demonstrate this is not the case. Those who become addicted to gambling, as some will, soon find the limited payouts available to them at the card rooms can be more than made up for at the illegal gambling facilities.

We also believe that the solution to illegal gambling is not simply to legalize it. Certainly we would believe that the legislature would never consider such a solution to other illegal acts. We also believe that the costs the state will incur attempting to repair the social ills that gambling brings with it will exceed whatever benefits the approval of this bill might bring. These social ills include increased domestic violence, various psychological and social problems and an increased incidence of suicide.

We believe it would be prudent and only right for the Legislature to seek detailed and independently researched estimates on the social costs expanding legalized gambling will bring prior to taking steps that once taken, might prove very difficult to undo.

The people of this state have spoken in the matter of gambling and they spoke loudly. A proposal to expand gambling within the state was presented to the people in 1990. This measure was defeated by over 40,000 votes, almost a 2:1 margin. We would think it only appropriate that the legislature not override this clear mandate of the people.

We are not unaware of the increased popularity of card games in this country. Cable television has an impressive array of televised Poker games on display. The players of these games appear happy and certainly not troubled by the ills of gambling. There is a simple

reason for this. Those seen in these programs have already won. As an example, the typical World Poker Tour program begins with six players. Each of these players will win thousands of dollars. What the program does not show is the hundreds of players who lost \$15,000 to \$25,000 each to finance the televised prizes. Do we ever hear the stories of the problems these losses cause? Naturally, we do not. Rest assured, these problems do exist there, and will exist at the card rooms, this bill would establish.

Finally, lest some conclude that a church group's opposition to gambling should in some way be seen as a distorted view, I would remind the committee, that there have been political organizations who have expressed an opposition to this as well. The 2004 Alaskan Republican party platform said it well, "We believe any expansion of gaming in Alaska is detrimental to our families and society."

Our state's problems with illegal gambling are not nearly so desperate as to take the significant gamble this bill proposes. Let us learn from the mistakes of the other states and not proceed down the path of gambling ruin.

Thank You

FROM | Leader Creek

FAX NO. : 9075618141

Apr. 05 2006 11:48AM P1



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

Committee on HB 272 Card Rooms & Operations, dated 4-6-2006
bill # / subject public hearing date

I am in favor of HB 272.

Signed: Rod Easmo (Rod Easmo)
Testifier

Representing (optional)
536 E. 4th Ave. - Anch. Ak 99503
Address

Phone number 907-561-8141



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

Committee on HB 272 Card Rooms & Operations, dated 4-6-2006
bill # / subject public hearing date

I SUPPORT HB 272

Signed: *Rachel Longest*
Testifier

Self
Representing (optional)

315 S. Park St. Anchorage, AK. 99505
Address

907-338-5325
Phone number



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

Committee on HB 272 Card Rooms & Operations, dated 4-6-2006
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I AM ONE OF MANY POKER PLAYERS IN ALASKA THAT HAS TO GO OUTSIDE THE STATE TO PLAY POKER LEGALLY. I WOULD MUCH RATHER STAY IN ANCHORAGE & PLAY WHEN I WANTED & WHERE I WANTED

I WOULD VERY MUCH LIKE TO SHOW MY SUPPORT FOR HB 272, PLEASE LET THIS BE REFLECTED AS MY TESTIMONY.

Signed:

Jim Stewart
Testifier

SELF

Representing (optional)

3437 STANFORD ANCH, AK 99508
Address

Phone number



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

Committee on HB 272 Card Rooms & Operations, dated 4-6-2006
bill # / subject public hearing date

I AM IN SUPPORT OF
HB 272.

Signed: Wesley S. Watkins WESLEY S. WATKINS
Testifier

Representing (optional)
918 LAKE GRAYSON DR KATY TX 77494
Address
281-351-1212
Phone number



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

Committee on HB 272 Card Rooms & Operations, dated 4-6-2006
bill # / subject public hearing date

I SUPPORT HB 272

Signed: W R Boudreau H K Boudreau
Testifier

Representing (optional)
2003 W 47 ANCHORAGE ALASKA 99517
Address
907 248 0278
Phone number

Question to the Sponsor of HB 272
Posed by the Senate Judiciary Committee
Dated 03/29/2006

- ❖ Can a minority shareholder of the establishment be a felon? (Legal) (Guess) Theoretically yes. The license is tied to one individual and there is an express prohibition on the licensee having been convicted of a felony, however there is no express prohibition on a minority shareholder. The bill requires a licensee to provide the names of any shareholders with a 20% interest or greater (Page 9, lines 27-29)
- ❖ Are there limits of profitability (Rake or the Cut) in the bill? (French) To be determined by the Department under regulation making authority (Page 4, lines 7-8)
- ❖ Why was the provision of the municipal vote to establish and or renew a card room license removed on the House Floor last year? (Seekins/Huggins)
- ❖ After review of the minutes of the House Floor Session, it was indeterminate as to why the municipal vote provision was removed.
- ❖ Is the license non transferable? (Seekins) Although there are stipulations about how the license may be transferred, ultimately under this version, a license is transferable (Page 8, Lines 12-23)
- ❖ Based upon the fact that this is a cash intense business, are there provisions and enforcement regulations in the bill to monitor and enforce activities? (Daily tally sheets, closed circuit TV, etc.)(French) (These were regulations that were to be determined by the Department of Revenue... The sponsor testified that we would have no problem putting them into statute). No, it does not appear that such provisions are included in the bill. If we look at Washington state as a model, when they adopted their legalized gambling statutes they created a gaming commission that was tasked with and given authority for promulgating regulations to this effect. We would need to adopt such provisions normally found in regulation in Alaska statute if we do not delegate this regulation authority to the Dept. of Revenue.
- ❖ What would be the effective dates in order to get Revenue up to speed on enforcement? There is currently no effective date (Guess).
- ❖ Are there provisions in the bill regarding hours of operation and Rakes, or would they be handled through regulation? (Guess & French) See the answer regarding cash handling enforcement and regulation, the authority and responsibility for this is granted on Page 4, Lines 3-8 of LS0916\Y.A
- ❖ How are cheats and or cheating defined? (Guess) Cheating is defined in the bill under the definitions section. If it seems that this definition is not sufficient there is a more detailed definition under the Revised Code of Washington (RCW). This definition can be found on Page 18, line 29.
- ❖ Are there prohibitions for other forms of gaming? (i.e.; pull-tabs or bingo)(Guess) (French)

- ❖ There are no provisions in the current bill to prohibit other forms of gaming (pull-tabs or bingo, etc)

24-LS1830A

Kurtz

4/5/06

SENATE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Introduced:

Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
 2 **Legislature, concerning House Bill No. 272, relating to card rooms and card operations.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
 5 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
 6 changes to the title of a bill, are suspended in consideration of House Bill No. 272, relating to
 7 card rooms and card operations.

