Staff Proposed Rule Change

- **Gambling Equipment**

April 2014 – Final Action
March 2014 – Study Session
February 2014 - Up for Discussion and Possible Filing
January 2014 - Study Session

ITEM: 6

a) **Amendatory Section WAC 230-06-050**
Review of electronic or mechanical gambling equipment.

b) **New Section WAC 230-06-054**
Notification of electronic or mechanical gambling equipment malfunctions.

Proposed Amendment:
WAC 230-06-050 Review of electronic or mechanical gambling equipment.

Proposed New Section:
WAC 230-06-054 Notification of electronic or mechanical gambling equipment malfunctions.

April 2014 – Final Action
March 2014 – Study Session
February 2014 – Up for Discussion and Possible Filing
January 2014 – Study Session

ITEM 1 (a) on the April 2014 Commission Meeting Agenda.	Statutory Authority 9.46.070
Who proposed the rule change?	
Staff	
Proposed Change	

The proposed changes to **WAC 230-06-050** will codify our practice of:

- Requiring the version of gambling equipment/software submitted for review to be identical or substantially similar to what is to be marketed and used in Washington State.
- Requiring all costs associated with the review of gambling equipment to be paid in full at the completion of the review.
- Including any security and surveillance requirements in our approval letter that must be met to operate the equipment.

It also clarifies that gambling equipment must be approved and the business licensed before selling or leasing may begin in Washington State.

The proposed new rule **WAC 230-06-054** will require licensees to notify us within 72 hours of identifying or becoming aware of an electronic or mechanical gambling equipment malfunction. Staff has created a form for licensees to use to report the equipment malfunctions.

In June of 2013, staff proposed changes to WAC 230-06-050 and provided notice to manufacturers of the changes. Based on the feedback received, the initial rule change proposal was put on hold while staff reviewed feedback. Staff incorporated the feedback received, revised WAC 230-06-050, and added WAC 230-06-054 to this rule change proposal.

Staff sent a letter to stakeholders notifying them of the proposed rule changes and asking for additional feedback. Overall, the feedback received was positive. One concern was brought forward regarding reporting equipment malfunctions. The concern was regarding licensees being required to report minor malfunctions of equipment such as a shuffler jam. Based on this comment, staff added language to the Gambling Equipment Malfunction Report to specify that only shuffler integrity or randomness issues must be reported to us.

Attachments:

- Draft Gambling Equipment Malfunction Report.
- Stakeholder notification letter dated November 5, 2013, sent to Group III, IV, and V bingo operators, manufacturers, house-banked card rooms, and Tribal Gaming Agencies.
- E-mail dated November 5, 2013, from Victor Mena, Washington Gold Casinos.
- E-mail dated November 19, 2013, from Leonard Faircloth, SHFL Entertainment.
- E-mail dated November 25, 2013, from Ryan Harris, SHFL Entertainment.

History of Rule

This rule was implemented in its original form in 2003. It was updated as part of the Rules Simplification Process in 2008.

Impact of the Proposed Change

The current rule change proposal will help accomplish our mission by ensuring the integrity of gambling equipment by ensuring the same equipment approved by staff is what is used by operators. In addition, licensees will be required to notify us when gambling equipment malfunctions. This will allow us to identify potential issues with equipment in a more timely manner.

The rule change provides more information to potential and current licensees about the process for submitting equipment for review, when they can begin selling or leasing approved equipment, and operational requirements.

WAC 230-06-050 will assist manufacturers by outlining what they need to know before submitting equipment for our review, including:

- The equipment they are submitting must be identical or substantially similar to what will be marketed and distributed in Washington.
- They cannot begin selling or leasing the equipment in Washington until they are licensed, have paid all review costs, and the equipment has been approved.

There have been several instances where the manufacturer did not submit the same version of equipment for review that they intended to market in Washington. This resulted in the review process taking longer than expected and delayed the ability of the manufacturer to market their equipment. In addition, manufacturers have modified software on previously approved equipment without resubmitting for review. This rule change will ensure all manufacturers are aware that all changes to equipment or associated software must be sent to us for review prior to operation.

WAC 230-06-054 requires licensees to notify us of gambling equipment malfunctions. Staff created the Gambling Equipment Malfunction Report that the licensees will use to report gambling equipment malfunctions. The form outlines the types of equipment malfunctions that must be reported and asks for specific information about the equipment and the incident. Obtaining this information within 72 hours will allow staff to identify issues with equipment sooner. It will also allow staff to identify whether the incident is isolated or may be occurring at multiple licensed locations. The proposed rule change will allow staff to identify and investigate equipment malfunctions and work with the manufacturers to fix the problems.

A Small Business Economic Impact Statement was not prepared because the changes to WAC 230-06-050 do not change the existing costs to licensees to have their equipment reviewed and the changes to WAC 230-06-054 do not add costs to licensees when reporting electronic or mechanical gambling equipment malfunctions on the form provided by staff.

Regulatory Concerns
• The amendment ensures the equipment deployed in Washington State has been approved as compliant with gambling laws and rules. • If the rule is not passed, equipment malfunctions may occur where staff is not notified which could impact the integrity of gambling.
Resource Impacts
The proposed amendment will save staff time responding to questions about the gambling equipment submissions process.
Policy Consideration
None.
Statements Regarding the Proposed Rule Change
Commission staff exchanged e-mails with three licensees (see below) over concerns with drafts of the proposed rule changes. These representatives were satisfied with the changes made by staff to address their concerns. E-mails dated: • November 5, 2013, from Victor Mena, Washington Gold Casinos. • November 19, 2013, from Leonard Faircloth, SHFL Entertainment. • November 25, 2013, from Ryan Harris, SHFL Entertainment.
Statements Supporting the Proposed Rule Change
None.
Statements Opposing the Proposed Rule Change
None.
Licensees Directly Impacted By the Change
Manufacturers and operators.
Staff Recommendation
Final Action.
Proposed Effective Date for Rule Change
July 1, 2014.

Amendatory Section:

WAC 230-06-050 Review of electronic or mechanical gambling equipment.

((~~(1) Persons who wish to submit gambling equipment, supplies, services, or games for our review to verify compliance with chapter 9.46 RCW and Title 230 WAC must pay the application deposit before we perform the review. They must also reimburse us for any additional costs of the review.~~
~~(2) We may require manufacturers to submit certain electronic or mechanical gambling equipment for review. The equipment must meet technical standards for compliance, accuracy, security, and integrity. To allow for continued testing and training, staff may keep any equipment submitted for review for as long as the equipment remains in play in Washington. The manufacturers must reimburse us for any costs of the review. The commissioners and commission staff are not liable for any damage to equipment while in our possession.~~
~~(3) Licensees must operate equipment identical to the version the director or director's designee approved.~~
~~(4) If persons submitting equipment do not agree with the director or director's designee's decision, they may file a petition for declaratory order with the commission to be heard as a full review (*de novo*) by an administrative law judge, according to RCW 34.05.240 and chapter 230-17 WAC.~~))

(1) When you submit gambling equipment, supplies, services, or games for our review to verify compliance with chapter 9.46 RCW and Title 230 WAC, you must pay the application deposit before we perform the review. You must also reimburse us for any additional costs of the review. All costs must be paid in full prior to the completion of the review.
(2) The gambling equipment submitted for review must be identical or substantially similar to what will be marketed, distributed and deployed in Washington. If the equipment is not sufficient for testing and review, we may require additional equipment or information.
(3) If your application is incomplete or we request additional information, you must provide us with the required items within thirty days of notification or we may administratively close your application.
(4) You can begin selling or leasing the gambling equipment when you are licensed and the gambling equipment has been approved by the director or director's designee.
(5) We may include security or surveillance requirements as part of gambling equipment approval.
(6) Gambling equipment must operate as approved by the director or director's designee.
(7) We may keep equipment submitted for review to allow for continued testing and training as long as the equipment remains in play in Washington. We are not liable for any damage to equipment while in our possession.
(8) If you do not agree with the director or director's designee's decision, you may file a petition for declaratory order with the commission according to RCW 34.05.240 and chapter 230-17 WAC.

New Rule:

WAC 230-06-054 Notification of electronic or mechanical gambling equipment malfunctions.
Licensees must notify us, in the format we require, within seventy-two hours of identifying or becoming aware of an electronic or mechanical gambling equipment malfunction.

Gambling Equipment Malfunction Report

Notification within 72-hours of discovering malfunction
Email to: get@wsgc.wa.gov Questions? (360) 486-3571

DRAFT

Check the box next to the gambling equipment you are reporting about:

- ◇ **Progressive/Bonusing system**
- ◇ **Electronic Card Facsimile**
- ◇ **Electronic Pull-Tab Dispensing Device**
- ◇ **Electronic Raffle System**
- ◇ **Shuffler with Integrity or Randomness Issues**
  (Excluding routine shuffler malfunctions/jams)
- ◇ **Electronic Bingo Dauber System**
- ◇ **Other**

Operator:_____

Submitter Contact #:_____

System manufacturer:_____

Date/time of report:_____ **Date/time of incident:**_____

Version of equipment and signature:_____

Description of malfunction:_____

_____

_____

_____

_____

Other helpful information:

1. Was there an unusual event that preceded the incident? (Power outage, Surge)?
   ____ Yes ____ No
2. Did you pull surveillance tapes? ___Yes ___ No
3. Were customers affected? Describe:_____

   _____

4. Describe troubleshooting attempts and any contact with equipment manufacturer.

   _____

   _____

Attachments:

Photos: ____Yes ____ No
Incident reports: ____Yes ____ No
System reports: ____Yes ____ No

STATE OF WASHINGTON
GAMBLING COMMISSION

"Protect the Public by Ensuring that Gambling is Legal and Honest"

November 5, 2013

Dear Stakeholders:

OPPORTUNITY FOR FEEDBACK ON PROPOSED RULE CHANGES

We are asking for your comments and suggestions on:

- Revised Rule: WAC 230-06-050 Review of electronic or mechanical gambling equipment.
- New Rule: WAC 230-06-054 Notification of electronic or mechanical gambling equipment malfunctions.

In June 2013, we began the initial stage of rule-making and provided notice to manufacturers about the proposed changes. Based on feedback we received, we have revised the rules.

The proposed changes to WAC 230-06-050 will add our current practice to the rule by:

- Requiring all costs associated with the review of gambling equipment to be paid in full at the completion of the review,
- Requiring the version of gambling equipment/software submitted for review to be identical or substantially similar to what is marketed and used in Washington State,
- Including security and surveillance requirements for operating the equipment in our equipment approval letter, and
- Clarifying that gambling equipment must be approved and the business licensed by us before the equipment can be sold or leased in Washington.

This rule does not apply to Tribal Lottery Systems or Tribal Lottery System components; the process for these systems is outlined in Class III gaming Tribal-State compacts.

The proposed new rule, WAC 230-06-054, outlines requirements for notifying us of electronic or mechanical gambling equipment malfunctions. If passed, you would be required to report equipment malfunctions to us.

We've attached:

- Proposed revisions to WAC 230-06-050;
- New rule WAC 230-06-054;
- A draft Gambling Equipment Malfunction Report.

We welcome your comments and suggestions. Please forward your comments and suggestions about these rules and the report by November 26th to Jennifer LaMont at Jennifer.lamont@wsgc.wa.gov.

There will be additional opportunities to comment on these rules at the Gambling Commission Study Session and the Gambling Commission Public Meetings, in January or February 2014. Please check our website for updated information on the rules and meeting dates and locations. Our website address is www.wsgc.wa.gov.

If you are interested in meeting to discuss these rule changes, let us know. If you have questions, please call Program Manager Jennifer LaMont at (360) 486-3571.

Newer, Susan (GMB)

From: Victor Mena [VMena@wagoldcasinos.com]
Sent: Tuesday, November 05, 2013 4:34 PM
To: LaMont, Jennifer (GMB)
Subject: RE: Washington State Gambling Commission - Proposed Rule Change

Hi Jennifer,

The only thing that comes to mind is shuffling integrity and randomness excluding routine card malfunctions(jams).

Thanks Victor

Victor Mena | VP WA Operations Nevada Gold, Chief Operating Officer WA Gold | VMena@wagoldcasinos.com | T: 425.264.1050 x100 | F: 425.264.1063
711 Powell Ave SW, Suite 100 | Renton, WA 98057 | http://www.wagoldcasinos.com

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From: LaMont, Jennifer (GMB) [mailto:jennifer.lamont@wsgc.wa.gov]
Sent: Tuesday, November 05, 2013 4:05 PM
To: VMena@wagoldcasinos.com
Subject: FW: Washington State Gambling Commission - Proposed Rule Change

Victor,

I appreciate your quick feedback. I understand your concern and we considered this as well. We thought adding the terms (integrity and randomness) would separate the issues we may be concerned with for regulatory issues and common malfunctions that would occur daily.

Do you have suggested language to clarify your concerns?

Jennifer

Jennifer LaMont
Tribal Certification Program Manager
Licensing Operations Division
360-486-3571

From: Arrona, Hollee (GMB)
Sent: Tuesday, November 05, 2013 3:54 PM
To: LaMont, Jennifer (GMB)
Subject: FW: Washington State Gambling Commission - Proposed Rule Change

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From: Victor Mena [mailto:VMena@wagoldcasinos.com]
Sent: Tuesday, November 05, 2013 3:05 PM
To: Arrona, Hollee (GMB)
Subject: RE: Washington State Gambling Commission - Proposed Rule Change

Hi Hollee,

The one concern I have with the malfunctioning equipment form is the term Shuffler Integrity and Randomness. Shufflers are constantly getting out of adjustment for everyday wear and tear which causes them to jam. The machines that jam consistently we set aside for Shuffle to come in and adjust them to get them to work. This occurs almost nightly in property over property and I would specifically write this type of malfunction out of the reporting scope as you will be buried with shuffler jams to all your agents. The term integrity becomes somewhat subjective in definition at that point as some might see shufflers jamming as an integrity issue.

Thanks Victor

Washington
GOLD

Victor Mena | VP WA Operations Nevada Gold, Chief Operating Officer WA Gold | VMena@wagoldcasinos.com | T: 425.264.1050 x100 | F: 425.264.1063
711 Powell Ave SW, Suite 100 | Renton, WA 98057 | http://www.wagoldcasinos.com

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From: Arrona, Hollee (GMB) [mailto:hollee.arrona@wsgc.wa.gov]
Sent: Tuesday, November 05, 2013 12:14 PM
To: LaMont, Jennifer (GMB)
Subject: Washington State Gambling Commission - Proposed Rule Change

The attached proposed rule changes may impact you. We are requesting your feedback to the attached by November 26, 2013.

Newer, Susan (GMB)

From: Leonard Faircloth [LFaircloth@shfl.com]
Sent: Tuesday, November 19, 2013 3:28 PM
To: LaMont, Jennifer (GMB)
Subject: RE: Washington State Gambling Commission - Proposed Rule Change

Hi Jennifer

This looks fine, I'm sure we are okay with the rule change.

Thanks for such a quick response.

Leonard Faircloth | Technical Compliance Engineer – Table Games & Utility Products | SHFL entertainment | Direct +1 702 270 5308 | Mobile +1 702 375 4531 | Fax +1 702 270 5194 | 6650 El Camino Road | Las Vegas, NV 89118

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From: LaMont, Jennifer (GMB) [mailto:jennifer.lamont@wsgc.wa.gov]
Sent: Tuesday, November 19, 2013 2:55 PM
To: Leonard Faircloth
Cc: LaMont, Jennifer (GMB)
Subject: FW: Washington State Gambling Commission - Proposed Rule Change

Leonard,

Thank you for your feedback. Here is a SHFL approval letter with security and surveillance requirements that are separated for the manufacturer and the operator: http://www.wsgc.wa.gov/activities/equipment/12-21-2012-nexus-command.pdf.

Does this address your concerns? If not, what rewording would you suggest to help clarify your concerns in the rule?

Thank you- Jennifer

From: Arrona, Hollee (GMB)
Sent: Tuesday, November 19, 2013 1:35 PM
To: LaMont, Jennifer (GMB)
Subject: FW: Washington State Gambling Commission - Proposed Rule Change

Feedback...

From: Leonard Faircloth [mailto:LFaircloth@shfl.com]
Sent: Tuesday, November 19, 2013 1:17 PM
To: Arrona, Hollee (GMB)
Subject: Washington State Gambling Commission - Proposed Rule Change

Hi Hollee

We have reviewed the documents and only have one concern. In the "WAC 230-06-050.pdf" bullet point 5 it states:

5) We may include security or surveillance requirements as part of gambling equipment approval.

We would like to get this reworded since the gaming supplier should not be responsible for the casino to maintain surveillance equipment. This should be a requirement for the casino and not a condition for approval.

Please let me know what you think.

Thanks

Leonard Faircloth | Technical Compliance Engineer – Table Games & Utility Products | SHFL entertainment | Direct +1 702 270 5308 | Mobile +1 702 375 4531 | Fax +1 702 270 5194 | 6650 El Camino Road | Las Vegas, NV 89118

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Newer, Susan (GMB)

From: Ryan Harris [RHarris@shfl.com]
Sent: Monday, November 25, 2013 4:52 PM
To: LaMont, Jennifer (GMB); Arrona, Hollee (GMB)
Cc: Jacqueline Hunter; Sheri Johnson
Subject: SHFL Feedback on Washington State Gambling Commission - Proposed Rule Change

Jennifer, Hollee,

We have reviewed the materials provided on November 5th and appreciate the opportunity to provide feedback on the proposed changes. We have no additional comments at this time and look forward to when the changes become effective.

Have a great evening,

Ryan Harris

Ryan Harris | Director - Technical Compliance & Product Assurance | SHFL entertainment | Direct +1 702 998 3418 | Mobile +1 702 241 9442 | Fax | 6650 El Camino Road | Las Vegas, NV 89118

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Staff Proposed Rule Change

- **Background checks on landlords.**

April 2014 – Final Action
March 2014 – Study Session
February 2014 – Up for Discussion and Possible Filing
January 2014 – Study Session
December 2013 – No Meeting
November 2013 – Study Session
October 2013 – Study Session
September 2013 – Study Session
August 2013 – Up for Further Discussion
July 2013 – Up for Discussion and Possible Filing
June 2013 – No Meeting
May 2013 – Study Session

ITEM: 7

a) **New Section: WAC 230-03-061**
Fingerprinting persons holding an interest in the building of house-banked card room licensees or charitable or nonprofit licensees in regulatory groups III, IV, or V.

