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United Auburn Indian Community  
of the Auburn Rancheria

Gene Whitehouse  
Chairman

John L. Williams  
Vice Chairman

Danny Rey  
Secretary

Brenda Adams  
Treasurer

Calvin Moman  
Council Member

November 19, 2014

Via Facsimile (916-227-2382) & U.S. Mail

Susanne George, Research Analyst  
Bureau of Gambling Control  
Department of Justice  
P.O. Box 168024  
Sacramento, CA 95816-8024

*RE: Proposed Amendments to Gaming Activity Authorization regulation*

Dear Ms. George,

On behalf of the United Auburn Indian Community, I want to thank you for this opportunity to provide these comments.

(1) This regulatory review was noticed to consider amendments to the Bureau of Gambling Control regulations in order to establish standards for approval of collection fees charged to patrons by California cardrooms which would make clear the parameters under which the collection fee charged to each patron may be waived. In fact, the notice for the last roundtable discussion stated it “will focus solely on the parameters for which the licensee may waive the collection fee, pursuant to Penal Code section 337j(f).” However, none of the current proposed regulatory options establish clear parameters.

The regulatory language should specify that waiver of such fee shall occur only under the following circumstances: (1) After the hand or round has begun and notice to public; and (2) Where the player receives no action on his or her wager or where a hand folds and there is no betting. This ensures compliance with Penal Code Section 337J(f), fourth sentence, as intended by the legislature and reflected in the Bill Analysis of AB 278. We enclose our prior correspondence of July 9, 2014, outlining such legal requirements for your reference and record.

The regulatory language should also provide the following in order to comply with California law:

(2) The gambling establishment charges each player a fixed collection fee *for each wager* in a controlled game. A fee for each hand or round of play only is not enough to ensure compliance with Penal Code Section 337J(f), which requires that the “amount of

*fees charged for all wagers shall be determined prior to the start of play of any hand or round.”*

(3) The collection fee charged to each player, including the proposition player service, for participation in any controlled game shall be the same for the same level of participation.


(4) The fixed fee on each wager shall increase proportionate to the amount of the wager and shall be in no case less than \$.50, provided that no more than five collection rates may be established per table, or some like formula that ensures collection fees have some proportionate relationship to the amount of wager and some value that is not de minimis.

(5) The fee shall be paid to the gambling establishment from each player's own funds, and the regulatory language should *clearly specify* that such fee shall not be reimbursed to such player.

(6) A fee shall not be calculated as a fraction or percentage of wagers made or winnings earned.

We thank you for this opportunity to comment and look forward to your next regulatory meeting in this review process.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Whitehouse". The signature is fluid and cursive, with a large loop at the end.

Gene Whitehouse  
Chairman



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July 9, 2014

Wayne J. Quint, Jr.  
Bureau Chief  
Bureau of Gambling Control  
Department of Justice  
P.O. Box 168024  
Sacramento, CA 95816-8024

*RE: Regulatory Review of Cardroom Collection Fee Waivers*

Dear Chief Quint,

On behalf of the United Auburn Indian Community, I want to thank you for considering amendments to the Bureau of Gambling Control regulations in order to establish standards for approval of collection fees charged to patrons by California cardrooms which would make clear the parameters under which the collection fee charged to each patron may be waived.

**Background:** California law prohibits California cardrooms from operating banked or percentage card games. (CA Constitution Article 4 Section 19; CA Penal Code 330). California law prohibits any cardroom from having a direct or indirect interest in the card game. (CA Busi & Prof Code 19984). California law provides for cardrooms to make their revenue by charging each patron a collection fee to play the game, which fee may be waived only under narrow circumstances established by Penal Code Section 337j(f) “after the hand or round has begun pursuant to the rules of the game and the notice provided to the public.”

Specifically, Section 337J of the Penal Code was amended in 2003 to add at subdivision (f):

“This subdivision is intended to be dispositive of the law relating to the collection of player fees in gambling establishments. A fee may not be calculated as a fraction or percentage of wagers made or winnings earned. The amount of **fees** charged **for all wagers** shall be determined prior to the start of play of any hand or round. However, the gambling establishment may waive collection of the fee or portion of the fee in any hand or round of play **after the hand or round has begun** pursuant to the published rules of the game **and the notice provided to the public...**[N]o more than five collection rates may be established per table.”  
(Emphasis added).

**The plain language of the statute requires a collection fee be charged to each patron for all wagers except in narrow circumstances when a waiver of this rule is permissible – only after the hand or round has begun.** The legislative history of Penal Code Section 337J(f) explains:

“The bill also will clarify the law relating to the collection of fees in card clubs by allowing the club to waive specified fees, a “player-friendly” change benefiting those players who do not receive action on their wager, or where a hand folds and there is no betting. Currently, clubs give a “free-play” token in when [sic] these instances occur. The Attorney General has advised the clubs that this change will clarify this section of law relating to these circumstances.” (See attached Bill Analysis for AB 278).

**Proposed Standards:** We have attached proposed Standards for BGC Approval of Collection Fees that would ensure compliance with California law, as follows:

1. The gambling establishment charges each player a fixed collection fee for each wager in a controlled game.

\*Note: This ensures compliance with Penal Code Section 337J(f), third sentence.

2. Waiver of such fee shall occur only under the following circumstances: (1) After the hand or round has begun and notice to public; and (2) Where the player receives no action on his or her wager or where a hand folds and there is no betting.