CS FOR HOUSE BILL NO. 272()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE KOTT

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to card rooms and card operations."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 **LEGISLATIVE INTENT.** This chapter is intended to benefit the people of Alaska by
6 promoting tourism and assisting economic development. The public's confidence and trust
7 will be maintained only through the comprehensive law enforcement supervision and strict
8 regulation of card rooms and card operations under AS 05.18.

9 *** Sec. 2.** AS 05 is amended by adding a new chapter to read:

10 **Chapter 18. Card Rooms.**

11 **Article 1. Card Games and Card Rooms.**

12 **Sec. 05.18.010. Card rooms; rake; municipal regulation.** (a) A person may
13 establish and operate a card room in the state if the person complies with the licensing
14 and other requirements of this chapter and of the municipality in which the card room
15 is located, as well as the statutory requirements applying to businesses generally.

1 (b) The following nonbanking card games may be played in a card room,
2 according to rules prescribed in regulation by the department:

- 3 (1) poker;
- 4 (2) pan;
- 5 (3) rummy;
- 6 (4) bridge; and
- 7 (5) cribbage.

8 (c) The maximum fee or rake a licensed owner may collect from players in a
9 card game for providing a dealer, table, location for playing the card game, or other
10 services related to the card game is \$4.00 a game. In this subsection, "rake" means a
11 percentage of the total amount wagered by all players in a game during the course of
12 that game.

13 (d) A municipality may regulate the hours of operation and other matters
14 relating to card rooms within that municipality.

15 **Sec. 05.18.020. Presence of department employees in card rooms.**
16 Employees of the department have the right to be present in a card room or any
17 adjacent facilities under the control of a licensed owner.

18 **Sec. 05.18.030. Wagers.** (a) The department shall determine minimum and
19 maximum wagers on card games.

20 (b) A licensed owner may not permit any form of wagering on card games
21 except as permitted under this chapter.

22 (c) Wagers may be received only from a person present in a licensed card
23 room. A person present in a card room may not place or attempt to place a wager on
24 behalf of another person who is not present in the card room.

25 (d) Wagering may not be conducted with money or other negotiable currency.

26 (e) All tokens or chips that are used to make wagers must be purchased from
27 the owner of the card room while the purchaser is in the card room or at a facility that
28 is adjacent to the card room and has been approved by the department. Before selling
29 any tokens or chips to a person, the licensed owner shall obtain from the person a
30 statement of the person's loss limit. Once the loss limit has been stated, a person may
31 not change the amount of the loss limit for at least 24 hours. Within any 24-hour

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period, a licensed owner may not sell to a person tokens or chips with a total value greater than the person's loss limit. For purposes of this subsection, "loss limit" means the maximum dollar amount a person is prepared to lose in a card room within a 24-hour period.

Sec. 05.18.040. Persons under 21 years of age. (a) A person who is under 21 years of age may not be present in a card room.

(b) A person who is under 21 years of age may not make a wager under this chapter.

Article 2. Administration.

Sec. 05.18.110. Administration, regulation, and enforcement. (a) The department shall administer, regulate, and enforce the provisions of this chapter. The department:

- (1) shall have all powers and duties specified in this chapter;
- (2) shall have all powers necessary to execute this chapter;
- (3) shall exercise jurisdiction and supervision over the following:
 - (A) all authorized card operations in the state;
 - (B) all persons in card rooms where card operations are conducted;
- (4) shall investigate and reinvestigate applicants and license holders and determine the eligibility of applicants for licenses and to require applicants and license holders to reimburse the department for the costs of the investigation and reinvestigation;
- (5) shall select from among competing applicants the applicants that promote the most economic development and that best serve the interests of the citizens of the state;
- (6) shall take appropriate administrative enforcement or disciplinary action against a licensee under this chapter that violates the provisions of this chapter;
- (7) shall investigate alleged violations of this chapter;
- (8) shall establish fees for the review and investigation of applications for the licenses that are authorized under this chapter;
- (9) may conduct hearings;

1 (10) may issue subpoenas to compel the attendance of witnesses and
2 subpoenas duces tecum for the production of books, records, and other relevant
3 documents;

4 (11) may administer oaths and affirmations to witnesses;

5 (12) shall prescribe a form to be used by a licensed owner as an
6 application for employment by potential employees of the card room and licensees of
7 the department;

8 (13) may revoke, suspend, or renew licenses issued under this chapter;

9 (14) may hire employees to gather information, conduct investigations,
10 and carry out other tasks under this chapter;

11 (15) may take any appropriate action to enforce this chapter, including
12 the issuance of notices of violations of this chapter or regulations of the department,
13 orders to cease and desist, and closure orders;

14 (16) may adopt regulations for the implementation and enforcement of
15 this chapter;

16 (17) shall adopt regulations governing the conduct of card games that
17 may be played in card rooms;

18 (18) shall adopt regulations specifying the form and amount of charges
19 a card room may impose on players for playing card games in the card room;

20 (19) may, through the office of the attorney general, apply to the courts
21 for injunctive and declaratory relief in aid of any action or decision of the department
22 on any matter within the jurisdiction of the department.

23 (b) The Department of Public Safety and the attorney general may assist the
24 department in conducting background investigations of applicants. The department
25 shall reimburse the Department of Public Safety for the costs incurred by the
26 department as a result of assistance provided to the department under this section. The
27 department shall make the payment from fees collected from applicants for licenses.

28 **Sec. 05.18.120. Violations; fees; inspections.** (a) The department shall

29 (1) provide for the establishment and collection of license fees
30 imposed under this chapter and deposit the license fees in the state gaming fund;

31 (2) levy and collect penalties for noncriminal violations of this chapter

1 and deposit the penalties in the state gaming fund.

2 (b) The department may enter an office, a card room, or other premises of a
3 person holding an owner's license where evidence of compliance or noncompliance
4 with this chapter is likely to be found.

5 **Sec. 05.18.130. Licensing.** (a) The department shall adopt standards for the
6 licensing of persons regulated under this chapter.