Proposed New Rule:
WAC 230-03-061 Fingerprinting persons holding an interest in the building of house-banked card room licensees or charitable or nonprofit licensees in regulatory groups III, IV, or V.

April 2014 – Final Action
March 2014 – Study Session
February 2014 – Up for Discussion and Possible Filing
January 2014 – Study Session
December 2013 – No Meeting
November 2013 – Study Session
October 2013 – Study Session
September 2013 – Study Session
August 2013 – Up for Further Discussion
July 2013 – Up for Discussion and Possible Filing
June 2013 – No Meeting
May 2013 – Study Session

ITEM 7 (a) on the April 2014 Commission Meeting Agenda.	Statutory Authority 9.46.070
Who proposed the rule change?	
Staff.	
Proposed Change	

RCW 9.46.070(7) states in pertinent part that "Provided further, That the commission ***shall require fingerprinting and national criminal history background checks*** on any person seeking licenses, certifications, or permits under this chapter or of ***any person holding an interest*** in any gambling activity, **building**, or equipment to be used therefore, or of any person participating as an employee in the operation of any gambling activity…***The commission must establish rules to delineate which persons named on the application are subject to national criminal history background checks.***" *(emphasis added)*

This new rule ensures the WAC is consistent with RCW 9.46.070(7) by requiring persons holding an "interest" in a building used for a gambling activity to undergo background checks. The rule describes an interest in a building used for a gambling activity is at least 51%, or less than 51% interest in a building when there is actual or potential influence or control of the operation of a house-banked card room or a charitable or nonprofit in regulatory groups III, IV, or V.

Charitable or nonprofit licensees are assigned to regulatory groups based on the annual gross gambling receipts for their combined licensed activities (WAC 230-07-015, attached).
The regulatory groups are:

(a) Group I	Combined annual gross receipts up to three hundred thousand dollars.
(b) Group II	Combined annual gross receipts up to one million dollars.
(c) Group III	Combined annual gross receipts up to three million dollars.
(d) Group IV	Combined annual gross receipts up to five million dollars.
(e) Group V	Combined annual gross receipts over five million dollars.

This new rule would apply to new applicants for a house-banked card room license and for a charitable or nonprofit licensee in regulatory groups III, IV, or V.

House-banked card rooms and charitable or nonprofits in regulatory groups III, IV, or V, that currently hold a license would be exempt from this new rule, unless there is a change in persons holding an interest in their building or they change location. We will continue to require copies of leases so staff may review persons holding a "substantial interest" as defined in WAC 230-03-045 (attached).

In May 2013, staff proposed a rule change to require persons holding an interest in the building of a house-banked card room (HBCR) to undergo a national criminal background investigation. A stakeholder notification letter was sent to all licensed house-banked card rooms regarding staff's proposed change.

In July 2013, the Commission filed staff's proposal for discussion.

On July 19, 2013, staff e-mailed all HBCRs the answers to questions that had been raised at the July 2013 Study Session, a copy of the proposed rule, and a draft notification letter they could provide to their landlords regarding the new requirements.

At the August 2013 Commission meeting, the Commissioners discussed the rule change and RCW. A licensee raised some questions and concerns about the rule. The Commission asked staff and stakeholders to discuss the rule and update the Commission on their progress.

On September 13, 2013, staff met with HBCRs to discuss their questions and concerns.

On September 26, 2013, an e-mail was sent to all HBCRs inviting them to meet on October 3, 2013, to continue our discussion on the proposed rule. Staff also told the HBCRs they could bring their landlords to the meeting as well.

Subsequently, staff resolved stakeholder concerns raised at the August 2013 Commission meeting with the changes in this final proposed rule.

In January 2014, staff met individually with the eight nonprofit licensees that would be impacted by this proposed rule change.

- Three did not have concerns as they do not plan to sell their current locations;
- Three had no comments;
- One thought their landlord may have concerns; and
- One is currently in negotiations to purchase the building they are in.

Attachments:

- RCW 9.46.070 (7) Gambling commission - Powers and duties.
- WAC 230-07-015 Regulatory group assignments.
- WAC 230-03-045 Defining substantial interest holder.
- Stakeholder notification letter dated January 3, 2014, which e-mailed to house-banked card rooms and hand delivered to affected non-profit licensees.
- Excerpt from the August 2013 Commission meeting minutes.

History of Rule
None. This is a new rule.

Impact of the Proposed Change
Persons holding an interest in the building of either a house-banked card room or a charitable or nonprofit in regulatory groups III, IV, or V meeting certain conditions would be required to undergo a national criminal background investigation, which requires fingerprinting. Only landlords that meet the definition of a "person of interest" as defined in the rule would be fingerprinted. Because the rule narrowly defines who would be a "person of interest," we believe very few landlords would be required to be fingerprinted. We intentionally defined "person of interest" narrowly to ensure this new rule would not be cumbersome for new applicants or for existing licensees when there is a change in persons holding an interest in their building or they change location. We are not adding any new requirements for licensees to monitor or report changes to us beyond what required in this new rule. This change will not increase the application cost for applicants. The processing times of the applications will vary based on the responsiveness of the person holding an interest in the building to submit their fingerprints. **A Small Business Economic Impact Statement** was not prepared because this proposed rule change will not impose additional costs.
Regulatory Concerns
Minimal.
Resource Impacts
Minimal. In 2013, we received three new house-banked card room applications and no regulatory group III, IV, and V bingo applications. Also, during the past year, the total number of charitable or nonprofit licensees in regulatory groups III, IV, or V decreased from nine to eight, and of those remaining only two do not own their own building. The resource impacts will, therefore, be minimal for both staff time and agency expenses.
Policy Consideration
None.
Statements Supporting the Proposed Rule Change
None.
Statements Opposing the Proposed Rule Change
None.
Licensees Directly Impacted By the Change
• Applicants for a house-banked card room license or a charitable or nonprofit licensee in regulatory groups III, IV, or V; and • House-banked card room licensees and charitable or nonprofit licensees in regulatory groups III, IV, or V when there is a change in persons holding an interest in their building or a change in location.
Staff Recommendation
Final Action.
Proposed Effective Date for Rule Change
July 1, 2014.

New Section

WAC 230-03-061 Fingerprinting persons holding an interest in the building of house-banked card room licensees or charitable or nonprofit licensees in regulatory groups III, IV, or V.

(1) This rule only applies to house-banked card room licensees or charitable or nonprofit licensees in regulatory groups III, IV, or V licensed after July 1, 2014.
(2) Persons holding an "interest" in the building of these licensees must undergo a national criminal history background check, including fingerprinting.
(3) An "interest" means:
  (a) Having fifty percent or more ownership in the building used for the gambling activity; or
  (b) Having less than fifty percent ownership in the building used for the gambling activity and having actual or potential influence over the gambling activity.
(4) For house-banked card room licensees or charitable or nonprofit licensees in regulatory groups III, IV, or V licensed before July 1, 2014, this requirement applies when there is a change in:
  (a) Persons holding an interest in the building; or
  (b) Location of the house-banked card room; or
  (c) Location of the charitable or nonprofit licensee's gambling activity.

RCW 9.46.070 (7) Gambling commission — Powers and duties

(7) To require that applications for all licenses contain such information as may be required by the commission: PROVIDED, That all persons (a) having a managerial or ownership interest in any gambling activity, or the building in which any gambling activity occurs, or the equipment to be used for any gambling activity, or (b) participating as an employee in the operation of any gambling activity, shall be listed on the application for the license and the applicant shall certify on the application, under oath, that the persons named on the application are all of the persons known to have an interest in any gambling activity, building, or equipment by the person making such application: PROVIDED FURTHER, That the commission shall require fingerprinting and national criminal history background checks on any persons seeking licenses, certifications, or permits under this chapter or of any person holding an interest in any gambling activity, building, or equipment to be used therefor, or of any person participating as an employee in the operation of any gambling activity. All national criminal history background checks shall be conducted using fingerprints submitted to the United States department of justice-federal bureau of investigation. The commission must establish rules to delineate which persons named on the application are subject to national criminal history background checks. In identifying these persons, the commission must take into consideration the nature, character, size, and scope of the gambling activities requested by the persons making such applications;

WAC 230-07-015 Regulatory group assignments.

(1) We assign charitable or nonprofit licensees to regulatory groups based on the annual gross gambling receipts for their combined licensed activities.

(2) Licensees must comply with requirements applicable to the regulatory group to which we have assigned them. The regulatory groups are:

(a) Group I	Combined annual gross receipts up to three hundred thousand dollars.
(b) Group II	Combined annual gross receipts up to one million dollars.
(c) Group III	Combined annual gross receipts up to three million dollars.
(d) Group IV	Combined annual gross receipts up to five million dollars.
(e) Group V	Combined annual gross receipts over five million dollars.

WAC 230-03-045 Defining substantial interest holder.

(1) "Substantial interest holder" means a person who has actual or potential influence over the management or operation of any organization, association, or other business entity.

(2) Evidence of substantial interest may include, but is not limited to:

(a) Directly or indirectly owning, operating, managing, or controlling an entity or any part of an entity; or

(b) Directly or indirectly profiting from an entity or assuming liability for debts or expenditures of the entity; or

(c) Being an officer or director or managing member of an entity; or

(d) Owning ten percent or more of any class of stock in a privately or closely held corporation; or

(e) Owning five percent or more of any class of stock in a publicly traded corporation; or

(f) Owning ten percent or more of the membership shares/units in a privately or closely held limited liability company; or

(g) Owning five percent or more of the membership shares/units in a publicly traded limited liability company; or

(h) Providing ten percent or more of cash, goods, or services for the start up of operations or the continuing operation of the business during any calendar year or fiscal year. To calculate ten percent of cash, goods, or services, take the operational expenses of the business over the past calendar or fiscal year, less depreciation and amortization expenses, and multiply that number by ten percent; or

(i) Receiving, directly or indirectly, a salary, commission, royalties, or other form of compensation based on the gambling receipts.

(3) Spouses of officers of charitable or nonprofit organizations and spouses of officers or board members of publicly traded entities or subsidiaries of publicly traded entities are not considered substantial interest holders, unless there is evidence to the contrary. If so, then an investigation will be conducted to determine if they qualify as a substantial interest holder.

Staff Proposed Rule Change

- **Holding stay hearing in 14 days, rather than 7.**

April 2014 – Final Action
March 2014 – Study Session
February 2014 - Up for Discussion and Possible Filing
January 2014 - Study Session

ITEM: 8

a) **Amendatory Section WAC 230-17-170**
Petition and hearing for stay of the summary suspension.

Proposed Amendment
WAC 230-17-170
Petition and hearing for stay of the summary suspension.

April 2014 – Final Action
March 2014 – Study Session
February 2014 – Up for Discussion and Possible Filing.
January 2014 – Study Session

ITEM 8 (a) on the April 2014 Commission Meeting Agenda.	Statutory Authority 9.46.070

Who proposed the rule change?

Staff.

Proposed Change

The current rule requires the agency to hold a stay hearing within seven days after we receive a request from a licensee or permittee. The proposed change increases the length of time to hold a stay hearing from seven to 14 days. The proposed change also clarifies stay hearings must be conducted as brief adjudicative proceedings (BAP) as required by WAC 230-17-150.

History of Rule

WAC 230-17-170 affords summarily suspended licensees or permittees an opportunity to request a hearing to stay their suspension and clarifies how the hearing will be conducted. The rule gives licensees or permittees a prompt opportunity to be heard on whether their license/permit should remain suspended pending the outcome of their administrative hearing, which usually occurs several months later.

Stay hearings should be conducted as BAPs, where the Administrative Law Judge (ALJ) relies upon briefs and oral argument. Under the rule, the only issues for the ALJ to decide are whether to grant a stay, or modify the terms of the suspension. The licensee or permittee has the burden of demonstrating by clear and convincing evidence each of the following:

- They are likely to prevail on the merits of the evidence at the administrative hearing.
- Without relief, the licensee will suffer irreparable injury. Elimination of income from licensed activities must not be deemed irreparable injury.
- The grant of relief will not substantially harm other parties to the proceedings.
- The threat to the public safety or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

Impact of the Proposed Change

Amending the rule to allow holding a stay hearing 14 days after a request for a stay will allow additional time for all parties to prepare for the hearing and is consistent with other state agencies. By comparison, the Department of Health boards and commissions that regulate health professions and the Liquor Control Board provide in their rules for stay hearings to be held within 14 days from the date a petition is received.

This rule only impacts licensees/permittees who are summarily suspended. Summary suspensions are only used when a licensee/permittee has demonstrated they pose an immediate threat to public health, safety, or welfare, such as cases involving physical harm, cheating and theft. Licensees/permittees may need to wait up to 14 days for a stay hearing under the proposed rule change.

A Small Business Economic Impact Statement was not prepared because it is not required under RCW 19.85.025 as it is a rule related to a procedure, practice, or requirement relating to agency hearings (RCW 34.05.310(4)(g)(i)).

Regulatory Concerns
None.
Resource Impacts
The proposed rule change is a more efficient use of resources as it would allow the parties and the ALJ additional time for scheduling and preparation.
Policy Consideration
None.
Statements Supporting the Proposed Rule Change
None.
Statements Opposing the Proposed Rule Change
None.
Licensees Directly Impacted By the Change
This rule only impacts licensees/permittees who are summarily suspended.
Staff Recommendation
Final Action.
Proposed Effective Date for Rule Change
Staff recommends an effective date of 31 days from filing the adopted rule.

Amendatory Section:

WAC 230-17-170 Petition and hearing for stay of the summary suspension.

(1) When the director summarily suspends a license or permit, the affected licensee or permittee may petition for a "stay of suspension" as explained in RCW 34.05.467 and 34.05.550(1).

(2) We must receive the petition in writing within fifteen days of service of the summary suspension.

(3) Within ((~~seven~~)) fourteen days of receipt of the petition, the presiding officer holds a hearing. If an administrative law judge is not available, the chairperson of the commission designates a commissioner to be the presiding officer. If the parties agree, they may have a continuance of the seven-day period.

(4) The stay hearing must use brief adjudicative proceedings as set out in WAC 230-17-150. At the hearing, the only issues are whether the presiding officer:

(a) Should grant a stay; or

(b) Modify the terms of the suspension.

(5) Our argument at the hearing consists of the information we used to issue the summary suspension and we may add any information we find after we order the suspension.

(6) At the hearing, the licensee or permittee has the burden of demonstrating by clear and convincing evidence all of the following:

(a) The licensee or permittee is likely to prevail upon the merits of the evidence at hearing; and

(b) Without relief, the licensee or permittee will suffer irreparable injury. For purposes of this section, elimination of income from licensed activities must not be deemed irreparable injury; and

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public safety or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(7) The initial stay of the summary suspension order whether given orally or in writing takes effect immediately unless stated otherwise.

Staff Proposed Rule Change

- **Allowing pull-tab prizes of $20 or less to be added to cash cards used in electronic video pull-tab dispensers.**

April 2014 – Final Action
March 2014 – Final Action, held over until April.
February 2014 – Final Action, held over until March.
January 2014 – Further Discussion
December 2013 – No Meeting
November 2013 – Up for Discussion and Possible Filing

ITEM: 9

a) Amendatory Section: WAC 230-14-047
Standards for electronic video pull-tab dispensers.

Proposed Amendment to
WAC 230-14-047 Standards for electronic video pull-tab dispensers.

April 2014 – Final Action
March 2014 – Final Action, held over until April.
February 2014 – Up for Final Action, held over until March.
January 2014 – Further Discussion
December 2013 – No Meeting
November 2013 – Up for Discussion and Possible Filing

ITEM 9 (a) on the April 2014 Commission Meeting. Statutory Authority 9.46.070 & 9.46.110
Who proposed the rule change?
Staff.
Proposed Change

This rule proposal is in response to an October 2013 Thurston County Superior Court decision, where the court directed the Commission to allow a specific electronic video pull-tab dispenser, which permits the purchase of a pull-tab at the dispenser and allows pull-tab winnings of $20 or less to be added onto a cash card at the dispenser.

This amendment adds language to WAC 230-14-047 to allow pull-tab prizes of $20 or less to be added to cash cards used in electronic video pull-tab dispensers. Most prizes are below $20.

Commission staff's review of this issue began in 2005 and has led to several court proceedings involving many different legal issues. The following is a brief summary of the Commission staff's, Commission's, Administrative Law Judge's (ALJ) and judicial decisions as they related specifically to cash cards used in electronic video pull-tab dispensers:

- In April 2005, the manufacturer requested Commission staff approve an electronic video pull-tab dispenser ("VIP") that would allow winnings of $20 or less to be put on a cash card. Staff denied the request.
- In September 2005, the manufacturer submitted a request to Commission for a declaratory action authorizing the VIP.
- In October 2005, the Commissioners referred the matter to an ALJ for an Initial Order.
- In May 2006, the ALJ issued his Initial Order and concluded that the VIP was not a gambling device under RCW 9.46.0241, but that the pull-tab dispenser's cash card features violated the Commission's then-current regulations. Both the manufacturer and the Commission staff sought final review by the full Commission.
- In August 2006, the Commission upheld the ALJ's determination that the VIP violated the Commission's then-current regulations. The Commission "vacated and specifically disavowed" the ALJ's decision regarding whether the VIP was an illegal gambling device. The Commission, however, did not issue a final decision on this issue having determined that the device violated the regulations.

- In August 2007, the Thurston County Superior Court found that cash cards were equivalent to both cash and merchandise and, therefore, were lawful under the Commission's regulations. The Commission appealed this decision to the Court of Appeals.

- In August 2009, the Court of Appeals held that "substantial evidence did not support the Gambling Commission's determination that the prepaid cards failed to satisfy the regulatory definition of cash." The Commission appealed this decision to the Washington Supreme Court.

