

Committee Reports

COMMITTEE REPORT

House Committee on Administration of Criminal Justice

Operation of Video Draw Poker Devices and Penalty Schedule (LAC 42:XI.2407 and 2430)

In accordance with R.S. 49:968, the oversight subcommittee of the Administration of Criminal Justice Committee met on November 28, 2006, in House Committee Room 6 at 9:30 a.m. for the purpose of conducting legislative oversight on a rules proposed by the Louisiana Gaming Control Board and published as a Notice of Intent in the Louisiana Register on August 20, 2006. The set of rules deletes specific penalty provisions contained in LAC 42:XI.2407(A)(1) and (14) and adopts a comprehensive penalty schedule provided for in LAC 42:XI.2430.

The meeting was conducted jointly with the Senate Committee on Judiciary B and was presided over by Senator Robert Marionneau. Members present were: Senators Cravins, Marionneau and Quinn and Representatives Cazayoux, DeWitt, Heaton, Martiny, Romero, White, Farrar, Heaton, White and Wooton.

The Senate subcommittee did not have a quorum to take action with regard to the rules. A quorum of the House oversight subcommittee being present, the subcommittee found the rules unacceptable without objection based upon the following:

1. On January 20, 1998, the Louisiana Gaming Control Board approved a Video Gaming Civil Penalty Schedule to be used for violations of Part XI of the Louisiana Administrative Code, §2401-2425 relating to video poker. This penalty schedule has been used by the board since that time and has not been amended. The penalty schedule was not adopted as a rule and Act No. 61 of the 2005 Regular Session mandated that the board adopt a penalty schedule through its rulemaking authority.

2. The committee has no objection to, and in fact supports, the adoption of a penalty schedule by rule. The objection to the fine schedule which was proposed involved the "multiplier effect" which placed higher fines upon the operators of more than three video draw poker devices for the same violations as operators of only three video draw poker devices.

3. Specifically, the committee objected to this differential in the fine schedule because neither the office of state police nor the Attorney General's office offered an explanation which justified the necessity for the difference. The only explanation offered was that they believed the larger fines for truck stops would function to achieve better compliance and serve as a greater deterrent, and that the board had the authority to raise the fines. With respect to the

issue of functioning as a deterrent or to achieve compliance, the majority of the examples provided by the state police and Attorney General's office involved first time violations and not repeat offenders.

4. When requested to provide specific examples of how the present fine schedule (in operation since 1998) was deficient, the agency representatives had no explanation as to the deficiencies or the necessity for increasing the fines.

5. R.S. 49:968(H)(1) provides that "[i]f both the House and Senate oversight subcommittees fail to find a proposed rule change unacceptable as provided herein, or if the governor disapproves the action of an oversight subcommittee within the time provided in R.S. 49:968(G), the proposed rule change may be adopted by the agency in the identical form proposed by the agency or with technical changes or with changes suggested by the subcommittee, provided at least ninety days and no more than twelve months have elapsed since notice of intent was published in the State Register." The committee entertained the idea of offering amendments to the rules which would incorporate the existing (1998) penalty schedule without the differential or multiplier based solely upon the number of devices operated at a facility. After discussing this with the representatives of the board, it was determined that this solution was impractical due to the intricacies of the necessary suggested amendments and the time the committee had to make those changes.

6. The committee suggested that the board withdraw the rules and make the amendments suggested by the committee but it was determined that the board would not meet again until the time period for rule oversight had elapsed.

7. With limited options available to the oversight committee, the committee found the rules unacceptable with the request to the board that they adopt the 1998 penalty schedule as a rule.

8. The board representatives, representatives of the office of the Attorney General, and the state police indicated that revising the rules to conform with the suggestions of the committee was an acceptable course of action.

9. With respect to the amendments to LAC 42:XI.2407(A)(1) and (14) and repeal of LAC 42:XI.2407(A)(8) these changes to the rules were dependant on the adoption of LAC 42:XI.2430. Those amendments could not be found acceptable if LAC 42:XI.2430 was found unacceptable.

Daniel R. Martiny
Chairman

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