7 (b) The department shall require that the records, including financial
8 statements, of a person holding an owner's license must be maintained in the manner
9 prescribed by the department.

10 (c) The department may not issue a license to a person who has been
11 convicted of a felony in this or another jurisdiction.

12 (d) An applicant for a license under this chapter shall provide the following
13 information to the department:

14 (1) the name, business address, and business telephone number of the
15 applicant;

16 (2) an identification of the applicant;

17 (3) the following information for an applicant that is not an individual:

18 (A) the state of incorporation and any states where the
19 corporation is registered to do business;

20 (B) the names and addresses of all corporate officers;

21 (C) the identity of

22 (i) any entity in which the applicant has an equity
23 interest of at least 20 percent; the identification must include the state
24 of incorporation or registration, if applicable; however, an applicant
25 that has a pending registration statement filed with the United States
26 Securities and Exchange Commission is not required to provide
27 information under this item;

28 (ii) the shareholders or participants of the applicant; an
29 applicant that has a pending registration statement filed with the United
30 States Securities and Exchange Commission is required to provide only
31 the names of persons holding an interest of more than 20 percent of all

1 shares;

2 (4) a statement of whether the applicant has applied for or held any
3 other licenses related to card rooms or card operations, and if so, the state or other
4 licensing jurisdiction, the date of application, the license number if a license was
5 issued, or in the case of an unsuccessful application, the reason the license was not
6 issued;

7 (5) an identification of any business, including the state of
8 incorporation and all states where the business is registered to do business, if
9 applicable, in which an applicant or the spouse or children of an applicant has an
10 equity interest of more than 20 percent of all shares;

11 (6) if the applicant has been indicted, been convicted, pled guilty or
12 nolo contendere, or forfeited bail concerning a criminal offense other than a traffic
13 violation under the laws of any jurisdiction, the applicant must include the following
14 information under this paragraph:

15 (A) the name and location of the court, the arresting agency,
16 and the prosecuting agency;

17 (B) the case number;

18 (C) the date and type of offense;

19 (D) the disposition of the charge;

20 (E) the location and length of incarceration, if any;

21 (7) a statement of whether the applicant has filed or had filed against
22 the applicant a proceeding in bankruptcy or been involved in a formal process to
23 adjust, defer, suspend, or work out the payment of a debt, including the date of filing,
24 the name and location of the court, and the case and number of the disposition;

25 (8) a statement of whether the applicant has filed or been served with a
26 complaint or notice filed with a public body concerning a delinquency in the payment
27 of or a dispute over a filing concerning the payment of a tax required under federal,
28 state, or local law, including the amount, type of tax, taxing agency, and times
29 involved;

30 (9) the name and business telephone number of the attorney, if any,
31 who will represent the applicant in matters before the department;

1 (10) a description of a proposed or an approved card room, including
2 the expected economic benefit to local communities;

3 (11) the following information from each licensee involved in the
4 ownership or management of card operations:

5 (A) an annual balance sheet;

6 (B) an annual income statement;

7 (C) a list of the stockholders or other persons having a least 20
8 percent beneficial interest in the card room activities of the person who has
9 been issued the owner's license;

10 (D) any other information the department considers necessary
11 for the effective administration of this chapter

12 (e) The department shall review and approve or disapprove promptly and in
13 reasonable order all license applications.

14 (f) A party aggrieved by an action of the department denying, suspending,
15 revoking, restricting, or refusing the renewal of a license may request a hearing before
16 the department. A request for a hearing must be made to the department in writing not
17 more than 10 days after service of notice of the action of the department.

18 (g) Except as provided in AS 05.18.180, the department shall serve notice of
19 the department's actions under this section on a party by personal delivery or by
20 certified mail. Notice served by certified mail is considered complete three business
21 days following the date of the mailing.

22 (h) The department shall conduct all requested hearings under this section
23 promptly and in reasonable order.

24 **Sec. 05.18.140. Card room advisory board.** (a) The governor shall appoint
25 five individuals to serve on a card room advisory board. Appointments to the board
26 shall be for a period of five years.

27 (b) The card room advisory board shall make recommendations to the
28 department relating to license applications and policy issues relating to card rooms.

29 (c) Members of the card room advisory board serve without compensation and
30 are not entitled to per diem and travel expenses authorized by law for boards and
31 commissions under AS 39.20.180.

1 **Sec. 05.18.150. Violations of chapter; fraudulent acts.** If a licensee or an
2 employee of a licensee violates this chapter or engages in a fraudulent act, the
3 department may

4 (1) suspend, revoke, or restrict the license of a licensee;

5 (2) require the removal of a licensee or an employee of a licensee from
6 the card room;

7 (3) impose a civil penalty of not more than \$5,000 against an
8 individual who has been issued an occupational license for each violation of this
9 chapter;

10 (4) impose for each violation of this chapter by a licensed owner a
11 penalty of not more than the greater of \$10,000 or an amount equal to the licensee's
12 daily gross receipts for each day of the violation.

13 **Sec. 05.18.160. Investigative procedure; complaints.** (a) The department
14 shall review and make a determination on a complaint by a person who has been
15 issued an owner's license concerning an investigative procedure that the licensee
16 alleges is unnecessarily disruptive of card operations.

17 (b) A licensee filing a complaint under this section must prove by clear and
18 convincing evidence that the investigative procedure

19 (1) does not have a reasonable law enforcement purpose; and

20 (2) is so disruptive as to unreasonably inhibit card operations.

21 (c) For purposes of this section, the need to inspect and investigate a licensee
22 shall be presumed at all times.

23 **Sec. 05.18.170. Transfer of licenses; prohibitions.** An owner's license may
24 not be transferred, sold, or purchased. A licensed owner or another person may not
25 lease, hypothecate, or borrow or loan money against an owner's license.

26 **Sec. 05.18.180. Suspension of license without notice or hearing; revocation**
27 **of license.** (a) The department may suspend a license issued to the owner of a card
28 room without notice or hearing if the department determines that the safety or health
29 of patrons or employees would be threatened by the continued operation of the card
30 room. The opportunity for a hearing shall be provided within a reasonable time
31 following a suspension.

1 (b) The suspension of a license under this section may remain in effect until
2 the department determines that the cause for suspension has been abated. The
3 department may revoke the license if the department determines that the owner has not
4 made satisfactory progress toward abating the hazard.

5 **Sec. 05.18.190. Department records.** All records pertaining to licenses,
6 applications, and activities authorized under this chapter are public records and may be
7 inspected and copied subject to AS 40.25.110 and 40.25.120.