- In January 2012, the Washington Supreme Court affirmed the lower court's decision, finding that ZDI met its burden of showing that the Gambling Commission "erred in concluding that the VIP machine violated then-in force regulations." The Court remanded the matter back to the Commission for proceedings consistent with its opinion.

- In March 2013, the Commission issued a Final Order on Remand adopting the Washington State Supreme Court's findings with respect to cash cards and determining that the VIP was a gambling device under RCW 9.46.0241. ZDI sought judicial review of this decision.

- In August 2013, the Thurston County Superior Court reversed the Commission's Final Order on Remand. Among the superior court's findings, the court concluded that the VIP was not a gambling device under RCW 9.46.0241 and should be allowed. The superior court's order was entered on October 18, 2013.

Bold = Additions made to the rules summary after the March 2014 Commission meeting.

Attachments:

- Alternative #1: Proposed amendment to WAC 230-14-047 Standards for electronic video pull-tab dispensers.
- **Alternative #2: Proposed alternative submitted by Mr. Gerow at the March 2014 Commission meeting.**
- **Alternative #3 forwarded by AAG Callie Castillo to Ms. Mell, Mr. Gerow's attorney.**
- Thurston County Superior Court Order dated October 18, 2013 (Order on ZDI's Second Petition for Judicial Review).
- Supreme Court of Washington Order (page 7 addresses cash cards and cash equivalents).

History of Rule
In 2008, the Commission adopted WAC 230-14-047, which sets out standards for electronic video pull-tab dispensers. At that time, the Commission decided not to adopt language to allow electronic video pull-tab dispensers to add prizes of $20 or less onto cash cards.
Impact of the Proposed Change
The rule change would allow other manufacturers to develop similar electronic video pull-tab dispensers. It is difficult to predict whether other manufacturers will do so.
Resource Impacts
• Because the feature of allowing pull-tab winnings of $20 or less to be added onto a cash card is new, we may receive an increased number of questions from the public and may experience an increase in complaints related to the electronic video pull-tab dispensers. • We will need to incorporate this new feature into our electronic video pull-tab dispenser regulatory program.
Policy Considerations
This rule proposal is consistent with the Thurston County Superior Court's order, where the court directed the Commission to allow a specific electronic video pull-tab dispenser that allows pull-tab winnings of $20 or less to be put onto a cash card at the dispenser.

Stakeholder Statements Supporting the Proposed Rule Change
None.
Stakeholder Statements Opposing the Proposed Rule Change
None.
Stakeholder Statements Regarding the Proposed Rule Change
• At the January 2014 Commission meeting, Amy Hunter, Administrator, relayed to the Commissioners that Mr. Jay Gerow was at the study session (but could not attend the Commission meeting) and let staff know that ZDI plans to offer alternative language. Chair Amos said Mr. Gerow had told him the same thing. • At the February 2014 Commission meeting, Mr. Gerow asked the Commissioners to hold this rule (Alternative #1) change over until the March Commission meeting. • **The day before the March 2014 Commission meeting, Mr. Gerow distributed new language (Alternative #2) for the Commissioners' consideration, including a request to repeal the WAC that defines "cash".** • **At the March 2014 Commission meeting, Joan Mell, attorney for Mr. Gerow, addressed the Commissioners. After much discussion, the Commissioners decided to hold the rule over for an additional month and asked staff to work on language with Mr. Gerow.** • **AAG Callie Castillo proposed Alternative #3 to Ms. Mell and as of the time of printing has not received a response back.**
Licensees Directly Impacted By the Change
Licensed manufacturers, distributors, and pull-tab operators.
Staff Recommendation
Final Action.
Effective Date
31 days from filing the adopted rule change.

Alternative #1

Amendatory Section:

WAC 230-14-047 Standards for electronic video pull-tab dispensers.

Electronic video pull-tab dispensers must be approved by us prior to use, meet the requirements below, and may incorporate only the features below and not perform additional functions.

(1) Electronic video pull-tab dispensers must dispense a paper pull-tab as defined in WAC 230-14-010 and follow the rules for:

(a) Pull-tabs; and

(b) Flares; and

(c) Authorized pull-tab dispensers.

(2) Electronic video pull-tab dispensers that use a reading and displaying function must:

(a) Use a video monitor for entertainment purposes only; and

(b) Open all, or a portion of, the pull-tab in order to read encoded data that indicates the win or loss of the pull-tab if the dispenser is equipped to automatically open pull-tabs; and

(c) Dispense the pull-tab to the player and not retain any portion of the pull-tab; and

(d) Read the correct cash award from the pull-tab either when it is dispensed or when the pull-tab is reinserted into the dispenser; and

(e) Display the cash award from the pull-tab, one pull-tab at a time; and

(f) Provide:

(i) An electronic accounting of the number of pull-tabs dispensed; and

(ii) A way to identify the software version and name; and

(iii) A way to access and verify approved components; and

(iv) Security on the dispenser to prevent unauthorized access to graphic and prize amount displays.

(3) ((~~Gift certificates or gift~~)) Cash cards used in electronic video pull-tab dispensers must:

(a) Be purchased with cash, check, gift certificates, gift cards, or electronic point-of-sale bank transfer before use in the dispenser; and

(b) Be convertible to cash at any time during business hours; and

(c) Subtract the cash value for the purchase of the pull-tab one pull-tab at a time.

(4) Electronic video pull-tab dispensers that accept cash cards may award any pull-tab cash prize of twenty dollars or less onto the cash card.

Alternative #2

Amend WAC 230-14-047 as follows:

Standards for electronic video pull-tab dispensers.

Sec. 1:

Electronic video pull-tab dispensers must be approved by us prior to use. The director may approve any dispenser that~~,~~ meets the requirements below. ~~, and may incorporate only the features below and not perform additional functions~~ Any feature or function not described below may be approved by an affirmative vote of three out of five commissioners for any dispenser that meets the requirements below when the additional feature or function either improves the commission's regulatory control or does not impair the commission's regulatory control of pull-tabs.

(1) Electronic video pull-tab dispensers must dispense a paper pull-tab as defined in WAC 230-14-010 and follow the rules for:

(a) Pull-tabs; and

(b) Flares; and

(c) Authorized pull-tab dispensers.

(2) Electronic video pull-tab dispensers that use a reading and displaying function must:

(a) Use a video monitor for entertainment purposes only; and

(b) Open all, or a portion of, the pull-tab in order to read encoded data that indicates the win or loss of the pull-tab if the dispenser is equipped to automatically open pull-tabs; and

(c) Dispense the pull-tab to the player and not retain any portion of the pull-tab; and

(d) Read the correct cash award from the pull-tab either when it is dispensed or when the pull-tab is reinserted into the dispenser; and

(e) Display the cash award from the pull-tab, one pull-tab at a time; and

Alternative #2

(f) Provide:
(i) An electronic accounting of the number of pull-tabs dispensed; and
(ii) A way to identify the software version and name; and
(iii) A way to access and verify approved components; and
(iv) Security on the dispenser to prevent unauthorized access to graphic and prize amount displays.
(3) ~~Gift certificates or gift cards~~ Cash cards used in electronic video pull-tab dispensers must:
(a) Be purchased with cash, check or electronic point-of-sale bank transfer before use in the dispenser; and
(b) Be convertible to ~~cash~~ currency at any time during business hours; and
(c) Subtract the ~~cash value for the~~ purchase price of the pull-tab one pull-tab at a time; and~~.~~
(d) Allow the purchaser to record a prize of twenty dollars or less automatically at the dispenser on the gift card.
[Statutory Authority: RCW 9.46.070. WSR 08-03-052 (Order 621), § 230-14-047, filed 1/11/08, effective 2/11/08.]

Sec. 2

REPEAL the definition of "cash".

WAC 230-06-003

Alternative #3

Amendatory Section:

WAC 230-14-047 Standards for electronic video pull-tab dispensers.

Electronic video pull-tab dispensers must be approved by us prior to use~~, meet the requirements below, and may incorporate only the features below and not perform additional functions~~.

(1) Electronic video pull-tab dispensers must dispense a paper pull-tab as defined in WAC 230-14-010 and follow the rules for:

(a) Pull-tabs; and

(b) Flares; and

(c) Authorized pull-tab dispensers.

(2) Electronic video pull-tab dispensers that use a reading and displaying function must:

(a) Use a video monitor for entertainment purposes only; and

(b) Open all, or a portion of, the pull-tab in order to read encoded data that indicates the win or loss of the pull-tab if the dispenser is equipped to automatically open pull-tabs; and

(c) Dispense the pull-tab to the player and not retain any portion of the pull-tab; and

(d) Read the correct cash award from the pull-tab either when it is dispensed or when the pull-tab is reinserted into the dispenser; and

(e) Display the cash award from the pull-tab, one pull-tab at a time; and

(f) Provide:

(i) An electronic accounting of the number of pull-tabs dispensed; and

(ii) A way to identify the software version and name; and

(iii) A way to access and verify approved components; and

(iv) Security on the dispenser to prevent unauthorized access to graphic and prize amount displays.

(3) ((~~Gift certificates or gift~~)) Cash cards used in electronic video pull-tab dispensers must:

(a) Be purchased with cash, check, gift certificates, ~~gift cards,~~ or electronic point-of-sale bank transfer before use in the dispenser; and

(b) Be convertible to cash at any time during business hours; and

(c) Subtract the ~~cash value for the~~ purchase price of the pull-tab one pull-tab at a time.

(4) Electronic video pull-tab dispensers that accept cash cards may award any pull-tab cash prize of twenty dollars or less onto the cash card.

3

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2013 OCT 18 AM 8:49

BETTY J. GOULD, CLERK

☐ EXPEDITE
☑ No Hearing Set
☐ Hearing is Set
The Honorable Gary Tabor

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

ZDI GAMING, INC., Petitioner, v. THE STATE OF WASHINGTON, by and through the WASHINGTON STATE GAMBLING COMMISSION, Respondent.	NO. 06-2-02283-9 ORDER ON ZDI'S SECOND PETITION FOR JUDICIAL REVIEW

On August 16th, 2013, the above captioned matter came before the Court for hearing on ZDI Gaming, Inc.'s Second Petition for Judicial Review. ZDI Gaming, Inc. appeared by and through its attorney of record Joan K. Mell of III Branches Law, PLLC. The State of Washington, by and through the Washington State Gambling Commission (the "Commission") appeared by and through its attorneys of record the Attorney General of Washington Robert W. Ferguson, and Assistant Attorney General Callie A. Castillo. The Court heard oral argument and considered the administrative record, the opening and reply briefs of ZDI Gaming, Inc., and the responsive brief of the Commission.

The Court deeming itself fully advised enters the following order:

1.1 ZDI Gaming, Inc.'s second petition for judicial review is granted.

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1.2 ZDI's electronic video pull-tab dispenser upgraded with cash card features that (1) permit the purchase of a pull-tab at the dispenser and (2) allow for any pull-tab prize of $20 or less to be added to the cash card at the dispenser is allowed (hereinafter "ZDI's VIP").

1.3 The Commission did not comply with the Administrative Procedure Act ("APA"), RCW 34.05.464(4) and .570(3)(f) when it did not decide all issues requiring resolution by the agency upon ZDI's petition for declaratory relief. Specifically, the Commission erred as a matter of law when it failed to decide the issue of whether ZDI's VIP was a gambling device in its August 2006 Final Order.

1.4 The Commission engaged in unlawful procedure or decision-making process under the APA, RCW 34.05.570(3)(c), when it considered the issue of whether ZDI's VIP was a gambling device in 2012.

1.5 The Commission's determination in its 2012 Final Order on Remand that ZDI's VIP is a gambling device under RCW 9.46.0241 is vacated as outside the statutory authority of the agency under the APA, RCW 34.05.570(3)(b), and as an erroneous interpretation or application of the law under the APA, RCW 34.05.570(3)(d). The portion of the Administrative Law Judge's Initial Declaratory Order determining that ZDI's VIP is not a gambling device is reinstated as the correct application of the law. ZDI's VIP is not a gambling device under RCW 9.46.0241. ZDI's VIP is not prohibited under the Gambling Act, RCW 9.46, or the Commission's regulations.

1.6 The Commission is ordered to allow ZDI's VIP for manufacturing, distribution, and use in the State.

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1.7 ZDI Gaming, Inc. shall be awarded its fees and costs incurred from the date of filing its petition under the Equal Access to Justice Act in the amount of $8,316.60.

Dated this 18 day of Oct, 2013.

THE HONORABLE GARY TABOR

Presented by:

ROBERT W. FERGUSON
Attorney General

CALLIE A. CASTILLO, WSBA #38214
Assistant Attorney General
Attorneys for Respondent

Approved as to form:

with electronic approval for

JOAN K. MELL, WSBA #21319
III Branches Law, PLLC
Attorney for ZDI Gaming, Inc.

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173 Wash.2d 608
Supreme Court of Washington,
En Banc.

ZDI GAMING, INC., Respondent,
v.
The STATE of Washington by and through the WASHINGTON STATE GAMBLING COMMISSION, Petitioner.

No. 83745-7. | Argued Nov. 16, 2010. | Decided Jan. 12, 2012. | As Corrected March 20, 2012. | Reconsideration Denied March 21, 2012.

Synopsis
Background: Gaming supply distributor sought review of state Gambling Commission's denial of application for permission to distribute electronic pull-tab machine incorporating cash card technology. After the Superior Court, Pierce County, Bryan Chushcoff, J., transferred venue of case, the Superior Court, Thurston County, Christine A. Pomeroy, J., reversed and awarded attorney fees to distributor. Both parties appealed. The Court of Appeals, 151 Wash.App. 788, 214 P.3d 938, affirmed in part and remanded. Review was granted.

Holdings: The Supreme Court, en banc, Chambers, J., held that:

[1] statute providing that court in single state county had jurisdiction over proceedings against state Gambling Commission did not limit subject matter jurisdiction to single state county in violation of state constitution, and

[2] electronic pull-tab machine that allowed player to purchase pull-tabs from machine using prepaid card and that either credited player's pull-tab winnings on to card or directed player to an employee of gaming establishment to receive payment did not violate former regulation requiring that pull-tab player receive winnings in cash or merchandise.

Affirmed.

J.M. Johnson, J., filed dissenting opinion in which Barbara A. Madsen, C.J., Mary E. Fairhurst, J., and Gerry Alexander, Justice Pro Tem, joined.

West Headnotes (11)

[1] **Gaming**
Licenses and taxes

Statute providing that court in single state county had jurisdiction over proceedings against state Gambling Commission did not limit subject matter jurisdiction to single state county in violation of provision of state constitution precluding subject matter jurisdictional restrictions as among state superior courts, as statute related to venue rather than to subject matter jurisdiction. West's RCWA Const. Art. 4, § 6; West's RCWA 9.46.095.

[2] **Courts**
Washington

Provision of state constitution vesting superior court with original jurisdiction in all cases in which jurisdiction was not vested exclusively in some other court precludes any subject matter restrictions as among superior courts. West's RCWA Const. Art. 4, § 6.

2 Cases that cite this headnote

[3] **Courts**
Grounds and essentials of jurisdiction

"Jurisdiction" is the power and authority of the court to act.

1 Cases that cite this headnote

[4] **Courts**
Jurisdiction of Cause of Action

"Subject matter jurisdiction" is a particular type

of jurisdiction, and it critically turns on the type of controversy; if the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction.

1 Cases that cite this headnote

[5] **Venue**
Nature and necessity of venue in action

"Venue" denotes the setting, location, or place where the power to adjudicate is to be exercised, that is, the place where the suit may or should be heard.

[6] **Venue**
Nature and necessity of venue in action

If a court has jurisdiction over the subject matter of a controversy, it need not exercise that authority if venue lies elsewhere.

[7] **Venue**
Nature and necessity of venue in action

Court need not dismiss case for improper venue, even if the statute of limitations lapses before the defect in venue is discovered.

[8] **Constitutional Law**
Presumptions and Construction as to Constitutionality

Court interprets statutes as constitutional if possible.

1 Cases that cite this headnote

[9] **Courts**
Washington
Venue
Constitutional and statutory provisions

Legislature may impose limitations on venue, but not upon subject matter or original jurisdiction, of individual superior courts. West's RCWA Const. Art. 2, § 26, Art. 4, § 6.

1 Cases that cite this headnote

[10] **Gaming**
Prizes or premiums

Electronic pull-tab machine that allowed player to purchase pull-tabs from machine using prepaid card and that either credited player's pull-tab winnings on to card or directed player to an employee of gaming establishment to receive payment did not violate former regulation requiring that pull-tab player receive winnings in cash or merchandise; card was functionally equivalent to cash in that card could be immediately converted into cash currency at establishment where player was playing. WAC 230–12–050 (2003).

[11] **Administrative Law and Procedure**
Scope
Administrative Law and Procedure
Limitation of scope of review in general

In reviewing decision of administrative agency, Supreme Court reviews the agency record directly and shows all due deference to that agency.

Attorneys and Law Firms

**930 Jerry Alan Ackerman, Office of the Attorney General, Olympia, WA, for Petitioner.

Joan Kristine Mell, III Branches Law, PLLC, Fircrest, WA, for Respondent.

Opinion

**931 CHAMBERS, J.

*611 ¶ 1 This case was filed in a county other than where it was to be adjudicated. We are asked today to decide whether, as a consequence, the case will not be *612 heard. We conclude that the proper forum is a question of venue, not the subject matter jurisdiction of superior courts. We affirm the Court of Appeals. *ZDI Gaming, Inc. v. Wash. State Gambling Comm'n*, 151 Wash.App. 788, 214 P.3d 938 (2009).

FACTS

¶ 2 For many years ZDI Gaming Inc., a family owned business, has provided " 'just about anything to do with the gambling industry in the state of Washington.' " Administrative Record (AR) at 410 (quoting Verbatim Report of Proceedings (VRP) at 88); Clerk's Papers (CP) at 18. This includes distributing pull-tabs and pull-tab machines. A pull-tab machine is a fairly modern gaming device. A traditional pull-tab involves a paper ticket containing a series of windows that hide numbers or symbols. The player "opens one of the windows to reveal the symbols below to determine if the ticket is a winner." CP at 1026. If the ticket's combination of numbers or symbols matches those listed on a sheet called a "flare" as a winning ticket, the ticket's purchaser is entitled to a prize. *Id.* Modern pull-tab machines can both dispense and read pull-tab tickets and can produce sounds and displays mimicking electronic slot machines.