\*Note: This ensures compliance with Penal Code Section 337J(f), fourth sentence, as intended by the legislature and reflected in the Bill Analysis of AB 278.

3. The collection fee charged to each player, including the proposition player service, for participation in any controlled game shall be the same for the same level of participation.

\*Note: This ensures compliance with CGCC regulation 12200.7, enacted in 2004, and as currently proposed in the CGCC regulatory review.

4. The fixed fee on each wager shall increase proportionate to the amount of the wager and shall be in no case less than \$.50, provided that no more than five collection rates may be established per table.

\*Note: This ensures compliance with Penal Code Section 337J(f), seventh sentence, and that collection fees have some value that is not de minimis.

5. The fee shall be paid to the gambling establishment from each player’s own funds and shall not be reimbursed to such player.

\*Note: This ensures compliance with Penal Code Section 337J(f) by eliminating loopholes, such as the fee being paid by Third Player Proposition company funds rather than each player (whether by direct payment to the cardroom or reimbursement to the player), which would render the subdivision meaningless.

6. A fee shall not be calculated as a fraction or percentage of wagers made or winnings earned.

\*Note: This ensures compliance with Penal Code Section 337J(f), second sentence.

We thank you for this opportunity to comment and look forward to your next regulatory meeting in this review process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gene Whitehouse", with a large, stylized flourish at the end.

Gene Whitehouse  
Chairman

Cc: Susanne George, Research Analyst II, CA DOJ

**Standards for BGC Approval of Collection Fees:**

Proposed game rules shall include the following:

1. The gambling establishment charges each player a fixed collection fee for each wager in a controlled game.
  2. Waiver of such fee shall occur only under the following circumstances: (1) After the hand or round has begun and notice to public; and (2) Where the player receives no action on his or her wager or where a hand folds and there is no betting.
  3. The collection fee charged to each player, including the proposition player service, for participation in any controlled game shall be the same for the same level of participation.
  4. The fixed fee on each wager shall increase proportionate to the amount of the wager and shall be in no case less than \$.50, provided that no more than five collection rates may be established per table.
  5. The fee shall be paid to the gambling establishment from each player's own funds and shall not be reimbursed to such player.
  6. A fee shall not be calculated as a fraction or percentage of wagers made or winnings earned.
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BILL ANALYSIS

Bill No: AB 278

SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION  
Senator Edward Vincent, Chair  
2003-2004 Regular Session  
Staff Analysis

AB 278 Author: Bermudez  
As Amended: July 2, 2003  
Hearing Date: July 8, 2003  
Consultant: Steve Hardy

SUBJECT  
Gambling Control Act.

DESCRIPTION

1. AB 278 would increase from 10 to 16, the membership of the Gaming Policy Advisory Committee (GPAC), which is appointed by the Gambling Control Commission (CGCC) as specified under present law. Under provisions of this act, eight members must be from the general public, and eight must represent controlled gambling licensees.
2. Would revise the definition of controlled game to clarify that games of "skill" (certain poker games), in addition to games of "chance" may be legally conducted in Card clubs.
3. Allows a gambling establishment (card club), to waive the collection of described fees collected by the club for any hand or round of play, after the hand or round has begun, pursuant to the published rules of the game and notice provided to the public. If the establishment waives this fee, the fee will not constitute one of the specified collection rates.
4. Contains a "cost disclaimer" clause.

PRIOR/RELATED LEGISLATION

SB 8 (Lockyer) Chapter 867, Statutes of 1997. Repealed the

previous Gaming Registration Act, and re-enacted an updated Gambling Control Act.

AB 2446 (Firebaugh) 2002 Session. Contained similar provisions to this measure. (Held on Suspense File, Senate Appropriations Committee)

#### EXISTING LAW

Existing law provides that the CGCC is required to appoint 10 members to the GPAC, composed of equal numbers of controlled gambling licensees and the general public as specified.

Existing law makes it a misdemeanor to operate specified controlled games, and to regulate the collection of player fees in licensed gambling establishments as specified.

#### BACKGROUND

The author indicates that this bill seeks to give a voice on the GPAC to those cities and counties that have gambling establishments in their jurisdictions. There are currently no specific provisions for representation of these local agencies on the GPAC. In addition the bill clarifies that games of skill (certain poker games) may be played in addition to games of chance. Card clubs are currently playing games, which under definition, would be considered games of skill. This change will provide clarity to allow these games to be conducted.

The bill also will clarify the law relating to the collection of fees in card clubs by allowing the club to waive specified fees, a "player-friendly" change benefiting those players who do not receive action on their wager, or where a hand folds and there is no betting. Currently, clubs give a "free-play" token in when these instances occur. The Attorney General has advised the clubs that this change will clarify this section of law relating to these circumstances.

Supporters of this bill indicate that controlled gaming establishments (i.e., card clubs) provide important revenues to their local communities in the form of licensing fees. Small urban cities such as Commerce, Bell Gardens and Hawaiian Gardens are dependent on these revenues. Supporters believe that the change proposed by



AB 278 (Bermudez) continued  
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this bill will give these cities and clubs fair  
representation on the committee.

The author has previously amended the bill to address  
concerns raised by the California Nations Indian Gaming  
Association that delete their opposition. There is no  
known opposition to the bill.

SUPPORT: Commerce Club of California  
Los Angeles Casino Political Action  
Committee  
City of Commerce  
Hawaiian Gardens Casino

OPPOSE: None registered as of 7/5/03

FISCAL COMMITTEE: Senate Appropriations Committee  
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SMH:bkh