8 **Article 3. Licenses.**

9 **Sec. 05.18.200. Owner's licenses.** (a) The department may issue to a person a
10 license to own a card room and conduct card games in a municipality that has a
11 municipal police department if the municipality has adopted an ordinance, ratified by
12 at least sixty percent of the municipal voters voting on the question, authorizing card
13 rooms and card games in that municipality. If the population of a municipality is less
14 than 50,000, only one owner's license may be issued in the municipality. If the
15 population of a municipality is 50,000 or more, the total number of owner's licenses
16 issued in the municipality may not exceed the total population of the municipality
17 divided by 50,000. The population of a municipality under this subsection shall be
18 determined by the most recent federal census information.

19 (b) A person applying for an owner's license under this chapter shall pay a
20 nonrefundable \$25,000 application fee to the department.

21 (c) An applicant shall submit the following on forms provided by the
22 department:

23 (1) the information required under AS 05.18.130;

24 (2) if the applicant is an individual, two sets of the individual's
25 fingerprints;

26 (3) if the applicant is not an individual, two sets of fingerprints for
27 each officer and director of the applicant.

28 (d) The department shall review an application for an owner's license under
29 this chapter and inform each applicant of the department's decision concerning the
30 issuance of an owner's license.

31 (e) The costs of investigation of an applicant for an owner's license under this

1 chapter shall be included in the application fee paid by the applicant.

2 (f) An applicant for an owner's license under this chapter shall pay all
3 additional costs that are associated with the investigation of the applicant that exceed
4 the portion of the application fee paid by the applicant that is assessed for the
5 investigation.

6 (g) The department may not issue an owner's license under this chapter to a
7 person if the person

8 (1) has been convicted of a felony under the laws of the state, the laws
9 of another state, or laws of the United States;

10 (2) has knowingly or intentionally submitted an application for a
11 license under this chapter that contains false information;

12 (3) has previously had their license to operate a gambling facility or
13 activity revoked in the State of Alaska or any other state or territory of the United
14 States or in any other jurisdiction;

15 (4) is an officer, a director, or a managerial employee of a person
16 described in (1), (2), or (3) of this subsection; or

17 (5) employs an individual described in (1), (2), (3), or (4) of this
18 subsection and that individual participates in the management or operation of card
19 operations authorized under this chapter.

20 **Sec. 05.18.210. Factors considered in granting owner's licenses.** (a) In
21 determining whether to grant an owner's license to an applicant, the department shall
22 consider

23 (1) the character, reputation, experience, and financial integrity of

24 (A) the applicant;

25 (B) a person that

26 (i) directly or indirectly controls the applicant; or

27 (ii) is directly or indirectly controlled by the applicant
28 or by a person that directly or indirectly controls the applicant;

29 (2) the card room or proposed card room;

30 (3) the good faith affirmative action plan of each applicant to recruit,
31 train, and upgrade minorities in all employment classifications;

1 (4) the financial ability of the applicant to purchase and maintain
2 adequate liability and casualty insurance;

3 (5) whether the applicant has adequate capitalization to provide and
4 maintain the card room for the duration of the license;

5 (6) the extent to which the applicant exceeds or meets other standards
6 adopted by the department by regulation.

7 (b) The department shall make an application for an owner's license available
8 for public inspection and copying, and shall invite public comment on an application
9 and consider all comments received in determining whether to grant the owner's
10 license.

11 (c) If there are more applicants for permits than there are permits available
12 under AS 05.18.200(a) in a municipality, in choosing among competing applicants the
13 department shall consider the recommendations of the city council or borough
14 assembly, and shall consider which applicant

15 (1) would most benefit players participating in card games; and

16 (2) would most benefit the local community.

17 **Sec. 05.18.220. Issuance of license; fee; bond.** (a) The department may issue
18 an owner's license to an eligible person if the person pays an initial license fee and
19 posts a bond as required in this section. The annual license fee is \$10,000 for each
20 card table. After a license has been issued, additional tables may be added for an initial
21 license fee of \$10,000 each; however, the full annual renewal fee for each table must
22 be paid on or before the anniversary of issuance of the owner's license, regardless of
23 when the table was added. The department may suspend or revoke a license if the
24 annual license fee is not paid in a timely fashion.

25 (b) A licensed owner must post a \$500,000 cash bond with the department at
26 least 60 days before the commencement of the construction of a card room or the
27 commencement of a card operation under the license, whichever is earlier.

28 (c) The principal of the bond shall be placed without restriction at the disposal
29 of the department, but interest earned on the principal shall inure to the benefit of the
30 licensee.

31 (d) The bond is subject to the approval of the department and must be payable

1 to the department for use by the department in satisfaction of the licensed owner's
2 financial obligations to the local community, the state, and other parties, as determined
3 by regulations of the department.

4 (e) If, following a hearing held after at least five days written notice, the
5 department determines that the amount of a licensed owner's bond is insufficient, the
6 licensed owner shall, on written demand of the department, file a new bond.

7 (f) The department may require a licensed owner to file a new bond with a
8 satisfactory surety in the same form and amount if

9 (1) liability on the old bond is discharged or reduced by judgment
10 rendered, payment made, or otherwise; or

11 (2) in the opinion of the department, a surety on the old bond becomes
12 unsatisfactory.

13 (g) If a new bond obtained under (e) or (f) of this section is unsatisfactory, the
14 department shall cancel the owner's license. If the new bond is satisfactorily furnished,
15 the department shall release, in writing, the surety on the old bond from any liability
16 accruing after the effective date of the new bond.

17 (h) The total and aggregate liability of the surety on a bond is limited to the
18 amount specified in the bond, and the continuous nature of the bond may not be
19 construed as allowing the liability of the surety under a bond to accumulate for each
20 successive approval period during which the bond is in force.

21 (i) A bond filed under this section is released 60 days after the owner's license
22 expires and a written request for release is submitted by the licensed owner.

23 **Sec. 05.18.230. Tournaments.** The holder of an owner's license for a card
24 room shall host a card tournament at least once each calendar quarter, with the gross
25 proceeds of the tournament to be distributed to a nonprofit educational institution or
26 group designated by the owner. An application for issuance or renewal of an owner's
27 license must include proposed dates for the tournaments, and specify the nonprofit
28 educational institution or group designated to benefit from each tournament. The
29 licensed owner shall notify the department of any change in the date or beneficiary of
30 a tournament. A nonprofit educational institution or group may be the designated
31 beneficiary of only one tournament each year under this section.