¶ 3 In 1973, when gambling was legalized in Washington State, the legislature declared pull-tabs, along with certain other games of chance, would be authorized, but "closely controlled." Laws of 1973, ch. 218, § 1 (currently codified as RCW 9.46.010); AR at 410. Accordingly, the Washington State Gambling Commission (Gambling Commission) has heavily regulated pull-tabs and pull-tab machines. E.g., former WAC 230-02-412(2) (2001); former WAC 230-08-017 (2003), former WAC 230-12-050 (2003); former WAC 230-08-010(2) (2004).

¶ 4 Historically, and broadly in the context of games of chance, the commission prohibited giving gifts or extending *613 credit to players for the purposes of gambling. Former WAC 230-12-050. Accordingly, players were required to pay the consideration "required to participate in the gambling activity ... in full by cash, check, or electronic point-of-sale bank transfer, prior to participation," with some exceptions not relevant here. Former WAC 230-12-050(2). The Gambling Commission also had required a pull-tab player to receive winnings "in cash or in merchandise." Former WAC 230-30-070(1) (2001).

¶ 5 ZDI Gaming distributes the VIP (video interactive display) machine, an electronic pull-tab machine featuring a video display screen, a currency bill acceptor, and (in later version) a cash card acceptor, all housed in a decorative cabinet. ZDI Gaming intentionally designed the current VIP machine to resemble a video slot machine and programmed it to use the same "attractor" sounds used to lure players. Players see rows of spinning characters that ultimately line up and stop in winning or losing combinations. The version of the machine at issue allows a player to purchase pull-tabs from the machine itself using a prepaid card. The VIP machine credits pull-tab winnings of $20 or less back to the card. If a player wins more than $20, the VIP machine directs the player to an employee to receive payment. A player who stops playing the VIP machine with a balance on the card can use it to purchase food, drink, merchandise, or turn it in for cash at the establishment featuring the VIP machine.

¶ 6 An earlier version of the VIP machine was approved by the Gambling Commission in 2002. However, once the cash card acceptor was added to the machine, things became more complicated. While initially, it appears Gambling Commission employees were "optimistic" that such technology would be approved, once they understood that a player's winnings would be credited directly back onto the card itself, they became concerned. AR at 14. After working with Gambling Commission staff for some time, ZDI Gaming submitted a formal application to the Gambling Commission *614 requesting permission to distribute the new VIP machine, with the cash card acceptor, in Washington. After the assistant director of licensing operations **932 formally denied the application, ZDI Gaming filed a petition for declaratory relief with the Gaming Commission. An administrative law judge (ALJ) agreed with ZDI Gaming that the VIP machines did not violate gambling statutes. However, he found the machines extended credit and allowed gambling without prepayment by " 'cash, check, or electronic point-of-sale bank transfer,' " violating then-operative regulations. AR at 419, 423 (citing former WAC

230–12–050). ZDI Gaming strenuously contended the cash card utilized by its VIP machine was functionally equivalent to cash. The ALJ rejected the argument, reasoning that the "difficulty with a cash card is that it's only valid at one location. It is impossible to take the cash card from the Buzz Inn to a local Harley Davidson dealer and purchase a new helmet.... [C]ash cards are not cash because they require an additional step on the part of the consumer to utilize in any other location." AR at 420–21. The ALJ also found that the VIP machine violated a regulation that required that all prizes be in either cash or merchandise. AR at 422–23 (citing former WAC 230–30–070).[1] On August 10, 2006, the full Gambling Commission issued a final declaratory order upholding the ALJ's decision that the VIP machine violated the regulations, though it disavowed the ALJ's decision that the machine complied with the statutory requirements as superfluous. AR at 961–93.

1 Perhaps presciently, the ALJ noted that "[t]he Commission was justified in denying approval for the equipment based on violation of the above regulations but has the inherent authority to revise the rules to better comport with the modern realities of the industry if it elects to do so." AR at 423–24. Since then, many of these rules have been revised.

¶ 7 On September 11, 2006, ZDI Gaming filed a petition for judicial review in Pierce County Superior Court challenging the validity of the rules the ALJ and the Gambling Commission found it had violated. Ten days later, the State informed ZDI Gaming that, in its view, RCW 9.46.095 ***615** granted exclusive jurisdiction of the matter to the Thurston County Superior Court and suggested that it may wish to withdraw its petition from Pierce County and file in Thurston County before the statute of limitations would run on October 4, 2006. The State told ZDI Gaming that it would otherwise move to dismiss the case for want of jurisdiction after October 4, 2006.[2] ZDI Gaming declined, and the State so moved. Noting that sometimes "when the Legislature uses the word 'jurisdiction,' it really mean[s] 'venue,' " Judge Chushcoff denied the State's motion to dismiss, but did transfer the case to the Thurston County Superior Court. VRP (Dec. 1, 2006) at 5; CP at 8, 17.[3]

2 We are mindful of the fact that the State has acted forthrightly by bringing this issue to ZDI Gaming's attention.

3 Judge Chushcoff also observed, with a great deal of insight, that "sometimes when the state Supreme Court uses the word 'jurisdiction,' they mean something else." VRP (Dec. 1, 2006) at 5.

¶ 8 The Thurston County Superior Court reversed the Gambling Commission. It found that cash cards were the equivalent to both cash and merchandise and thus lawful under the regulations. The court denied the Gambling Commission's motion for reconsideration, remanded the case to the Gambling Commission for action, and awarded ZDI Gaming $18,185 in attorney fees under the equal access to justice act, RCW 4.84.350, which was less than ZDI Gaming had sought.

¶ 9 Both parties appealed. The Court of Appeals affirmed in part, holding that the Pierce County Superior Court had subject matter jurisdiction over the appeal under the Administrative Procedure Act, ch. 34.05 RCW, and that substantial evidence did not support the Gambling Commission's determination that the prepaid cards failed to satisfy the regulatory definition of "cash." *ZDI Gaming*, 151 Wash.App. at 795, 214 P.3d 938. The court remanded the case to the Thurston County Superior Court, directing it to reconsider its decision to exclude fees that ZDI Gaming spent responding to the Gambling Commission's motion to dismiss. *Id.* at 812, 214 P.3d 938. ***616** The State petitioned for review, contending that the use of the word "jurisdiction" in RCW 9.46.095 was unambiguous, that the courts below erred in concluding that "cash" included cash cards, and that the Court of Appeals shifted the burden of proof to the Gambling Commission. ZDI ****933** Gaming answered the petition and sought review of the attorney fee award. We granted the State's petition for review and denied ZDI Gaming's request for review of the attorney fee issue. *ZDI Gaming, Inc. v. Wash. State Gambling Comm'n*, 168 Wash.2d 1010, 227 P.3d 853 (2010).

ANALYSIS

[1] [2] ¶ 10 Whether Pierce County Superior Court had subject matter jurisdiction over this case is controlled by *Shoop v. Kittitas County*, 149 Wash.2d 29, 37, 65 P.3d 1194 (2003). "[A]rticle IV, section 6 of the Washington Constitution ... states in relevant part: 'The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court [.]' That provision precludes any subject matter restrictions as among superior courts." *Id.*

¶ 11 Among other things, jurisdiction is a fundamental building block of law. Our state constitution uses the term "jurisdiction" to describe the fundamental power of courts

to act. Our constitution defines the irreducible jurisdiction of the supreme and superior courts. It also defines and confines the power of the legislature to either create or limit jurisdiction. *See* WASH. CONST. art. IV, § 4 (defining the power of the supreme court), § 6 (defining the power of the superior courts), § 30(2) (explicitly giving the legislature the power to provide for jurisdiction of the court of appeals). Our constitution recognizes and vests jurisdiction over many types of cases in the various courts of this State. WASH. CONST. art. IV, §§ 1, 4, 6, 30. Superior courts have original jurisdiction in the categories of cases listed in the constitution, which the legislature cannot take away. ***617** WASH. CONST. art. IV, § 6; *State v. Werner,* 129 Wash.2d 485, 496, 918 P.2d 916 (1996) (quoting *Blanchard v. Golden Age Brewing Co.,* 188 Wash. 396, 415, 63 P.2d 397 (1936)). As we ruled long ago, "Any legislation, therefore, the purpose or effect of which is to divest, in whole or in part, a constitutional court of its constitutional powers, is void as being an encroachment by the legislative department upon the judicial department." *Blanchard,* 188 Wash. at 415, 63 P.2d 397. The legislature can, however, expand and shape jurisdiction, consistent with our constitution. WASH. CONST. art. IV, § 6; *Dougherty v. Dep't of Labor & Indus.,* 150 Wash.2d 310, 316–17, 76 P.3d 1183 (2003). But *Dougherty, Shoop,* and *Young v. Clark,* 149 Wash.2d 130, 134, 65 P.3d 1192 (2003), all reject the principle that all procedural requirements of superior court review are jurisdictional. E.g., *Dougherty,* 150 Wash.2d at 316, 76 P.3d 1183. Simply put, the existence of subject matter jurisdiction is a matter of law and does not depend on procedural rules. 14 KARL B. TEGLAND, WASHINGTON PRACTICE: CIVIL PROCEDURE § 3. 1, at 20 (2d ed.2009).

¶ 12 The term "jurisdiction" is often used to mean something other than the fundamental power of courts to act. The current edition of *Black's Law Dictionary* devotes six pages to different types of jurisdiction, ranging from agency jurisdiction to voluntary jurisdiction, touching on equity jurisdiction, in rem jurisdiction, and spatial jurisdiction, along with many others. BLACK'S LAW DICTIONARY 927–32 (9th ed.2009). Sometimes "jurisdiction" means simply the place or location where a judicial proceeding shall occur. Where jurisdiction describes the forum or location of the hearing, it is generally understood to mean venue. *See, e.g., Werner,* 129 Wash.2d 485, 918 P.2d 916.

[3] [4] ¶ 13 In *Dougherty,* 150 Wash.2d 310, 76 P.3d 1183, we discussed the important distinction between jurisdiction and venue. "Jurisdiction 'is the power and authority of the court to act.' " *Id.* at 315, 76 P.3d 1183 (citing 77 AM. JUR.2d *Venue* § 1, at 608 (1997)). Subject matter jurisdiction is a particular type of jurisdiction, and it critically turns on "the 'type of controversy.' " ***618** *Id.* at 316, 76 P.3d 1183 (quoting *Marley v. Dep't of Labor & Indus.,* 125 Wash.2d 533, 539, 886 P.2d 189 (1994)). " ' "If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction." ' " *Marley* 125 Wash.2d at 539, 886 P.2d 189 (quoting Robert J. Martineau, *Subject Matter Jurisdiction as a New Issue on* ****934** *Appeal: Reining in an Unruly Horse,* 1988 BYU L. REV. 1, 28 (1988)).

[5] [6] [7] ¶ 14 By contrast, as we explained in *Dougherty,* rather than touching on the power or authority of courts to act on certain subjects, venue denotes the setting, location, or place " 'where the power to adjudicate is to be exercised, that is, the place where the suit may or should be heard.' " *Dougherty,* 150 Wash.2d at 316, 76 P.3d 1183 (quoting 77 AM. JUR. 2d, *Venue* § 1, at 608). As we explained in *Dougherty,* if a court has jurisdiction over the subject matter of the controversy, it need not exercise that authority if venue lies elsewhere. *Id.* at 315, 76 P.3d 1183 (citing *Indus. Addition Ass'n v. Comm'r of Internal Revenue,* 323 U.S. 310, 315, 65 S.Ct. 289, 89 L.Ed. 260 (1945)). Nor need it dismiss the case even if the statute of limitations lapses before the defect is discovered. *Id.* (citing *Indus. Addition Ass'n,* 323 U.S. at 315, 65 S.Ct. 289 (noting that "[w]here petition timely filed in circuit court as required by statute but in wrong venue, case need not be dismissed but can be transferred to circuit court with proper venue")).

¶ 15 With these principles in mind, we turn to the statute before us. It says:

> No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the commission or any member thereof for anything done or omitted to be done in or arising out of the performance of his or her duties under this title: PROVIDED, That an appeal from an adjudicative proceeding involving a final decision of the commission to deny, suspend, or revoke a license shall be governed by chapter 34.05 RCW, the Administrative Procedure Act.

***619** RCW 9.46.095. Read as the State would have us read it, this statute violates article IV, section 6 because it would limit the original jurisdiction of the superior court bench

county by county. *Contra Dougherty,* 150 Wash.2d at 317, 76 P.3d 1183; *Shoop,* 149 Wash.2d at 37, 65 P.3d 1194; *Young,* 149 Wash.2d at 134, 65 P.3d 1192 (finding that reading former RCW 4.12.020(3) (1941) to relate to jurisdiction rendered it unconstitutional). Just as our constitution does not allow the legislature to decree that only King County judges have subject matter jurisdiction to hear child dependency actions or that only Pend Oreille County judges have subject matter jurisdiction to hear shareholder derivative actions, our constitution does not allow the legislature to decree that only Thurston County judges have subject matter jurisdiction to hear cases involving the Gambling Commission. If RCW 9.46.095 restricts the original jurisdiction of the superior court to one county, it is unconstitutional.

[8] ¶ 16 We interpret statutes as constitutional if we can, and here we can. The legislature wanted to have cases involving the Gambling Commission heard in Thurston County. By interpreting the word "shall" to be permissive, RCW 9.46.095 relates to venue, not jurisdiction. *Cf. In re Elliott,* 74 Wash.2d 600, 607, 446 P.2d 347 (1968) (interpreting the legislature's use of the term "shall" as permissive to save the constitutionality of an otherwise unconstitutional statute).[4] We therefore hold that the statute establishes the proper venue for judicial review of cases involving the Gaming Commission ruling in Thurston County.

4 Interpreting jurisdiction as venue is precisely what the Pierce County Superior Court and the Court of Appeals did below. *ZDI Gaming,* 151 Wash.App. at 801, 214 P.3d 938; VRP (Dec. 1, 2006) at 14 ("I do think that although the word 'jurisdiction' is used here, the effective meaning of this is as a venue matter.... I will order that the venue be changed to Thurston County.").

¶ 17 We recognize that here, the superior court was sitting in its appellate capacity. Our constitution suggests, and our cases have from time to time assumed, that the legislature has greater power to sculpt the appellate jurisdiction of the individual superior courts. *See* ***620** WASH. CONST. art. IV, § 6 ("The superior court.... shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law."). But whether or not the appellate jurisdiction of the superior court can be limited county by county, the simple fact is, *original jurisdiction may not be. Werner,* 129 Wash.2d at 494, 918 P.2d 916; *Shoop,* 149 Wash.2d at 37, 65 P.3d 1194 (citing WASH. ****935** CONST. art. IV, § 6). Again, as we held in *Shoop,* "[t]hat provision *precludes any subject matter restrictions* as among the superior courts." 149 Wash.2d at 37, 65 P.3d 1194 (emphasis added).

ARTICLE II, § 26

[9] ¶ 18 The State contends that under article II, section 26 of the Washington State Constitution, the legislature has the authority to limit trial court jurisdiction to consider suits against the State. That provision says that "[t]he legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state." CONST. art. II, § 26. It is true that prior to the general legislative abolition of sovereign immunity, we held that the legislature could limit which county could hear suits brought against the State under one of the more limited waivers, and often couched the legislature's power in terms of the court's jurisdiction. *See, e.g., State ex rel. Thielicke v. Superior Court,* 9 Wash.2d 309, 311–12, 114 P.2d 1001 (1941); *State ex rel. Shomaker v. Superior Court,* 193 Wash. 465, 469–70, 76 P.2d 306 (1938); *State ex rel. Pierce County v. Superior Court,* 86 Wash. 685, 688, 151 P. 108 (1915); *Nw. & Pac. Hypotheek Bank v. State,* 18 Wash. 73, 50 P. 586 (1897). The classic formulation appears in *Pierce County:*

> the state being sovereign, its power to control and regulate the right of suit against it is plenary; it may grant the right or refuse it as it chooses, and when it grants it may annex such condition thereto as it deems wise, and no person has power to question or gainsay the conditions annexed.

Pierce County, 86 Wash. at 688, 151 P. 108; *see also Thielicke,* 9 Wash.2d at 311–12, 114 P.2d 1001 ("when a suit against the state is commenced in a ***621** superior court outside Thurston county, such court does not have jurisdiction over the action").

¶ 19 But in 1961, the Washington State Legislature abolished sovereign immunity. LAWS OF 1961, ch. 136, § 1, codified as RCW 4.92.090. We have recognized that in so doing, the State intended to repeal all vestiges of the shield it had at common law. *See Hunter v. N. Mason High Sch.,* 85 Wash.2d 810, 818, 539 P.2d 845 (1975); *Cook v. State,* 83 Wash.2d 599, 613–17, 521 P.2d 725 (1974) (Utter, J., concurring). We noted long ago that the waiver of sovereign immunity was "unequivocal" and abolished special procedural roadblocks placed in the way of claimants against the State. *Hunter,* 85 Wash.2d at 818, 539 P.2d 845 (striking a 120 day nonclaims statute that effectively operated as a statute of limitations). Simply put, the State may not create procedural barriers to access to the superior courts favorable to it based upon a claim of immunity it has unequivocally waived.

¶ 20 Article II, section 26 and article IV, section 6 may be harmonized. In order to give effect to both, we hold that the legislature can sculpt the venue, but not the subject matter or original jurisdiction, of the individual superior courts in this State.

CASH CARDS AND CASH EQUIVALENTS

[10] [11] ¶ 21 We must decide whether the agency erred in concluding that the VIP machine violated these repealed regulations. We sit in much the same position as the trial court, reviewing the agency record directly and showing all due deference to that agency. *Ingram v. Dep't of Licensing*, 162 Wash.2d 514, 521–22, 173 P.3d 259 (2007). As the challenger, ZDI Gaming bears the burden of demonstrating that the agency erred. RCW 34.05.570(1)(a). We conclude it has met that burden.