1 **Sec. 05.18.240. Term of a license.** An owner's initial license expires five years
2 after the effective date of the license.

3 **Sec. 05.18.250. Revocation of owner's license for delay.** The department may
4 revoke an owner's license if

5 (1) the licensee begins regular operations more than 12 months after
6 receiving the department's approval of the application for the license; and

7 (2) the department determines that the revocation of the license is in
8 the best interests of the state.

9 **Sec. 05.18.260. Renewal of owner's license; compliance investigations.** (a)
10 The owner's license may be renewed for an additional five-year period, if the bond
11 required under AS 05.18.220 remains in force, the annual license fees have been paid
12 in a timely fashion, and the requirements of this section are met.

13 (b) A licensed owner shall undergo a complete investigation by the
14 department every five years to determine whether the licensed owner remains in
15 compliance with this chapter.

16 (c) Notwithstanding (b) of this section, the department may investigate a
17 licensed owner at any time the department determines necessary to ensure that the
18 licensee remains in compliance with this chapter.

19 (d) The licensed owner shall bear the cost of an investigation or
20 reinvestigation of the licensed owner and an investigation resulting from a potential
21 transfer of ownership.

22 **Sec. 05.18.270. Schools for training occupational licensees.** This chapter
23 does not prohibit a licensed owner from operating a school for the training of
24 occupational licensees.

25 **Sec. 05.18.280. Nature of license.** An owner's license is a revocable privilege
26 granted by the state and is not a property right.

27 **Sec. 05.18.290. Occupations requiring license.** The department shall
28 determine the occupations related to card games and card rooms that require a license
29 under this chapter. The department shall require that an individual applying for an
30 occupational license may manage card operations for only one licensed owner.

31 **Sec. 05.18.300. Occupational license; requirements; fees; duration;**

1 **renewal; compliance investigations.** (a) The department may issue an occupational
2 license to an individual if

3 (1) the individual has applied for the occupational license and provided
4 the information required under AS 05.18.130;

5 (2) a nonrefundable application fee set by the department has been
6 paid on behalf of the applicant in accordance with (b) of this section;

7 (3) the department has determined that the applicant is eligible for an
8 occupational license; and

9 (4) an annual license fee set by the department has been paid on behalf
10 of the applicant in accordance with (b) of this section.

11 (b) A licensed owner or an applicant for an owner's license shall pay the
12 application fee of an individual applying for an occupational license to work at the
13 licensed owner's card operation and any renewal fees on behalf of an employee or
14 potential employee. The licensed owner or applicant for an owner's license may seek
15 reimbursement of the application fee or annual license fee from an employee who is
16 issued an occupational license by the department.

17 (c) A license issued under this section is valid for two years after the date of
18 issuance.

19 (d) Unless an occupational license is suspended, expires, or is revoked by the
20 department, the occupational license may be renewed biennially on the payment of a
21 license renewal fee by the licensed owner on behalf of the licensee, or by the licensee
22 in an amount established by the department and a determination by the department that
23 the licensee is in compliance with this chapter.

24 (e) The department may investigate the holder of an occupational license at
25 any time the department determines necessary to ensure that the licensee is in
26 compliance with this chapter.

27 (f) A licensed owner or an applicant for an owner's license shall pay the cost
28 of an investigation or reinvestigation by the department of a holder of an occupational
29 license who is employed by the licensed owner. The licensed owner or applicant for an
30 owner's license may seek reimbursement of the cost of an investigation or
31 reinvestigation from an employee who holds an occupational license.

1 **Sec. 05.18.310. Qualifications for occupational license.** The department may
2 not issue an occupational license to an individual unless the individual

3 (1) is at least 21 years of age;

4 (2) has not been convicted of a felony under the laws of this state, the
5 laws of another state, or the laws of the United States;

6 (3) has demonstrated a level of skill or knowledge that the department
7 determines is necessary to operate card games; and

8 (4) has met standards of character and fitness adopted by the
9 department for the holding of an occupational license.

10 **Sec. 05.18.320. Application for occupational license.** (a) An application for
11 an occupational license shall be made on forms prescribed by the department and
12 contain all information required by the department.

13 (b) An applicant for an occupational license shall provide the following
14 information in the application:

15 (1) a statement of whether the applicant has applied for or held any
16 other licenses related to card rooms, and, if so, the state or other licensing jurisdiction,
17 the date of application, the license number if a license was issued, or in the case of an
18 unsuccessful application, the reason the license was not issued;

19 (2) if the applicant has been licensed in another state under any other
20 name, the name under which the applicant was licensed in the other state;

21 (3) the applicant's age.

22 (c) An applicant for an occupational license shall submit with the application
23 two sets of the applicant's fingerprints. The applicant must submit the fingerprints on
24 forms provided by the department. The department shall charge each applicant the fee
25 set by the Department of Public Safety for state and national fingerprint record
26 searches.

27 **Sec. 05.18.330. Restrictions on issuance of occupational license.** The
28 department may refuse to issue an occupational license to an individual who

29 (1) is unqualified to perform the duties required of the applicant;

30 (2) does not disclose or states falsely any information required by the
31 application;

- 1 (3) has been found guilty of a violation of this chapter; or
2 (4) has not met standards of character and fitness adopted by the
3 department for the holding of an occupational license.

4 **Sec. 05.18.340. Suspension, revocation, or restriction of licenses.** The
5 department may suspend, revoke, or restrict an occupational licensee for

- 6 (1) a violation of this chapter;
7 (2) a cause that, if known to the department, would have disqualified
8 the applicant from receiving the occupational license;
9 (3) a default in the payment of an obligation or a debt due to the state;
10 or
11 (4) any other just cause.

12 **Sec. 05.18.350. Schools for training occupational licensees.** (a) This chapter
13 does not prohibit a licensed owner from entering into an agreement with a school
14 approved by the department for the training of an occupational licensee.

15 (b) Training offered by a school described in (a) of this section must be in
16 accordance with a written agreement between the licensed owner and the school and
17 approved by the department.

18 **Sec. 05.18.360. Training locations.** Training provided for occupational
19 licensees may be conducted in a card room or at a school with which a licensed owner
20 has entered into an agreement under this chapter.

21 **Article 4. Crimes.**

22 **Sec. 05.18.400. Crimes.** (a) A person commits a class A misdemeanor if the
23 person

- 24 (1) with criminal negligence makes a false statement on an application
25 submitted under this chapter;
26 (2) with criminal negligence owns or operates a card operation in
27 which wagering is conducted or is to be conducted in a manner other than the manner
28 required under this chapter;
29 (3) with criminal negligence permits a person under 21 years of age to
30 make a wager;
31 (4) recklessly aids, induces, or causes a person under 21 years of age

1 who is not an employee of the card room to enter or attempt to enter the card room; or
2 (5) knowingly enters or attempts to enter a card room and is not an
3 employee of the card room and is under 21 years of age.

4 (b) A person commits a class C felony if the person knowingly

5 (1) offers, promises, or gives anything of value or benefit

6 (A) to a person who is connected with the owner of a card
7 room, including an officer or an employee of a licensed owner or holder of an
8 occupational license; and

9 (B) under an agreement to influence or with the intent to
10 influence

11 (i) the actions of the person to whom the offer, promise,
12 or gift was made in order to affect or attempt to affect the outcome of a
13 card game; or

14 (ii) an official action of the department;

15 (2) solicits, accepts, or receives a promise of anything of value or
16 benefit

17 (A) while the person is connected with a card room, including
18 an officer or employee of a licensed owner or a holder of an occupational
19 license; and

20 (B) under an agreement to influence or with the intent to
21 influence the actions of the person to affect or attempt to affect the outcome of
22 a card game or an official action of the department;

23 (3) uses, or possesses with the intent to use, a device to assist in
24 projecting the outcome of a card game;

25 (4) cheats at a card game;

26 (5) manufactures, sells, or distributes any cards, chips, or device that is
27 intended to be used to violate this chapter;

28 (6) alters or misrepresents the outcome of a card game on which
29 wagers have been made after the outcome is made sure but before the outcome is
30 revealed to the players;

31 (7) places a bet on the outcome of a card game after acquiring

1 knowledge that is not available to all players and that concerns the outcome of the card
2 game that is the subject of the bet;

3 (8) aids a person in acquiring the knowledge described in (7) of this
4 subsection for the purpose of placing a bet contingent on the outcome of a card game;

5 (9) claims, collects, takes, or attempts to claim, collect, or take money
6 or anything of value in or from a card game with the intent to defraud or without
7 having made a wager contingent on winning a card game;

8 (10) claims, collects, or takes an amount of money or thing of value of
9 greater value than the amount won in a card game;

10 (11) uses or possesses counterfeit chips or tokens in or for use in a card
11 game;

12 (12) possesses a key or device designed for opening, entering, or
13 affecting the operation of a card game, a drop box, or an electronic or mechanical
14 device connected with the card game or removing coins, tokens, chips, or other
15 contents of a card game; this paragraph does not apply to a licensee or an employee of
16 a licensee acting in the course of the employee's employment;

17 (13) possesses materials intended to be used in a manner that violates
18 this chapter;

19 (14) knowingly owns or operates a card operation in which wagering is
20 conducted or is to be conducted in a manner other than the manner required under this
21 chapter.

22 (c) A person who violates (a) of this section is guilty of a class C felony if,
23 within the five years preceding the violation, the person has been previously convicted
24 under

25 (1) this section; or

26 (2) a law or ordinance of this or another jurisdiction with elements
27 substantially similar to this section.

28 **Sec. 05.18.410. Possession of cheating devices; presumption.** The possession
29 of more than one of the devices described in AS 05.18.400(b) as cheating devices
30 creates a rebuttable presumption that the possessor intended to use the devices for
31 cheating.

Article 5. General Provisions.

Sec. 05.18.500. State gaming fund. There is created in the general fund the state gaming fund. The state gaming fund consists of all revenue received from card room activities under this chapter and all other money credited or transferred to the fund from another fund or source.

Sec. 05.18.900. Definitions. (a) In this chapter,

(1) "card game" means a nonbanking card game listed in AS 05.18.010(b);

(2) "card operation" means the conduct of card games in a licensed card room;

(3) "card room" means a structure in which card games authorized under this chapter are conducted by an owner licensed under this chapter;

(4) "cheat" means to alter the selection of criteria that determine the result of a card game or the amount or frequency of payment in a card game;

(5) "department" means the Department of Revenue;

(6) "gross receipts" means the total amount of money exchanged for the purchase of chips or tokens by card room patrons;

(7) "license" means a license issued by the department under this chapter;

(8) "licensed owner" means a person that owns a card room who is licensed under this chapter;

(9) "licensee" means a person holding a license issued under this chapter;

(10) "owner's license" means a license issued under this chapter that allows a person to own and operate a card room.

(b) In this chapter, the terms "intentionally," "knowingly," "recklessly," and "with criminal negligence" have the meanings given in AS 11.81.900(a).

* **Sec. 3.** AS 11.66.280(2) is amended to read:

(2) "gambling" means that a person stakes or risks something of value on the outcome of a contest of chance or a future contingent event not under the person's control or influence, on an agreement or understanding that that person or

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someone else will receive something of value in the event of a certain outcome;
"gambling" does not include

(A) bona fide business transactions valid under the law of contracts for the purchase or sale at a future date of securities or commodities and agreements to compensate for loss caused by the happening of chance, including contracts of indemnity or guaranty and life, health, or accident insurance;

(B) playing an amusement device that

(i) confers only an immediate right of replay not exchangeable for something of value other than the privilege of immediate replay; and

(ii) does not contain a method or device by which the privilege of immediate replay may be cancelled or revoked; or

(C) an activity authorized by the Department of Revenue under

AS 05.15 or AS 05.18;

* **Sec. 4.** AS 44.64.030(a)(2) is amended to read:

(2) AS 05.15 and AS 05.18 (charitable gaming; card rooms);



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

Committee on HB 272 Card Rooms & Operations, dated 4-6-2006
bill # / subject public hearing date

I am in favor of house bill (HB272)

Signed:

Laura Schenkels
Testifier

ly
Representing (optional)

721 W 71st Ave Anchorage AK 99518
Address

907-344-6928
Phone number



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

Committee on HB 272 Card Rooms & Operations, dated 4-6-2006
bill # / subject public hearing date

*I am strongly in favor of
 House Bill 272.*

Signed: *Herald A. Schaubals*
Testifier

Representing (optional)
721 W. 71st ANCHORAGE AK.
Address

(907) 349-6928
Phone number



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

Committee on HB 272 Card Rooms & Operations, dated 4-6-2006
bill # / subject public hearing date

*I Support This HB 272 Card Rooms +
Operations*

Signed: *[Signature]*
Testifier

Representing (optional)

1200 Post Rd

Anchorage AK 99501
Address

258 1164
Phone number

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 3, 2006

SUBJECT: CSHB 272(FIN) am (Work Order No. 24-LS0916\Y.A)

TO: Representative Pete Kott
Representative Woodie Salmon
Representative Max Gruenberg
Representative Bruce Weyhrauch
Senator Ralph Seekins, Chair, Senate Judiciary Committee

FROM: Kathryn L. Kurtz 
Legislative Counsel

The purpose of this memo is to alert you to a discrepancy between the title and the text of HB 272, the card room bill, in its current version. The bill title¹ includes a clause about requiring a community to vote to allow card rooms before a card room owner's license can be issued. The bill, however, does not include a vote requirement.