¶ 22 ZDI Gaming argues that its cash card is the functional equivalent of cash and that "[d]efining cash to ***622** exclude cash equivalents was an abuse of discretion because cash equivalents are commonly accepted forms of cash." Suppl. Br. of Resp't at 7. One can find several definitions of "cash" in dictionaries: *Black's Law Dictionary* and *The American Edition of the Oxford Dictionary*. AR at ****936** 420. *Black's* defines "cash" as "**1.** Money or its equivalent. **2.** Currency or coins, negotiable checks, and balances in bank accounts." BLACK'S, *supra, at* 245. According to the ALJ, "[t]he American Edition of the Oxford Dictionary defines cash as 'money in coins or bills, as distinct from checks or orders.' " AR at 420 (quoting THE OXFORD DICTIONARY AND THESAURUS, AMERICAN EDITION (1996)).

¶ 23 If a player wins more than $20 on a VIP machine, the machine directs the player to an employee of the establishment to receive cash, food, drink, or merchandise, and a player who stops playing can similarly immediately receive cash or the credits to make purchases from the gaming establishment. While we agree with the State that an extra step is required to convert the cash card to cash, the step is de minimis. Unlike gift certificates, coupons, or rebates, the player does not have to travel or wait to receive cash. Because the cash card can be immediately converted into cash currency at the establishment where the player is playing, the VIP cash card is functionally equivalent to cash.

¶ 24 ZDI Gaming's request for attorney fees under RAP 18.1 is denied as untimely.

CONCLUSION

¶ 25 Despite its invocation of the word "jurisdiction," we find that RCW 9.46.010 is a venue statute and that the courts below properly considered ZDI Gaming's suit. We find that ZDI Gaming has met its burden of showing the Gambling Commission erred in concluding that the VIP ***623** machine violated then-in force regulations. Accordingly, we affirm.

WE CONCUR: CHARLES W. JOHNSON, SUSAN OWENS, and DEBRA L. STEPHENS, Justices, RICHARD B. SANDERS, Justice Pro Tem.

J.M. JOHNSON, J. (dissenting).

¶ 26 In contrast to the majority's view, the question in this case is whether the Washington State Constitution prohibits the legislature from adopting a statute granting exclusive jurisdiction to Thurston County Superior Court to review appeals of certain decisions of the Washington State Gambling Commission (Commission). RCW 9.46.095 limits the superior court's appellate jurisdiction rather than its original jurisdiction. Additionally, sovereign immunity concerns attach where the state or one of its agencies is named as a party to the suit. I would hold that RCW 9.46.095 does not violate the grant of general jurisdiction to superior courts found in article IV, section 6 of the Washington Constitution, and thus dissent.

¶ 27 RCW 9.46.095 expressly grants Thurston County Superior Court exclusive jurisdiction to review the decisions of the Commission and provides that "[n]o court of the state of Washington other than the superior court of Thurston county shall have *jurisdiction* over any action or proceeding against the [C]ommission." (Emphasis added.) The Commission denied the application of ZDI Gaming Inc. to distribute its VIP (video interactive display) electronic pull tab machine. ZDI Gaming filed in Pierce County Superior Court to seek review. I would hold that Pierce County Superior Court lacked subject matter jurisdiction and dismiss the case.

1. The History of Gambling in Washington

¶ 28 I begin my analysis by briefly noting the history of gambling in Washington State. In 1889, our state constitution ***624** originally provided that "[t]he legislature

shall never authorize any *lottery* ...." WASH. CONST. art. II, § 24 (orig.text) (emphasis added), *amended by* WASH. CONST. amend. 56. In subsequent cases, we interpreted the term "lottery" broadly to encompass virtually any game involving " 'prize, chance and consideration' " so long as it did not involve " '*any substantial degree of skill or judgment* ....' " *State ex rel. Evans v. Bhd. of Friends,* 41 Wash.2d 133, 150, 247 P.2d 787 (1952) (quoting *State v. Coats,* 158 Or. 122, 132, 74 P.2d 1102 (1938)).

¶ 29 In 1972, the people of the state of Washington amended the state constitution to remove this broad and absolute prohibition. WASH. CONST. amend. 56. The amended article II, section 24 permitted lotteries, but only where affirmatively approved by a supermajority (i.e., 60 percent) of the legislature. ****937** Wash. Const. art. II, § 24. In light of this new constitutional authority, the legislature enacted the gambling act of 1973, chapter 9.46 RCW. Though the gambling act now authorizes some forms of gaming, it expressly recognizes the potential dangers presented by legalized gambling and requires that all such activities be "closely controlled...." RCW 9.46.010. Within this context, I turn to the issue presented.

2. Subject Matter Jurisdiction over Claims against the Commission

¶ 30 With respect to subject matter jurisdiction, the proper standard of review is de novo. "Whether a court has subject matter jurisdiction is a question of law reviewed de novo." *Dougherty v. Dep't of Labor & Indus.,* 150 Wash.2d 310, 314, 76 P.3d 1183 (2003) (citing *Crosby v. Spokane County,* 137 Wash.2d 296, 301, 971 P.2d 32 (1999)).

¶ 31 The term "subject matter jurisdiction" refers to the power of a court to hear a case. *Morrison v. Nat'l Austl. Bank Ltd.,* — U.S. —, 130 S.Ct. 2869, 2877, 177 L.Ed.2d 535 (2010). The subject matter jurisdiction of the superior courts comes from either the Washington Constitution or ***625** the State's legislature. WASH. CONST. art. IV, § 6 (establishing jurisdiction of superior courts and authorizing jurisdiction "as may be prescribed by law"); *see also Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council,* 165 Wash.2d 275, 295, 197 P.3d 1153 (2008) (stating that the legislature may confer limited appellate review of administrative decisions to the superior courts); *Dougherty,* 150 Wash.2d at 314, 76 P.3d 1183 (describing legislation that grants appellate jurisdiction to the superior courts); *Bellingham Bay Imp. Co. v. City of New Whatcom,* 20 Wash. 53, 63, 54 P. 774 (holding that an act conferring appellate review of administrative decisions to the superior courts did not violate the Washington Constitution), *aff'd on reh'g,* 20 Wash. 231, 55 P. 630 (1898). The Washington Constitution distinguishes between two types of subject matter jurisdiction: "original jurisdiction" and "appellate jurisdiction." *See* WASH. CONST. art. IV, § 6. An appeal from an administrative agency invokes a superior court's appellate jurisdiction. *Skinner v. Civil Serv. Comm'n,* 168 Wash.2d 845, 850, 232 P.3d 558 (2010). "Because an appeal from an administrative body invokes the superior court's appellate jurisdiction, 'all statutory requirements must be met before jurisdiction is properly invoked.' " *Id.* at 850, 232 P.3d 558 (internal quotation omitted) (quoting *Fay v. Nw. Airlines, Inc.,* 115 Wash.2d 194, 197, 796 P.2d 412 (1990)).

¶ 32 In addition to these broad jurisdictional considerations, special sovereign immunity concerns attach where the state or one of its agencies is named as a party to the suit as well. The state constitution provides that "[t]he legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state." WASH. CONST. art. II, § 26. "It may be said without question that an action cannot be maintained against the state without its consent.... Since the state, as sovereign, must give the right to sue, it follows that it can prescribe the limitations upon that right." *O'Donoghue v. State,* 66 Wash.2d 787, 789, 405 P.2d 258 (1965). As we said regarding article II, section 26:

> ***626** "the state being sovereign, its power to control and regulate the right of suit against it is plenary; it may grant the right or refuse it as it chooses, and when it grants it may annex such condition thereto as it deems wise, and no person has power to question or gainsay the conditions annexed."

State ex rel. Shomaker v. Superior Court, 193 Wash. 465, 469–70, 76 P.2d 306 (1938) (quoting *State ex rel. Pierce County v. Superior Court,* 86 Wash. 685, 688, 151 P. 108 (1915)). For these reasons, if the State chooses to subject itself to suit exclusively in Thurston County, then "when a suit against the state is commenced in a superior court outside of Thurston [C]ounty, such court does not have jurisdiction over the action." *State ex rel. Thielicke v. Superior Court,* 9 Wash.2d 309, 311–12, 114 P.2d 1001 (1941).

¶ 33 Thurston County Superior Court possesses exclusive appellate jurisdiction over challenges to the decisions of the Commission. The Washington State gambling act provides:

> ****938** *No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction* over any action or proceeding against the commission or any member thereof for anything done or

omitted to be done in or arising out of the performance of his or her duties under this title: PROVIDED, That an appeal from an adjudicative proceeding involving a final decision of the commission to deny, suspend, or revoke a license shall be governed by chapter 34.05 RCW, the Administrative Procedure Act.

RCW 9.46.095 (emphasis added).[1] ZDI Gaming challenged the Commission's action in Pierce County Superior Court. ***627** Due to the legislature's exclusive grant of jurisdiction to the superior court of Thurston County, the Pierce County Superior Court lacked subject matter jurisdiction over ZDI Gaming's appeal of the Commission's decision. "When a court lacks subject matter jurisdiction, dismissal is the only permissible action the court may take." *Shoop v. Kittitas County,* 149 Wash.2d 29, 35, 65 P.3d 1194 (2003). Because the court lacked jurisdiction, dismissal is the appropriate remedy.

1 ZDI Gaming also argues that RCW 9.46.095 provides an exception to the Thurston County jurisdictional requirement for licensing decisions. This argument fails. First, the Commission licenses gaming *businesses;* it does not license gaming *equipment. See* WAC 230-14-001 (defining "licensees" as "the business holding the punch board and pull-tab license."); *see also* WAC 230-14-045(1) (defining the requirements for "[a]uthorized pull-tab dispensers"). Second, both the superior court and the Court of Appeals applied the jurisdictional provision and treated it as a venue provision with respect to ZDI Gaming's appeal. The determination of the lower courts also warrants our review of this provision.

¶ 34 The Court of Appeals reached the opposite conclusion. It incorrectly rewrote the legislature's term "jurisdiction" in RCW 9.46.095 to read "venue." *ZDI Gaming, Inc. v. Wash. State Gambling Comm'n,* 151 Wash.App. 788, 801, 214 P.3d 938 (2009). In arriving at this conclusion, the Court of Appeals relied heavily on this court's decisions in *Dougherty* and *Shoop. Id.* at 801–03, 214 P.3d 938. The Court of Appeals interpreted *Shoop* to preclude " 'any subject matter [jurisdiction] restrictions as among superior courts' " under article IV, section 6 of the Washington Constitution. *Id.* at 803, 214 P.3d 938 (alteration in original) (quoting *Shoop,* 149 Wash.2d at 37, 65 P.3d 1194). Based on this principle, the court concluded that a "constitutional reading" of RCW 9.46.095 "suggests that the statute was intended to govern venue...." *Id.* at 804, 214 P.3d 938.

¶ 35 The Court of Appeals misapplied the case law. In *Dougherty,* we held that the filing requirements of a different statute, RCW 51.52.110, referred to venue and not to subject matter jurisdiction. *Dougherty,* 150 Wash.2d at 320, 76 P.3d 1183. Dougherty was an injured worker who filed an industrial insurance claim for worker's compensation. *Id.* at 313, 76 P.3d 1183. The Department of Labor and Industries (Department) denied the claim. *Id.* The statute[2] at issue in *Dougherty* directed the claimant to file his appeal in his county of residence, the ***628** county where the injury occurred, or Thurston County. *Id.* at 315, 76 P.3d 1183. Dougherty appealed the Department's decision to Skagit County Superior Court, but he did not live in Skagit County, and the injury did not occur in Skagit County. *Id.* at 313, 76 P.3d 1183. The superior court granted the Department's motion to dismiss and the Court of Appeals affirmed, holding that Skagit County Superior Court lacked subject matter jurisdiction. *Id.* at 313–14, 76 P.3d 1183. We reversed the Court of Appeals, holding that RCW 51.52.110 referred to venue and that Skagit County Superior Court did not lack subject matter jurisdiction over ****939** Dougherty's appeal. *Id.* at 320, 76 P.3d 1183.

2 The text of the statute at issue in *Dougherty* reads as follows:

> "In cases involving injured workers, an appeal to the superior court shall be to the superior court of the county of residence of the worker or beneficiary, as shown by the [Department of Labor and Industries'] records, or to the superior court of the county wherein the injury occurred or where neither the county of residence nor the county wherein the injury occurred are in the state of Washington then the appeal may be directed to the superior court for Thurston county."

Dougherty, 150 Wash.2d at 315, 76 P.3d 1183 (quoting RCW 51.52.110).

¶ 36 The statute at issue in *Dougherty* did not use either the term "jurisdiction" or "venue." *Id.* at 315, 76 P.3d 1183. After engaging in a conceptual analysis of the doctrines of jurisdiction and venue, we announced a general canon of statutory interpretation that "*[u]nless mandated by the clear language of the statute,* we generally decline to interpret a statute's procedural requirements regarding location of filing as jurisdictional." *Id.* at 317, 76 P.3d 1183 (emphasis added). In the case at bar, the statute is very different. The statute expressly reserves all "jurisdiction" over actions against the Commission to Thurston County Superior Court. RCW 9.46.095 ("No court of the state of Washington other than the superior court of Thurston county shall have *jurisdiction* over any action or proceeding against the commission ...." (emphasis added)). Because the clear language of the statute addresses jurisdiction, the interpretive canon announced in *Dougherty* does not apply.

¶ 37 Only a few months prior to the decision in *Dougherty,* we decided *Shoop.* In *Shoop,* we held that the requirements

of the statute there at issue, former RCW 36.01.050 (1997),[3] ***629** related only to venue and not to subject matter jurisdiction. *Shoop,* 149 Wash.2d at 37, 65 P.3d 1194. Shoop brought a personal injury claim against several unnamed defendants and Kittitas County. *Id.* at 32, 65 P.3d 1194. The statute at issue in *Shoop* directed the plaintiff to commence her action against Kittitas County in either Kittitas County or one of the two nearest counties. *Id.* at 35, 65 P.3d 1194. The two nearest counties were Yakima County and Grant County. *Id.* at 32, 65 P.3d 1194. Shoop brought her suit in King County. *Id.* Kittitas County moved to dismiss for lack of subject matter jurisdiction. *Id.* The superior court granted the motion and the Court of Appeals reversed. *Id.* at 32–33, 65 P.3d 1194. We affirmed the Court of Appeals, holding that the requirements of former RCW 36.01.050 (1997) relate to venue rather than subject matter jurisdiction. *Id.* at 37–38, 65 P.3d 1194.

3 The text of the statute at issue in *Shoop* reads as follows:
"(1) All actions against any county may be commenced in the superior court of such county, or in the superior court of either of the two nearest counties....
"(2) The determination of the nearest counties is measured by the travel time between county seats using major surface routes, as determined by the office of the administrator for the courts."
Shoop, 149 Wash.2d at 35, 65 P.3d 1194 (alteration in original) (quoting former RCW 36.01.050 (1997)).

¶ 38 The primary issue in *Shoop* was our previous holding in *Cossel v. Skagit County,* 119 Wash.2d 434, 834 P.2d 609 (1992), *overruled by Shoop v. Kittitas County,* 149 Wash.2d 29, 65 P.3d 1194 (2003). In *Cossel,* we held that a predecessor statute, former RCW 36.01.050 (1963), restricted the subject matter jurisdiction of the superior courts. *Shoop,* 149 Wash.2d at 34, 65 P.3d 1194. In Shoop's case, the Court of Appeals distinguished *Cossel* on grounds that the 1997 legislative amendments transformed former RCW 36.01.050 (1997) into a venue rather than a jurisdictional statute. *Id.* at 35, 65 P.3d 1194. We disagreed with the Court of Appeals' conclusion that the 1997 legislative amendments transformed the statute. *Id.* at 36–37, 65 P.3d 1194. Nonetheless, we affirmed the Court of Appeals. *Id.* at 37, 65 P.3d 1194. Though *Cossel*'s jurisdictional reading of RCW 36.01.050 (1997) still controlled, such a reading would violate article IV, section 6 of the Washington Constitution. *Id.* To avoid this constitutional problem, we overruled *Cossel* and construed the statute as a restriction on venue ***630** rather than jurisdiction. *Id.* In short, *Shoop* overruled *Cossel,* determined that a jurisdictional reading of former RCW 36.01.050 (1997) violated the state constitution, and, for that reason, construed the statute as a restriction on venue rather than a limit on subject matter jurisdiction. *Id.*

¶ 39 This case does not raise the constitutional issues at stake in *Shoop. Shoop* involved constitutional original jurisdiction of a superior court. *Id.* at 32, 65 P.3d 1194. So long as the amount in controversy surpasses the jurisdictional threshold, a superior court's original jurisdiction comes directly from the state constitution. ****940** WASH. CONST. art. IV, § 6 ("The superior court shall have original jurisdiction in all cases at law ... and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law...."). While the legislature can restrict the superior court's jurisdiction by changing the amount-in-controversy requirement or abolishing the substantive law for a particular type of common law tort claim (*see Dougherty,* 150 Wash.2d at 314, 76 P.3d 1183), the legislature cannot otherwise restrict the type of tort controversy that a superior court may adjudicate.[4]

4 *See* 1 WILFRED J. AIREY, A HISTORY OF THE CONSTITUTION AND GOVERNMENT OF WASHINGTON TERRITORY 466 (June 5, 1945) (unpublished Ph.D. dissertation, University of Washington) (on file with Washington State Law Library) (stating that the Constitutional Convention of 1889 fixed the jurisdiction of the Washington courts and that "[t]he superior courts were always to be open and to have original jurisdiction in practically all types of criminal, civil, and probate cases if the amount in civil actions exceeded $100").