This situation is a result of two floor amendments. Amendment no. 3 added a clause to sec. 05.18.200(a) requiring voter ratification of a municipal ordinance permitting card rooms before the Department of Revenue can issue a card room owner's license in that municipality, and made a corresponding addition to the bill title. Three days later, the House adopted amendment no. 5, which deleted sec. 05.18.200(a) and replaced it with text permitting issuance of an owner's license in a municipality with a population of less than 30,000. Amendment no. 5 did not change the title.

A bill title that refers to matter that does not exist in the bill is defective in that it fails to adequately describe the contents of the bill as required under Art. II, sec. 13, Constitution of the State of Alaska. The title of the House - passed CSHB 272(FIN) am does not give reasonable notice of the subject of the bill, rather, it misleads the reader into thinking the bill contains a provision which it does not.

Generally, the Uniform Rules prohibit title changes in the second house. However, there is an exception for clerical and technical changes.² According to the Manual of

¹ "An Act relating to card rooms and card operations, and permitting issuance of a license to own a card room and conduct card games in a municipality of the state if the municipality has adopted an ordinance, ratified by a majority of the municipal voters voting on the question, authorizing card rooms and card games in that municipality".

² Rule 35 provides: "A motion or proposition on a subject that requires a change in the title of the bill as enacted in the house of origin, other than a clerical or technical change,

January 3, 2006

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Legislative Drafting, "[t]echnical title changes include those that are necessary to correct a title that was defective when the bill passed the first house; in such cases, the corrected title should be written as narrowly as possible so that the technical title change does not become an excuse for broad changes in the second house." Manual at 11.

Precisely such a technical title change is required here to conform the title of the bill to the subject matter of the bill. We recommend deleting the phrase ", and permitting issuance of a license to own a card room and conduct card games in a municipality of the state if the municipality has adopted an ordinance, ratified by a majority of the municipal voters voting on the question, authorizing card rooms and card games in that municipality" from the title to resolve this issue in the next version of the bill that the Senate considers.

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is not in order in the second house." Similarly, Rule 41(b) provides that "[a]n amendment to a bill introduced in the other house is not in order if the amendment requires a change of the bill title other than a clerical or technical change."

Justiciary

We, the future adults of Alaska, are opposed to House Bill 272, which would permit issuance of a license to own a card room and conduct card games. We don't feel that gambling of any kind would help our community as much as it would hurt it. We don't want to have any measure that would open the door to legalized gambling in Alaska. We urge you to help improve our future rather than damage it.

(signature)	(age)
Nate Williams	16
Chay Johnson	16
Jordan Strout	15
Cecid Lynn	16
Josh Roestenburg	14
Ellice Hackley	15
Grace Hopkin	14
Clare Hopkin	17
Aimee Halliger	16
Anna Gusswall	17
Tom Pitman III	16
Greg Coy Jr.	16
Bekkah Mille	16
Ryan Parker	15
Burke	15
Fanniem McBack	15
Justin Litchfield	17
Faith Caporas	17
David Meyer	15
Justin	16
Reley Anderson	16
Ashley Hauger	16 15

Kimberly Hester	15
Jeth D. King	17
Lauren Johnson	17
Kameron Paul	15
Alex June	16
Nicole Goodman	16
Josh Miller	16
Cori Peterson	16
Scott Linton	16
Bryan Gully	17
Tony Heath	15
Barbara Cox	17
Amanda VanSledem	18
Celt Phillips	18
Gary Coiro	16
Zan Otto	14
Eugene Segour (Eugenie Segour)	14
Christina Fidler	15
David Gooden	17
Barbara King	15
Kevin Shiff	14
Tammie Heath	17
BURTON WRIGHT	17
Lab Schaefer	16
Spencer Summit	16
Janice Miller	16
Megan Jailer	17

IT'S POKER, NOT GAMBLING

By Roy Cooke

An awful lot of what goes on in the world is about image. The casino industry has over the past decade engaged in a pretty successful image campaign, encouraging the use of the word gaming as opposed to gambling in order to make the business seem more acceptable. Wall Street and the media have pretty much bought into this semantic manipulation, and tend to describe the industry accordingly.

I have often referred to our poker world as being part of the gambling community, in part because poker rooms tend to be located in gambling establishments. In addition, many gamblers also play poker. Furthermore, many poker players treat the game as a gambling experience and approach it from a perspective not significantly different from the way they approach gambling games. The fundamental unit of both poker and gambling is the wager, a sum of money risked with the outcome determined by an event or series of events in which chance is one of the variables. (In most gambling, chance is the only variable.) These are all things poker has in common with gambling.

Regardless of these commonalities, poker is far more different from gambling than it is similar. They are mathematically, pragmatically, historically, culturally, socially, legally, and, in my opinion, morally differentiated. In the past, this has been for the most part a matter of small consequence, a subject for discussion and debate around the bar, perhaps, but not really important. Poker players explained to their wives and mothers that what they did wasn't really gambling, but a game of skill. Times have changed, however, and the distinction between poker and gambling has become very important to the current and future health of the game.

Internet poker grew by more than 600 percent, both in number of players and volume of money bet, between the end of 2002 and the end of 2003. If poker is lumped with Internet gambling, it now constitutes 10 percent of the online gaming market. After years of sluggish performance and a static supply of players and money, poker is presently enjoying incredible popularity, fueled by the Internet, including Chris MoneyMaker's incredible parlay of \$40 on an Internet cardroom site into the World Series of Poker title and its \$2.5 million first-place prize. The popularity of TV poker, resulting from producer Steve Lipscomb's introduction of the lipstick camera to show players' holecards, has also been a major factor in the current healthy state of poker. The poker world has never seen anything like this, far surpassing the growth in the game when California opened up poker in the early '90s. But this growth is gravely threatened.

There are bills pending in the U.S. House and Senate designed to disembowel Internet gambling. One in particular, introduced by Sen. Jon Kyl, R-Ariz., is very close to coming to the floor and enjoys bipartisan support. The U.S. Justice Department, having plenty of excess resources not allocated to the war on terrorism, is using a 1960s-era law that was designed to inhibit illegal bookies to pressure financial institutions and media who do business with Internet gambling sites, and is promising prosecutions. Fearing competition, many stalwarts of the brick-and-mortar "gaming" industry have, in a strange bedfellows kind of partnership, joined with religious and "family values" groups to lobby for restrictions or prohibition of all forms of Internet wagering, including poker.

If poker is defined as substantially different from gambling (as contemplated by existing and proposed laws), the Internet version of the game that has been the engine driving growth can perhaps be insulated from the barrage of present and pending attacks. This approach is somewhat

complicated by the reality that some online poker sites and some Internet gambling sites have related ownerships. For them, any regulation of either Internet gambling or poker is a loss, and they may not be happy about the idea of treating the two industries separately. But the best interest of poker is clearly served by legally bifurcating the two, and poker is what matters to me.

Personally, I think that while government regulation of both poker and gambling on the Internet may perhaps be appropriate to protect players from the unscrupulous, prohibition of either is wrong. There is much sentiment in America that government needs to tend to its own business, stick to the big issues like war and health care, and stay the hell out of people's lives. Both the libertarians of the right and the civil libertarians of the left tend to support that philosophy. But as a member of the poker community, and one associated with an Internet poker site, I believe that if the government elects to choose regulation of wagering activity on the Internet, poker's best defense is to make the case that it is not the same as gambling and should not be treated by the law in the same way. The most significant consideration is that poker and gambling are indeed different animals.

The biggest distinction between poker and gambling is that in pretty much all gambling, you are playing against the house. This can be particularly problematic when you are playing a computerized game against the people who control the program. If you win, the house loses. If the house wins, you lose. The games favor the house. In poker, the house has no interest in the outcome, and is an impartial provider of services-for-a-fee, a forum for the players to compete equally against each other.

Another major difference between poker and gambling is that the rules of poker accord every player a statistically equal chance to win, but the rules of gambling games all give the house a definite advantage against the player, which over time is inexorable and inevitable. In essence, poker is fair, gambling is not.

The mechanics of poker and gambling are different in a fundamental way. In gambling, you post a wager, after which an event occurs over which you have little or no control, and which determines whether you win or lose. At the point where you risk your money, you are always an underdog. In poker, you receive your cards with an equal chance against your opponents, and then make decisions of whether or not to wager or match wagers made by other players as the hand progresses.

Poker is a game of skill. It is a contest of abilities, more akin to bridge or chess than it is to gambling, in that more-talented players will prevail against less-talented players. Chance can and will affect short-term results, but skill separates winners from losers over time. The claims of a few

purported card counters and system players notwithstanding, skill can only mitigate your losses when you gamble, and chance rather than skill is the principal determining factor in your results. A California court said in 1938: "A game is not to be regarded as one of skill merely because that element enters into the result in some degree, or as one of chance solely because chance is a factor in producing the result. The test of the character of a game or scheme as one of chance or skill is, which of these factors is dominant in determining the

result." *People v. Settles*, 29 Ca App Supp 2d 781, 78 P 2d 274 (Appellate Department, Superior Court, County of Los Angeles, 1938).

There are other arguments that favor poker over gambling that are perhaps intangible but no less real than the ones mentioned above. Poker is a part of the fabric of America, woven into our history from Ulysses S. Grant playing with his fellow junior officers in the Mexican-American War through Harry Truman being interrupted at his poker game to learn that FDR had died and

Harry had become president. From Mississippi riverboats to the California Gold Rush to the foxholes of Ardennes, the Chosin Reservoir, and Khe Sang, poker is part of our cultural makeup, our frontier heritage, our individualistic mentality. Presidents Harding, Coolidge, Roosevelt, Eisenhower, Nixon, and Johnson all frequently played poker. In some state capitols, more business of governing has been done at poker tables than in committee.

Beyond being historic, poker much more than gambling is ubiquitous. Kitchen-table poker and weekly poker night are staples of our society. In 1968, a report estimated that 50 million Americans had played some poker. That number has surely grown in the caddy shack, the bowling alley, or after Supreme Court hearings — and of course on the Internet and in hundreds of public cardrooms around the country that didn't exist back in those days. You find poker in hundreds of movies, in the officers lounge of the Starship Enterprise, in the Travis Magee detective novels. And, of course, it's all over cable TV.

Poker is democratic. It matters whether you have the money to play, but the game doesn't care if you're black, white, Asian, Hispanic, male, female, gay, in a wheelchair, or even an obnoxious jerk. You sit down with your buy-in at the green felt and you have all the rights, privileges, and the same chance to win as everybody else at the table. You'll never get to play a pickup game against Michael Jordan or a round of golf against Tiger, or tear up the track against Matt Kenseth, but you can plop your buy-in down and take on Doyle Brunson or Howard Lederer. Where else in America can you parlay a \$40 buy-in into a shot at \$2.5 million with grit, skill, and a little luck? (And it's not the kind of luck where the odds are rigged against you, I might add.)

Fair. Historic. Ubiquitous. Democratic. It's mighty hard for gambling to make such a case for itself. But, then again, there's no reason it should. Poker is, after all, a different thing.

Perhaps the weightiest relevant distinction between poker and gambling is the legal recognition by many jurisdictions that they are in fact different. A large majority of states prohibit gambling, but at least 37 states have some form of legal poker. California, for example, prohibits games played against the house, but permits poker. Florida has a provision against gambling in its state constitution, but has by affirmative act of its legislature distinguished and permitted poker on a regulated basis. Other examples abound.

I fervently hope the Feds will not further pursue restriction of either gambling or poker on the Internet. I hope the lobbyists who are making the case on behalf of the online casinos prevail and manage to shoot the whole thing down. But you can't take hopes to the bank. To wait for the shoe to drop would be foolhardy and naive. To preserve the flow of new players and new money into poker rooms around the country, the industry must band together and properly define itself as something different and apart from the gambling business.

And aside from the legal issues, it wouldn't hurt our image a bit.