¶ 40 In contrast to *Shoop,* the present case involves legislatively created appellate jurisdiction of a superior court to review an administrative agency decision. Appellate jurisdiction over administrative decisions is a creature of statute. *Residents Opposed to Kittitas Turbines,* 165 Wash.2d at 295, 197 P.3d 1153. "This court has consistently held that a right of direct review in superior court of an administrative decision invokes the limited appellate jurisdiction of the court." *Id.* at 294, 197 P.3d 1153. The state constitution does not expressly provide for this type of appellate jurisdiction; however, "[a]llowing only limited appellate ***631** review over administrative decisions, rather than original or appellate jurisdiction as a matter of right, 'serves an important policy purpose in protecting the integrity of administrative decisionmaking.' " *Id.* at 295, 197 P.3d 1153 (quoting *King County v. Wash. State Boundary Review Bd.,* 122 Wash.2d 648, 668, 860 P.2d 1024 (1993)). "The legislature may confer such limited appellate review by statute." *Id.*

¶ 41 With respect to the Commission, the legislature clearly determined that Thurston County Superior Court possesses exclusive jurisdiction. Thus, Pierce County

Superior Court lacked subject matter jurisdiction. *Shoop* has defined the remedy: "When a court lacks subject matter jurisdiction, dismissal is the only permissible action the court may take." 149 Wash.2d at 35, 65 P.3d 1194.

CONCLUSION

¶ 42 I would hold that, under RCW 9.46.095 as written by the legislature, the Thurston County Superior Court possesses exclusive subject matter jurisdiction to review Commission orders. Because the Pierce County Superior Court lacked subject matter jurisdiction, I would dismiss the case.

WE CONCUR: MARY E. FAIRHURST, Justice, GERRY L. ALEXANDER, Justice Pro Tem. and BARBARA A. MADSEN, Chief Justice.

Parallel Citations

268 P.3d 929

End of Document

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Petition from the Public

Submitted by: John Lowmon, licensed distributor representative

- **Requiring bingo and pull-tab manufacturers to make related products and equipment available to all distributors.**

April 2014 – Up for Discussion and Possible Filing

ITEM: 10

a) **New Section WAC 230-16-003**
Bingo and pull-tab manufacturers must make related products and equipment available to all distributors.

Proposed New Rule

WAC 230-16-003 Bingo and pull-tab manufacturers must make related products and equipment available to all distributors.

April 2014 – Up for Discussion and Possible Filing
March 2014 – Study Session

ITEM 10 (a) on the April 2014 Commission Meeting Agenda.

Who proposed the new rule?

John Lowmon, licensed distributor representative.

Proposed Change

We have received a petition from a licensed distributor representative requesting the Commission adopt a new rule to require licensed manufacturers of bingo and pull-tab products and equipment to make their products and equipment available to all distributors for the same price and terms. The new rule also sets out the following:

- In the absence of an established line of credit with terms, all bingo and pull-tab products and equipment must be made available on a cash basis; and
- Manufacturers must not dictate purchasing requirements to distributors, such as quantities and mix of products that must be purchased; and
- Any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to the Commission.

The distributor representative states in his petition that there are licensed distributors who are unable to purchase bingo and pull-tab products from manufacturers.

Attachments:

- Proposed new WAC 230-16-003 Bingo and pull-tab manufacturers must make related products and equipment available to all distributors.
- Petition for rule change and two-page letter from the petitioner date stamped January 31, 2014.
- E-mail dated February 20, 2014, from the petitioner requesting that his petition be held over until the April 2014 Commission meeting for filing.
- Stakeholder letter dated March 27, 2014.
- 2007 petition and summary for a new rule from Mr. Lowmon, which was similar to this new petition.
- Excerpts from Commission meeting minutes when this topic was previously discussed: June, August and September 2005; March, April, June and July 2006; January 2007; September 2009; July 2011.

History of Rule

The Commission has discussed rules about manufacturers being required to sell to all distributors numerous times since 2005. On October 10, 2005, WAC rules requiring licensed manufacturers to make their products and services available to all licensees without discrimination were repealed. The Commission repealed the discriminatory pricing restrictions in 2005 because, among other reasons, these restrictions did not have a direct impact on gambling. In 2009, staff reported on their follow up to complaints about discriminatory pricing from licensees that were ultimately unfounded. In addition, licensees submitted three petitions in 2006, 2007, and 2011 to reinstate the rules. Each time, the Commission denied the petition.

The three petitions were denied (not filed for discussion), in part, for the following reasons:

- Regulating business relationships between distributors and manufacturers is outside the Commission's authority and mission;
- There are other legal remedies that the petitioner could pursue other than rely on Commission rules, such as anti-trust laws; and
- Before repealing the credit rules in 2005, the Commissioners carefully considered all arguments and had given them due consideration over the course of several Commission meetings.

Impact of the Proposed Change
The petitioner's proposal would require manufacturers of bingo and pull-tab products to provide products to all distributors for the same price and terms. In absence of credit, manufacturers would be required to make their products available on a cash basis. Manufacturers would not be able to dictate purchasing requirements to distributors and any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to the Commission. We are evaluating whether a Small Business Economic Impact Statement is needed. We are seeking input from stakeholders to determine whether the rule will impose more than minor costs.
Regulatory Concerns
In order for the Commission to fully regulate this area, staff would have to add back provisions that are substantially similar to the credit/pricing rules that were repealed in 2005. For example, subsection (1) says if there is an agreement between the manufacturer and distributor for credit, then the Commission may not monitor the agreement. However, subsection (4) says if there is no agreement, the Commission will monitor the relationship between manufacturers and distributors.
Resource Impacts
Before the repeal of the pricing and credit restrictions in October 2005, staff spent an equivalent of .5 FTE enforcing these regulations. When complaints are received, staff would be required to verify the prices and terms of products sold to distributors. Staff estimates this would require .5 FTE.
Policy Considerations
• The Commission repealed discriminatory pricing restrictions in 2005 because these restrictions did not have a direct impact on the gambling activity (See September 2005 Commission meeting minutes, which are attached). • Whether a problem exists that justifies rules that restrict a business' ability to set their own prices and make their own decisions as to credit. • There are other legal remedies that the petitioner could pursue other than rely on Commission rules, such as anti-trust laws. • Before repealing the credit rules in 2005, the Commissioners carefully considered all arguments for three months, and had given them due consideration.
Statements Supporting the Proposed Rule Change
None.
Statements Opposing the Proposed Rule Change
None.
Licensees Directly Impacted By the Change
Manufacturers, distributors and operators of pull-tab and bingo products and equipment.
Staff Recommendation
File for further discussion.
Proposed Effective Date for Rule Change
The petitioner requests the new rule become effective 31 days from filing.

New Section:

WAC 230-16-003 Bingo and pull-tab manufacturers must make related products and equipment available to all distributors.

(1) Manufacturers must make all bingo and pull-tab products and equipment available to all distributors for the same price and terms. Credit terms are between the manufacturer and distributor and are not to be monitored by us.

(2) In the absence of an established line of credit with terms, all bingo and pull-tab products and equipment must be made available on a cash basis.

(3) Manufacturers must not dictate purchasing requirements to distributors, such as the quantity of items and product mix to be purchased.

(4) Any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to us.

Received

JAN 3 1 2014

Gambling Commission
Comm. & Legal Division

PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

Print Form

In accordance with RCW 34.05.330, the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at http://apps.leg.wa.gov/wac/default.aspx?cite=82-05.

CONTACT INFORMATION *(please type or print)*

Petitioner's Name John Lowmon

Name of Organization Magic Distributing

Mailing Address 26018 25th Ave N.E.

City Arlington State WA Zip Code 98223

Telephone 360-201-0255 Email johnlowmon@gmail.com

COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
- Provide relevant examples.
- Include suggested language for a rule, if possible.
- Attach additional pages, if needed.
- Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: http://www.leg.wa.gov/CodeReviser/Documents/RClist.htm.

RECEIVED
JAN 3 1 2014
GAMBLING/LICENSING

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: WSGC

☒ **1. NEW RULE - I am requesting the agency to adopt a new rule.**

☒ The subject (or purpose) of this rule is: Access to stamped pulltabs and bingo supplies without discimination

☒ The rule is needed because: A monopoly exist whereby one company controls over 95% of all production and is withholding access to the there product line with directed discrimintation against our company only.

☒ The new rule would affect the following people or groups: All pulltab distributors and manufaturers of pulltabs for the State of Washington

RECEIVED
JAN 31 2014
GAMBLING/LICENSING

John Lowmon – Magic Distributing 1/28/2014

360-201-0255

Re: Access to pulltab and bingo supplies.

In the issuance of the license transfer from Universal Manufacturing to Arrow International we are now denied the same product line that we had uninterrupted and continuous access to without prejudice or discrimination.

In complaints and requests for implementation of a new rule through the petition process in 2006, Magic Distributing brought forward ongoing issues of denial of access to pulltabs and bingo supplies from Arrow, Trade, Specialty, Bonanza Press and Douglas Press without cause.

The follow up investigations by WSGC produced no active discovery or no physical evidence to support any of the offending manufacturers claims to our complaints.

We have an honest and ethical company and whole heartedly disagree with the WSGC findings.

Washington State requires that Pulltab Distributors will only sell pulltab series with their approved stamps. When a manufacturer places those stamps on their products and does not make them available as an authorized product there is a problem that must be remedied.

WSGC historically would purport that they are sympathetic and rendered no alternative action to support our access to a fair and competitive marketplace.

Arrow International obtained ownership of Universal Manufacturing in late 2013 under the approval of the WSGC. This created a monopolistic corporation that now controls 95% of the available inventory in the State.

Arrow's practices allow gender discrimination against Magic Distributing whose owner is the only female owner of pulltab distributorship in the State of Washington.

The end user is being harmed as the charities and operators are also being denied the right to actively acquire any product they can legally place in play through their distributor of choice.

As this was unfolding in late 2013 we obtained knowledge of WOW distributor representatives entering our accounts, namely Marion Gobatto at the Slo Pitch, and stating that Magic Distributing will be out of business by 2014. At the same time they are distributing flyers of the Universal Games products we have always had access to but are now being denied the same.

Prior to the change in ownership of Universal Manufacturing we had placed our usual order and that was purposely held up without notice and subsequently denied to us after the acquisition by Arrow with no good cause.

These strong-arm tactics of Arrow International should not continue or be supported in any way.

Where is the strong-arm of equity and regard for equal treatment for similarly situated persons?

Suggested WAC language could be as follows:

Manufacturers shall make their pulltab and bingo supplies available to all distributors at all times without discrimination.

In the absence of credit terms no product will be withheld for a cash purchase. Credit terms are between the distributor and the manufacturer will not be monitored by the commission.

Manufacturers shall not require burdensome purchases that would deny access to their products in a reasonable manner and no distributor should be required to have a purchase larger inventory than they could reasonably manage for the sake of the health of the industry.

Manufactures will not make historical games exclusive to the disadvantage of other distributors, namely Big Casino and Firemen's Fund Raiser which have been in existence for decades as well as others.

Detailed denials of access shall be provided to the distributor in writing and a copy shall be provided to the commission to have on file.

Thank you,

RECEIVED
JAN 31 2014
GAMBLING/LICENSING

John Lowmon

Newer, Susan (GMB)

From: John Lowmon [johnlowmon@gmail.com]
Sent: Thursday, February 20, 2014 8:06 AM
To: Newer, Susan (GMB)
Cc: Harris, Mark (GMB); coffey, ellie
Subject: Rules Proposal follow up for Magic Distributing

Hello Susan -

I recently proposed a new rule regarding requirements of manufacturers of pulltabs and bingo supplies to make their licensed products available to all distributors. I realize that it would be better to delay the hearing time frame into April as opposed to March in order to craft the rule language.

So the purpose of this email is to let you know that our company would like it to be an April 2014 agenda item and not a Mar 2014 agenda item.

Thank you for your work on this.

--
John Lowmon - Magic Distributing - 360-201-0255

STATE OF WASHINGTON

GAMBLING COMMISSION

"Protect the Public by Ensuring that Gambling is Legal and Honest"

March 27, 2014

To: Manufacturers and distributors of pull-tab and bingo products and equipment.

NOTICE OF PROPOSED NEW RULE to require bingo and pull-tab manufacturers to make related products and equipment available to all distributors.

We have received a petition from a licensed distributor representative requesting a new rule to require manufacturers of bingo and pull-tabs to make their products and equipment available to all distributors for the same price and terms. In the absence of an established line of credit, manufacturers would be required to make their products and equipment available on a cash basis to distributors. Additionally, manufacturers would be prohibited from dictating purchasing requirements to distributors, such as the quantity of items and product mix to be purchased. The proposed new rule is attached.

The petition will be Up for Discussion and Possible Filing at the Thursday, April 10, 2014, Commission meeting. The meeting will be held at the Vancouver Heathman Lodge, 7801 NE Greenwood Drive, Vancouver, Washington 98662, (360) 254-3100. Please visit our website about one week before the meeting to confirm the date and start time, which will be posted under Public Meetings. Commission meetings are open to the public and you are invited to attend.

We are asking for your input in order to complete a small business economic impact statement. Please answer the following questions:

(1) What kinds of additional professional services will you need to comply with the proposed rule(s)?

(2) Is there an increased cost in equipment, supplies, labor or administrative costs to comply with the proposed rule(s)?

(3) Will complying with the proposed rule(s) cause your business to lose sales or revenues?

(4) Do you have an estimate for the number of jobs created or lost as a result of complying with the rule(s)?

(5) About how many employees do you have?

Any feedback we have in advance of April 10 will be presented at the April Commission meeting. If you are not able to respond by April 10, we would still appreciate your response as soon as possible. Send your comments to:

E-mail: Susan.Newer@wsgc.wa.gov
FAX: (360) 486-3625
Phone: (360) 486-3466
Mail: Susan Newer, WSGC, P.O. Box 42400, Olympia, WA 98504-2400

New Section: WAC 230-16-003 Bingo and pull-tab manufacturers must make related products and equipment available to all distributors.

(1) Manufacturers must make all bingo and pull-tab products and equipment available to all distributors for the same price and terms. Credit terms are between the manufacturer and distributor and are not to be monitored by us.

(2) In the absence of an established line of credit with terms, all bingo and pull-tab products and equipment must be made available on a cash basis.

(3) Manufacturers must not dictate purchasing requirements to distributors, such the quantity of items and product mix to be purchased.

(4) Any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to us.

Petition for Rule Change
Requiring Manufacturers to Sell Product to Distributors

Up for Discussion and Possible Filing January 12, 2007.

ITEM 17:

a) **New Section WAC 230-12-231**
Access to product, services, and supplies for the public interest.

Ru Up For Discussion and ssible Filing

Proposed New rule
WAC 230-12-231
Access to product, services, and supplies for the public interest.

ITEM 17(a) on the January 12, 2007, Commission Meeting Agenda. Statutory Authority 9.46.070

Who proposed the rule change?

John Lowmon, licensed distributor representative.

Proposed Change

A Petition for Rule Change was submitted by John Lowman, a licensed distributor representative, requesting that the Commission adopt a new WAC which would require:

1. All manufacturers to make their licensed products available to any licensed distributor without prejudice.
2. All manufacturers to accept any cash purchase in the absence of credit terms.
3. The Commission to indefinitely revoke the license of any manufacturer, distributor and their representatives who interfere with this rule.

The petitioner requests that manufacturers provide their product to "newly" licensed and smaller punchboard/pull-tab distributors, which the petitioner indicates some have refused to do.

Attachments:
Memo to the Commission outlining their options for handling the petition.
Letter notifying Mr. Lowmon that his petition will be up for filing at the January 12, 2007, meeting.
Petition for Rule Change dated November 13, 2006.
Proposed new rule WAC 230-12-231.
Case Report concerning a complaint from Mr. Lowmon.
Minutes from the June, August, and September Commission meetings (blue paper).

History of Rule

Prior to October 2005, the Commission had a rule which required manufacturers and distributors to offer their products and services to all licensees without discrimination. These rules also prevented discriminatory pricing. The intent was to prevent market control. After discussion at three Commission meetings, the Commission voted to repeal this rule. The agency no longer is involved with pricing or determining which licensees manufacturers sell to, as long as the distributors and operators are licensed. See attached meeting minutes from the June, August and September Commission meetings (Blue paper).

A similar petition was submitted in March 2006, by Magic Distributing, Inc., requesting that discriminatory pricing restrictions be reinstated. The discriminatory pricing restrictions required manufacturers and distributors to offer their products and services to all licensees without discrimination. The petitioner stated, in part, that:

1) Gambling equipment and related products should be available to all licensees without discrimination; and
2) Reinstating the requirements would prevent a monopoly, and unfair and deceptive practices.

At that time, the Commission denied the petition, in part, for the following reasons:

1) Regulating business relationships between distributors and manufacturers is generally outside the Commission's mission;
2) There are other legal remedies that the petitioner could pursue other than rely on Commission rules,

such as anti-trust laws; and

3) Before repealing the credit rules, the Commissioners carefully considered all arguments, for three months, and had given them due consideration.

In June 2006, Special Agents contacted six distributors and two manufacturers to discuss what impact eliminating discriminatory pricing rules had on the industry.

Distributors:

1) Four said the rule changes had no impact on their business.
2) One said the manufacturers had reduced the discount they offered and it was also necessary to make very large purchases to get the discount (they didn't buy that much). They also were against allowing credit to operators because operators can barely meet their day-to-day expenses as it is.
3) One said Bingo King would not sell to him anymore because he's too small.

Manufacturers:

1) One said there was no impact yet. They felt the impact to manufacturers would be in 4 to 5 years – there would be long term credit/debt problems. Also felt if the rules changes allowing credit at the operator level the operators would over-extend themselves.
2) One said things were going okay. They were making money now that they didn't have to out do each other with a sale of the week. They have heard grumblings from one smaller distributor – Magic Distributing (Didn't say what the distributor's concerns were).

Impact of the Proposed Change

The petitioner's proposal would require manufacturers to sell product to distributors regardless of the distributor's business practice, credit problems, or bad debt. In the past, credit restriction rules, which have been repealed, would have prevented the sale of more product to those with past due accounts.

Regulatory Concerns

Regulating business practices between manufactures and distributors is generally outside the scope of the Commission's mission to keep gambling legal and honest.

If the petitioner's request is adopted, it would add a new regulatory requirement and would require the commission to indefinitely revoke a manufacturer's license if they don't comply.

Resource Impacts

Before the repeal of the pricing and credit restrictions in October 2005, staff spent an equivalent of .5 FTE enforcing these regulations. Likewise, staff would likely be required to devote at least .5 FTE, if we enforce this new rule.

Policy Consideration

It is a policy decision whether the proposal is consistent with the Commission's statutory mission.

Statements Supporting the Proposed Rule Change

None.

Statements Opposing the Proposed Rule Change

None.

Licensees Directly Impacted By the Change

Manufacturers, distributors and operators.

Staff Recommendation
Deny the petition for the following reasons: 1) Regulating business relationships between distributors and manufacturers is generally outside the Commission's mission; 2) There are other legal remedies that the petitioner could pursue other than rely on Commission rules, such as anti-trust laws; 3) Before repealing the credit rules, for three months, the Commissioners carefully considered all arguments and had given them due consideration; 4) It would require manufacturers to sell product to distributors regardless of the distributor's business practice, credit problems, or bad debt; and 5) It would require the Commission to indefinitely revoke a manufacturer's license if they don't comply.
Proposed Effective Date for Rule Change
The petitioner requests the new rule become effective 31 days from filing.

New Section:

WAC 230-12-231 Access to product, services, and supplies for the public interest.

1. All manufacturers licensed in Washington State shall make their licensed products available to any licensed distributor without prejudice.
2. Any cash purchase shall not be refused in the absence of credit terms.
3. Any manufacturer, distributor and their representatives who cause interference with this rule will have their license revoked indefinitely.

Excerpt from June 2005 Commission Meeting Minutes

13. Credit and Pricing Restrictions:
WAC 230-12-330, WAC 230-12-340, WAC 230-12-345, WAC 230-12-350, and **WAC 230-12-320:**
Ms. Cass explained that as a matter of background, Items 13-A through 13-E are part of the Commission's budget reduction plan.

Item 13-A is a proposed repealer to WAC 230-12-330. The rule supports the budget reductions by removing pricing restrictions between manufacturers and distributors. The rule currently requires manufacturers and distributors to offer their products and services to all licensees without discrimination. Volume discounts are allowed but only if they are offered to all licensees and based on a single sales transaction. The intent of this rule was to prevent market control and predatory pricing. These proposed amendments open the market and allow the manufacturers and distributors to sell their products for different prices to different customers. The agency would no longer be involved with monitoring and following up on product pricing and complaints. Staff would also stop conducting discriminatory pricing compliance checks. All of the entities would still be required to be licensed and undergo thorough background checks before they would be given a gambling license.

There have been numerous manufactures and distributors who have made statements against the proposed changes. There are several letters included in the agenda packet directed towards WAC 230-12-330 and WAC 230-12-340 which allows credit. In general, the comments include concerns over market instability, lack of control in the marketplace and adverse impacts on small manufacturers and distributors. The small businesses state that they will not be able to compete with the larger businesses and will be forced out of business. Staff's current position is that these are not regulatory issues and that it is time for the industry to monitor itself regarding these issues. Staff's recommendation is to file for further discussion.

Item 13-B has proposed amendments to WAC 230-12-340. The rule currently requires gambling equipment to be purchased on a cash basis only. One exception is allowed for punch-board and pull-tab manufacturers—trade account terms for 60 days are allowed between manufacturers and distributors. The rule was originally put into place in the mid 90's when distributors incurred substantial debt with manufacturers. The current intent of the rule was to prevent influence between manufacturers, distributors, and operators; and to prevent concerns of influence that they held over each other. Currently manufacturers report distributors that are past due on their accounts to the Commission. If the distributor becomes past due on a trade account then the manufacturer notifies all the other manufacturers of the past due account and that distributor may only buy merchandise on a cash basis from all manufacturers. After the account is brought current, the manufacturers notify staff and other manufacturers and the distributor may again make purchases using 60-day terms. Staff then files the notice and monitors the situation, which creates quite a work load.

The proposed rule change allows credit to manufacturers and distributors but continues the prohibition of credit to operators. The agency would no longer be involved in the collection of debt from the manufacturers. A second amendment, which is under Subsection (4), allows operators to use credit cards to purchase, rent, or to lease gambling equipment. It also allows operators to have license agreements and to use manufacturer patented or copyrighted trade marking on credit. All entities would still be required to be licensed and undergo thorough background checks to receive a license. Numerous manufacturers and distributors are in opposition to this rule. They are concerned in particular that the changes may cause distributors to go into debt with manufacturers thus causing influence by a licensee over many marketing levels. Staff recommends filing the rule for further discussion.

Commissioner Ludwig questioned why the rule was originally adopted. **Ms. Cass** explained that at the time there was one case in particular—a distributor became deeply in debt to a manufacturer and the manufacturer came forward with concerns that the distributor in essence had a hold on them. Commissioner Ludwig asked if it couldn't also create a situation that if a business operator was in jeopardy, that he might have to cut corners enough or do something else to try to solve the problem. Ms. Cass believed Commissioner Ludwig was referring to a previous situation where the manufacturer and distributor colluded to determine where the winning tickets were; she didn't believe these rules would impact that scenario. Commissioner Ludwig questioned how many staff FTEs it would take to monitor the present rule if the proposals were not adopted. Ms. Cass responded that it currently takes one-third to one-half of a full time position. Commissioner Ludwig questioned if we have adopted a risk of further indebtedness. Ms. Cass advised that the staff believes the industry has matured, that they are better able to monitor themselves, and there are also other Federal regulations that they need to comply with. Commissioner Ludwig questioned if they didn't monitor themselves properly, would the Commission be right back with the same problem again. Ms. Cass affirmed there is that potential; however she noted there are other ways of addressing the regulatory issues through the rules against hidden ownership and clauses about substantial interest holders which go directly to the influence over the company.

Commissioner Ellis advised that he was curious as to how extensive the problems were on price discrimination issues and undercover discounting or trade wars, and how they were dealt with, either by staff/field investigations or through information gathering and filing complaints. Ms. Cass responded that at this point it is mainly information gathering and follow-up when staff doesn't get the pricing list. If staff is in the field and discovers differences, then reports are written. She advised that staff was not aware of any price war or credit issues in the recent past.

Ms. Cass stated that Item 13-C is a proposed repealer to WAC 230-12-345 which requires gambling equipment such as card tables to be used or rented on a cash basis. This rule was adopted in 1997, when house-banked card rooms were authorized to mirror WAC 230-12-340 which prohibits credit between manufacturers, distributors, and operators. The rule currently requires manufacturers and distributors to report the delinquent accounts to the Commission. When staff receives notice of a delinquent account they investigate to determine if the operator solicited credit and staff takes appropriate action. Staff ensures the

payments have been made or makes sure the operator stops using the game and the manufacturer must remove the game from the operators' premises in a timely manner under the current rule. The proposed amendment removes the restrictions on leases, rentals and licensed games, and the agency would no longer be involved in the collection of debt of the distributors for the manufacturers. All of the entities would still be required to be licensed and to undergo a thorough background check prior to receiving their license. **Ms. Cass** noted the Commission received several statements, but, not necessarily against this particular rule, and staff recommends filing this rule for further discussion.

Item 13-D contains proposed amendments to WAC 230-12 –350. This rule sets out the guidelines for operators and distributors that use checks to purchase gambling equipment, supplies and services. Distributors and manufacturers must follow specific procedures if they receive a dishonored check for gambling equipment; including reporting it to the Commission. At that point it would be considered credit. Once staff receives the notice of the dishonored check, staff investigates and follows up. The rule change removes restrictions on how distributors and manufacturers handle dishonored checks and removes agency staff from the process. It also allows operators and distributors to use credit cards to make these purchases. **Ms. Cass** pointed out that it does not allow players to use credit cards to purchase something in a gambling activity. Staff recommends filing the rule for discussion.

Item 13-E is a repeal proposal to WAC 23 0-12-320. This rule limits the amounts of gifts that manufacturers, distributors, and operators may offer as incentives to purchase their goods. The original intent was to prevent the influence over one another in the different marketing levels and to limit the amount of gifts the different levels may offer to each other. The rules were intended to control the marketplace activities and the competition. The proposed amendment removes the restrictions related to gifts and promotional items between the manufacturers, distributors, and operators, and the Commission would no longer be involved in how companies reward buyers with their merchandise. Staff recommends filing the rule for further discussion.

Commissioner Ellis readdressed the limitations and credit issue, both in the context of the purchase of equipment and the rental and leasing of equipment. Since advanced cash payments are required by the rules, he inquired whether the Commission received complaints or inquiries from small operators who were concerned about their ability to acquire equipment because of the need to pay cash up front. **Ms. Cass** advised she was not aware of any and noted that most of the calls received relate to the distributor wanting their money. She explained it is not the Gambling Commission's role to help people collect their money from each other.

There were no additional comments and **Chair Niemi** called for public comments.

Mary Magnuson representing the National Association of Fund Raising Ticket Manufacturers (an association of five manufacturers of primarily Bingo, pull-tab, punch-board, and Bingo related supplies), asked the Commission to oppose staff's recommendation to repeal WAC 230-12-330 the prohibition against discriminatory pricing, and WAC 230-12-

340 the rule that prohibits credit. She reported that she sent letters and some rule proposals with possible compromise language for Commission staff/Rules Team consideration and further discussion with the industry in an effort to reach a mutual agreement on addressing the staff's concerns while at the same time not deregulating this portion of the industry. **Ms. Magnuson** noted the discriminatory pricing rule has been in effect since "day one"— to prohibit discriminatory pricing and require manufacturers to sell to all distributors in the marketplace on the same terms. Since that rule has been in place, other states have also used the rule to solve problems they experienced within their jurisdictions.

Ms. Magnuson explained the credit rule was adopted in 1997 after considerable discussion with Commission staff. In approximately 1996, then Director Ben Bishop decided that a credit rule was necessary. The purpose of the credit rule was not to force the Commission not to become a collection agency for manufacturers or distributors, the purpose related to the $5.5 million in outstanding debt between distributors and manufacturers in the state. That didn't happen overnight, it happened over a period of time; however, the debt load that was held by the distributors in Washington was paralyzing. There were distributors that would never be able to pay that debt under the circumstances that they found themselves in. There were manufacturers who would not collect, and there were manufacturers and distributors who perhaps were engaging in discussions and influencing activities that were inappropriate. The rule prohibited the extension of credit between manufacturers and distributors for any period to exceed 60 days, and it also allowed distributors who found themselves (there were 27) in financial debt—in difficulty with debt situations to actually turn that debt into promissory notes payable to the manufacturers over a period of five years. That was not permitted until the rule was adopted. During those five years, the debt was paid, people became current, and the debt between the manufacturers and the distributors has essentially been eliminated. Ms. Magnuson emphasized that is not to say that the industry has matured and there isn't a problem. She believed there isn't a problem because the rule is in place and the rule works very well to prohibit that kind of a problem. She suggested that had the rule not been adopted, there would have been many distributors that would have had to file bankruptcy or go out of business because they never would have been able to pay the debt they owed to the manufacturers.

Ms. Magnuson agreed there are other rules out there such as the Federal Anti-Trust Statute that prohibits various types of collusion, price fixing, and all sorts of other things. However, she believed the problem in the area of credit is that companies cannot monitor credit. It's a violation of the Anti-Trust Bill. She explained that if she was a manufacturer, and a distributor owed her a million dollars, she couldn't tell anyone—they are not allowed to monitor that credit. She clarified she could cut the distributor off as a manufacturer; but, the distributor could go to the next manufacturer and obtain substantial credit and if they get cut off, they move on to the third and fourth manufacturer, etc., until they find themselves in a situation where they can never pay the debt. Manufacturers cannot communicate to one another that a certain distributor has debt issues. The only way around the Anti-Trust Law is if a state agency prohibits the credit and allows the communication to occur.

Ms. Magnuson addressed the proposed rule noting the manufacturers attempted to keep the credit restrictions in place, tried to keep some sense of pricing control in place, and tried to take Commission staff almost completely out of the process. They acknowledged the Commission's budget resource problems, and she advised they were trying to come up with a better solution that keeps the regulation in place, and, at the same time accepts the fact that the Commission needed to cut some people while facing difficult budgeting issues. The pricing proposal would require the manufacturers to file a price list once a year. That may be done at any time; however it was suggested this be coordinated with the re-licensing or renewal application; and the manufacturers would be required to sell at the price list as filed with the Commission. Ms. Magnuson affirmed there are opportunities for some deviations such as a sale, and the manufacturer would simply file that information with the Commission.

Ms. Magnuson reported the rule proposal she is offering is essentially from the Missouri and is also used in Minnesota. Both states have indicated the rule works very well and takes little to no staffing needs. They get the report, they look at the report, and in Minnesota the reports are filed for public information. Any company that files a report may look at all the other reports filed by the other companies, which essentially creates self policing. "Everyone knows what the prices are supposed to be, and if there is any deviation, they know they will be reported; therefore, everyone stays in line because they know they are being watched by their competitors." The pricing rule would not apply to distributors, except there would be a requirement that if a distributor wanted to sell at below cost, they would have to notify the Commission in advance.

In relation to the credit rule proposal, **Ms. Magnuson** advised the manufacturers tried to simplify the rule in such a way to take the Commission out of the process entirely. The proposal prohibits credit between manufacturers and distributors, and it incorporates the leasing changes and the credit card purchases the Commission has proposed. Credit could be extended for only 60 days, and the rule only applies to manufacturers of consumable goods—pull-tabs, bingo, and paper bingo supplies—and takes the Commission staff entirely out of the notification loop. If a distributor is delinquent on a payment, the manufacturer simply sends out a notice to all the manufacturers and distributors notifying them of such, and that from a "go forward basis" all items should be sold on a cash only basis until that distributor pays their debts. The only way that the Commission would get involved would be if someone didn't abide by the notification and a complaint was issued. The Commission would then decide whether to follow up with an enforcement action or not. Ms. Magnuson reported that she facilitated a survey of the association members, and in the last five years there have been no more than a handful of notices issued, which she believed was because of the fact that the credit rule exists and it works. She didn't anticipate many notices would be filed.

Ms. Magnuson emphasized that the rule proposals were not curved in stone—the manufacturers are open to further discussion with the staff to reach a compromise where the staffing needs can be met without a complete deregulation of the WACs to the point where distributors, manufacturers, and the public being hurt. Ms. Magnuson reported she represents large and small manufacturers—they believe if staff's proposal goes forward and the rules are repealed in their entirety, the industry will go from a very controlled market to a very

deregulated market. There will be considerable fallout for the small companies because they are not going to be able to compete with the larger companies and they will find it harder to get products at the prices that the big guys can get their products at, and ultimately they may not be able to remain in business. The larger manufacturers and the larger distributors will be fine.

Commissioner Ellis advised that he had a number of questions relating to some of the state and federal anti-trust implications. He affirmed this was pure anti-trust theory the Commission would be dealing with in terms of the current regulatory authority the Commission is exercising and the possibility of the Commission withdrawing from that area. He noted that if the Commission decided to authorize the publication of the rule proposals it would allow for a comment period and an environment to more satisfactorily and orderly address the issues in the context of the commentary.

Dan McCoy from McCoy's Distributing, a mid-sized company which distributes pull-tabs and Bingo supplies in eastern Washington, also opposed the repeal of the pricing and credit rules, and pointed out the tremendous positive impact these rules have had on the industry. Mr. McCoy presented a solution that would keep the rules in place and allow the Commission to eliminate the position that has overseen the enforcement of this rules package. He addressed two letters included in the agenda packet making reference to the destabilizing affect repealing these rules would likely have on the industry based on past history. He noted the Washington State Gambling Commission has required the manufacturers and distributors to engage in above-board, fair, and equitable marketing practices. This has with very few exceptions been working exceptionally well when compared to the multitude of problems before the rules were enacted. His letter also specifically described how the relationships will change between the three marketing levels; it will likely result in fewer manufacturers, fewer distributors, fewer operators, fewer players, and ultimately less money would be generated from fees which the Gambling Commission uses in order to operate. He emphasized all this would be bad for the health of this industry.

Mr. McCoy suggested that the distributors and manufacturers fax their price sheets and sales announcements to a file clerk at the Gambling Commission. He believed it was a better idea for the distributors and manufacturers to be responsible for posting their information on the Gambling Commission website themselves. The field agents would then be able to look at the information when they needed it, and it would require little Commission oversight with the exception of the initial set up.

Mr. Mc Coy distributed copies of the September 1997 Commission meeting minutes where he highlighted quotes leading up to the adoption of the pricing and credit rules. He stressed the importance of considering why the Commission implemented the rules in the first place. He believed the reasons are still relevant today and are critical to the continued success and stability of the industry. He quoted Commissioner McLaughlin asking about the different gaming industry products and any other products; and then Director Miller's response that "the Commission and staff were here to regulate an industry that needs regulation because it is gambling and because historically it is one that needs these controls." He also noted that

Director Miller stated "the largest pull-tab market in the world is Washington State … and the whole packet is designed to preserve and protect the market and the distribution process." Director Miller then explained that "in 1973, rules were passed to keep corruption out. It was designed to keep business on a cash basis primarily with no control. It was not a free market system because gambling is not a free market. It is a highly regulated industry, probably the most highly regulated industry, some would say next to nuclear waste." **Mr. McCoy** quoted then Director Miller as saying that "over the years, and as this market has grown, distributors and the operators continue to have their cash basis. For the most part distributors and manufacturers have been on a cash basis. Four or five years ago, some distributors asked the Commission to do away with this rule. They thought it was too hard to enforce from a staff prospective. Staff proposed to the Commission that they would let them get the best price they could with the market control and the Commission out of it because it was too costly for the agency to regulate. The Commission said they wanted to maintain control but did not want them to have free reign and a few people controlling the market." Director Miller went on to discuss the impact the credit problems has had on the industry and how to fix it. Mr. McCoy continued with quote #3 from then Director Miller noting that "over the last two and a half years they have gone from a no debt system to $5 or $6 million dollar debt by a few. Enforcement was not the problem. It happened quickly and they were caught off guard. As the complaints began to mount, it became a major issue over the last two years. They have been inundated with requests to help fix it because it was broken. This is the biggest market in the country but the pricing system in Washington State is archaic … the whole package was an attempt to clean up the problem and establish some good business practices." He continued by saying "he thought part of their mission was beyond the player, it was also the public at large which he thinks includes the whole process of distribution, if the distribution process is harmed, ultimately he thinks the player could be harmed, the operator, the charities, the tavern owners, it starts there in the sale of pull-tabs."

Mr. McCoy quoted then Director Miller as saying "the Commission has many different roles and many hats to play. The time has come to fix the problem or to change policy and do away with it and allow the free market system to dictate it. There is no middle ground. These rules give the staff guidelines that are fair. They give the distributor guidelines; they give the manufacturer guidelines to know what they can and cannot do in Washington State anymore. This is where they are facing a hard time, if it is so broadly written. He believes it is healthier to have 25 distributors sell the product than three or four." Mr. McCoy then noted that Assistant Attorney General Jon McCoy pointed out that there is a specific statutory authority which gives the Commission authority to regulate in this area, and there was an argument being made that it was beyond the Commission's authority and it would be beyond the Commission's responsibility to regulate business practices. RCW 94.6.070 specifically states that it is the responsibility of the Commission to regulate and establish the type, scope, and the manner of conducting activities authorized under this chapter, which includes the sale of gambling equipment, and material.

Mr. McCoy echoed that sentiment, noting the bottom line is that the Commission does have the authority and the reason, and after several more pages of discussion, a vote was taken unanimously passing and adopting the rules package. He reiterated that vote was taken eight

years ago and since then there have been virtually no debt problems or complaints about predatory marketing. Mr. McCoy felt this was a very successful policy. He suggested the industry is in exceptionally good health from a regulatory perspective, which means the Commission could eliminate the position; however, still keep the rules package in tact and establish a section on the Commission's website allowing the manufacturers/distributors to post their pricing and sales notices and credit violations for all to see. This would give the field agents the audit information they need should a complaint arise. **Mr. McCoy** urged the Commission to deny the filing of these proposals and pursue the alternative solutions to the problem. **Commissioner Ludwig** thanked Mr. McCoy for the historical research on the rule.

Walt Antoncich from Tri-Focus Enterprises advised he has had a distributor license since 1988. He reiterated the scenarios described by Ms. Magnuson and Mr. McCoy would absolutely be true. There will be fewer manufacturers active in the state, fewer distributors able to compete in this state, and ultimately the control will be in the hands of a few, which he believed would ultimately allow for questionable business practices. He also believed that as other deregulations have occurred (communications, phone companies, cable companies, and trucking), ultimately prices have risen because when control gets in the hands of a few, prices increase. As prices increase there will be a falling out of more operators. Mr. Antoncich commented that the pull-tab industry has been declining and operators have been falling out due to competition and other factors which will increase resulting in a loss of tax and revenue.

Addressing the budgetary issue, **Mr. Antoncich** noted that if the rule was considered to be an unjust or ineffective rule he might understand; however, to take a rule that has existed and been crafted over a period of time and say for budgetary reasons that it is no longer needed seemed to be a little bit short sighted. He also noted the gambling tax revenue that is collected goes to the cities and the counties, a portion of which is targeted for enforcement and monitoring of gambling authorities by the local police departments. Mr. Antoncich advised that he conducted a poll of approximately 20 of his accounts and reported that not one of them from about six or seven different counties have seen any law enforcement representatives do any monitoring of their gambling activities. He suggested the Commission explore the fact that all these jurisdictions are collecting gambling tax dollars and appear to have abrogated their responsibility to do anything for those dollars, which may be a source of relief for the Gambling Commission.

Jay Gerow from ZDI Distributing advised that he has been a distributor for 23 years, and unlike everyone else, he was in favor of the repeal of this section. Over that time period the industry has gone up and down. He affirmed that at one point there were 27 distributors that were facing bankruptcy and his company was not one of them due to good business practices. He emphasized that he would like to see a fair market. He noted that in terms of size, his company is probably rated number three or four. He also noted his license fee is based on the volume of business they conduct and therefore he has to pay a higher volume than a small distributor. However, he affirmed that right now, the small distributor is unable to buy products at the same price as the larger distributors, which he believed was contradictory to what the rules are about. He reiterated that he would like to see a fair market—noting it's

very restricted and doesn't allow for a lot of marketing. Mr. Gerow advised the market was very stagnant and he felt that part of the decline was attributed to the fact that distributors weren't allowed to do any creative marketing; and they would like to see something change. **Commissioner Ellis** addressed the restrictions on credit and verified if distributors were able to get bank financing to the extent they were needed. **Mr. Gerow** affirmed; however, he reported his company has never needed to do so. **Commissioner Ellis** verified that as a practical matter, that area was not an important concern. Mr. Gerow affirmed.

Wendy Windsor from Estrada Distributing advised their company has held a gambling license since 1990, and they were similar in size to ZDI. She also addressed the "huge debt" incurred by everyone in 1977, and affirmed their company took advantage of the extended terms. She reported that at the time the new rules were put in place, there was a company that was strong enough to repay the debt and her company didn't have to go with the five-year note and subsequently continued to operate at a profit. Ms. Windsor emphasized that by keeping the 60-day terms in place, it forces the distributors to continue to operate at a profit without allowing people to get their financing out of whack. She encouraged rule adoption relative to the 60-day terms.

Ms. Cass clarified staff's rule proposal would allow distributors to have trade accounts; licensees would simply need to enforce it themselves. Secondly, she affirmed that while the rules package came forward as a result of budget considerations, staff's first focus related to regulatory business concerns. After reviewing the industry submitted proposals, staff did not seen any regulatory concerns, and they noted the proposals didn't necessarily save the staff a lot of work because they still require the Commission to collect the information, which puts the agency back the position of needing to enforce the rules. Ms. Cass affirmed this is Commission policy decision. **Commissioner Ludwig** commented that the Commission staff members are the greatest staff of any state agency currently in existence. However, he noted this rules package appeared on the agenda sometime ago (within the past eight to twelve months) and he felt the Commission sent a message when they declined to file this rule at that time. **Ms. Cass** affirmed that rules addressed merchandise on pull-tab games and staff attempted to deregulate the requirements, which was when the Commission declined the packet.

Commissioner Orr made a motion seconded by **Commissioner Ellis** to file WAC 230-12-330, WAC 230-12-340, WAC 230-12-345, WAC 230-12-350, and WAC 230-12-320 for further discussion.

Commissioner Ludwig expressed his opposition to doing away with the current rules and advised he was very concerned about the proposed rule. He emphasized that he wasn't opposed to discussing the issue further, and he would support the motion for further discussion, with the affirmation that he still didn't like the rule. He noted the Commission has heard from people reporting that the current rule is working, at a cost to the Commission of one third of a position. He emphasized his opinion that if the rule kept any part of the gambling industry clean and properly controlled, that was not too big of a price to pay.

Commissioner Ellis commented that he very clearly sees the pros and the cons that have been presented orally and in the written materials and that he was impressed with the significance of these issues having spent many years in anti-trust enforcement. However, he advised he was uncomfortable making a decision today whether or not to consider the rules further given the fact that this industry does need a lot more regulation than most American industries. He advised he would support the motion to file in order to have further opportunities to consider the considerations and their impacts.

Commissioner Parker advised he was prepared to vote for further discussion; however, he also had reservations based on the testimony that has been presented, and he looked forward to being enlightened further in terms of the possible impacts of the rule changes. Commissioner Parker didn't think this was simply a budgetary issue and affirmed there is a policy consideration that underlines the rules package. He reported that he wasn't sure whether or not he would personally support or oppose that policy until further discussion is conducted.

Chair Niemi affirmed that to a certain extent she agreed with the comments expressed by each of the commissioners. She reminded the audience the next meeting isn't scheduled until August and in the interim, she would like to have the staff get the relative information to the commissioners well in advance of the August meeting in order to be better prepared, rather than one week before the meeting. **Commissioner Ellis** thought it would be useful to seek input on the proposed repeal and the alternative rules from the Anti-Trust Division of the Attorney General's Office. **Mr. Ackerman** affirmed and suggested that the Commission not approach the Anti-Trust Division until after the next meeting in an effort to see what further information has been developed and then determine if that would be a productive thing to do. He thought it would be beneficial for the Anti-Trust Division to have the issues crystallized as much as possible so they know what it is that they are commenting on since they may not be familiar with this particular segment of the gambling industry. Commissioner Ellis concurred. *Vote taken; the motion passed unanimously.*

Director Day agreed the rules package needs continued discussion. He clarified this was part of an overall budget reduction package, and essentially staff put together a package that reduced approximately 21 FTEs through a combined process. Staff deliberated and looked at where the agency needed to focus the resources while continuing to do the best job with fewer funds. He stated that he appreciated the significant discussion regarding the history for this rule package; however, he emphasized the Commission is designed to regulate gambling activities in the interest of public protection. He was confident the continued discussion will be interesting, and he assured the commissioners information will be provided as it is gathered providing additional lead time for their review.

Excerpt from August 2005 Commission Meeting Minutes

14. Presentation - Changes in the Regulatory Program for Manufacturers and Distributors

Deputy Director Nunamaker reported that at the June Commission Meeting, the Commissioners requested some history on the credit and pricing rule. In 2004, Gambling Commission staff prepared a proposed budget for the fiscal period 2005 to 2007. Revenue for that period, combined with our available working capital, did not support an agency of 188 FTEs, so the proposed budget reduced FTEs to 169. Part of the agency's ability to reduce the FTEs came with the suggestion that staff bring before the Commission some regulatory changes. The changes to the credit and pricing rules are part of that package. Previous testimony has claimed that the proposals before the Commission will deregulate the industry, but staff think that is an exaggeration. Many of current rules concerning prohibition of price fixing and exclusive supply agreements will remain.

Effective January 1978, an addition was made to WAC 230-12-200 that said that manufacturers and distributors shall make such items available to all persons without discrimination with the same price and terms. That rule was in effect for 20 years until 1998. In the early 1990s a number of manufacturers had allowed distributors to become millions of dollars in debt. The manufacturers felt that WAC 230-12-200 which required them to sell at the same prices and terms to everyone caused the problem. In the early 1990s, when the situation first surfaced, staff suggested that the agency get out of the business of regulating prices. The agency received a lot of reaction from the industry, and negotiations were held with the manufacturers and distributors and the rules that are before the Commission are what came out in 1998. Manufacturers and distributors have testified that repealing the rule would result in the loss of small operations and the centralization of product availability. Ms. Magnuson claimed, in her letter of April 4, 2005, that large distributors would command bargain-based pricing.

Discounts for large purchases are already authorized in the rules and are pretty much industry practice. Many of the small distributors will buy their products from larger distributors, who have been able to get the volume discounts, because the small distributor can get the product cheaper than from the manufacturer. Another concern was that competition would be adversely impacted. In 2004, the manufacturers market was about $22 million. Of the nine licensed manufacturers, three control 80 percent of the market and two control 68 percent of the market. Deputy Director Nunamaker did not see how the market would change that much. In 1990, there were 15 licensed manufacturers; currently there are nine. In 2004, four distributors controlled 66 percent of the sales for about $35 million. The top two distributors have controlled 40 percent of the market since the 1970s.

Another concern expressed was that the current rule forces a separation between manufacturers and distributors and requires they both be independent and financially responsible. Without credit restrictions, it would be possible for manufacturers to effectively own a distributor. Although the agency does not have rules regarding marketing levels, there is an exception that manufacturers may also be licensed as distributors. The gambling market

has changed drastically over the past 15 years. In 1996, punchboards and pull-tabs comprised 36 percent of the total market. Today they comprise 9 percent. While the agency's motivation to consider these changes began based on budget considerations, staff would not have moved this change forward if they believed these changes would cause regulatory problems. **Commissioner Niemi** commented that the written reports received through the Internet were very good. **Commissioner Ellis** agreed and added that it appeared these changes would not affect the Commission's regulatory abilities regarding its core mission. He asked if there were any advantages as far as the Commission staff were concerned in keeping organized crime out of gambling in this state by having smaller rather than larger businesses. **Deputy Director Nunamaker** responded that staff attempt to address those issues fundamentally within our licensing program. Whether they are a large business, small business, sole proprietorship, or a major publicly-funded corporation, it is more a factor of how much investigation is involved, and the agency does a thorough job investigating. These rules cover transactions between licensed entities that staff have already determined to be properly run and properly owned. The agency also an ongoing program of inspection and financial review of existing licensees, and staff look for hidden ownership and infiltration of organized crime. Commissioner Ellis said he appreciated the extent of the financial analysis staff conduct with regard to licensees. His question addresses the argument being made that the Commission should preserve these rules in order to protect small distributors and small businesses from being crushed by larger competitors. Commissioner Ellis questioned whether it is a legitimate function of the Commission give preference to either small businesses or large businesses so long as they are otherwise complying with the law. He added that his question really concerns whether it will be useful to the Commission in conducting its legitimate activities, such as analyzing the books of licensees to make sure that money is being properly accounted for and not being fed to organized crime. Deputy Director Nunamaker replied that the agency prefers to consider all our licensees as legitimate; although we not only trust but also verify.

Chair Ludwig called for public comment.

Roger Franke, Director of Governing Affairs for Urban International Association of Fund Raising Ticket Manufacturers (NAFTM) and President for the Association of Fund Raising Ticket Manufactures testified that NAFTM opposes the proposed changes and supports the status quo. Mr. Franke emphasized the good relationship NAFTM has with the distributors and with the activities of this industry and the state, and stated it would like to maintain it.

Mr. Franke addressed some points Assistant Director Cally Cass raised in her response to the supporting letter that he sent. The first point was the goal of the Commission in doing business as simply as possible. The manufacturers or distributors send in notices to the State, which get filed and responded to when issues come up. It could not be much more simple than that. The next point concerned distributors having millions of dollars of debt. In conflict with that, Ms. Cass wrote that the distributors felt they were only using the tools and terms provided by the manufacturers in a prudent business fashion. Mr. Franke asked whether staff thought distributors going in debt for over $5 million was a prudent business fashion. If so, then Mr. Franke differed with staff. It appears what is important is to

maintain the status quo so the people involved in this business get a fair shake from everybody. Another point Ms. Cass raised was that it was not the duty of the Commission to regulate debt, to which Mr. Franke agreed except that regulating the debt is a by-product or safeguard of these rules. Ms. Cass wrote that the current market is very good, better than it was before. Mr. Franke agreed that was true, but what is happening is the pie is getting larger but the charitable gambling portion is not. Ms. Cass wrote that less than a handful of notices of delinquencies were sent to manufacturers over the past couple of years. That seems to indicate that businesses are doing better at self-regulation in controlling the debt. Ms. Cass went on to say that it seemed logical these business practices would continue without the rule. Mr. Franke asked if it was logical that business practices would continue without the rule, then why did these business practices occur in the first place. That doesn't appear logical. Mr. Franke added that Ms. Cass suggested no one from the manufacturer or distributor licensees have been able to suggest how this would be a negative. Mr. Franke asked why they have to prove it is a negative. If staff want to check on negatives, look in the history books. What happened before this rule was enacted? If that is the condition the agency is asking for in the future, that is the condition it is going to get.

Mr. Franke expressed his concern about the .5 FTE and stated it did not appear to be a financial or staffing burden, that it would cost less than $30,000 in an annual budget of over $14 million. Mr. Franke pointed out to the ex officio members an organization called the National Council of Legislators from Gaming States that has model legislation for charitable gambling. Mr. Franke declared that within that model legislation is the exact program that the state of Washington has.

Commissioner Ellis asked why the Commissioners should be concerned about competition in this industry. Competition is the lifeblood of the American economy and free market competition is normally how markets regulate themselves. The Commission has important functions to play in keeping out organized crime, but when discussing the pricing and credit practices that are the issue in these rules, why should the Commission be concerned about more competition. **Mr. Franke** referred back to a statement made by Deputy Director Nunamaker at a previous commission meeting regarding not controlling widget operators. Mr. Franke said that if widgets were being manufactured, fingerprints and background checks on the administration would not be done.. Mr. Franke stressed that gambling is a different kind of activity that requires oversight. Commissioner Ellis responded that the Commission should be concerned if organized crime is operating your company from the back room, but why should your prices be a concern of the Commission.
Mr. Franke replied that it is the natural drive of a business person to do everything possible, within the limits, to compete and succeed. If there are no limits, who knows what happens. Mr. Franke said he did not like what happened before there were limits, and pointed out that if the rule was removed, someone would come forward in a few years and petition for another rule on pricing. When that happens, NAFTM will be there to support that rule.

Commissioner Ellis said Mr. Franke and his organization were very helpful in providing a legal analysis by Mark Jacobson, from Lindquist and Vennum, concerning the legal and anti-trust implications with repealing these rules. Commissioner Ellis questioned how far the

analysis was carried by Mr. Jacobson, who emphasized that manufacturers and distributors could be subject to anti-trust litigation for exchanging price or credit information if these rules were to be repealed. Commissioner Ellis commented that there is nothing in the existing rules that would allow manufacturers anti-trust immunity for exchanging price information among themselves. The price information must be filed with the Commission, who retains that information as proprietary and confidential. Commissioner Ellis asked Mr. Franke if he thought it operated differently and that the existing rules would provide immunity for exchanges of price information between manufacturers. Under existing rules, manufacturers are required to notify the Commission and other manufacturers when a distributor is in default under the trade credit. Mr. Jacobson referenced in his letter the immunity that is provided for exchanges of information about credit terms. Commissioner Ellis did not think current rules allow manufacturers to provide the actual credit terms being used with their distributors, as opposed to simply the fact of a default. Commissioner Ellis requested clarification, possibly at the next meeting, on how the immunity works and if it is being done differently than Commissioner Ellis thought. **Mr. Franke** said he would contact Commissioner Ellis to find out specifically what information he wanted and provide a response at the next meeting.

Monty Harmon, Harmon Consulting, reported that he was a former Gambling Commission agent and verified that testing on credit pricing is a complicated and time-consuming process. Mr. Harmon stated that pricing information on file with the Commission is actually available through public disclosure. Mr. Harmon testified that he was in support of this particular rule change.

Gary Murray, Recreational Gaming Association (RGA) testified that the RGA supports the intentions of all these rules. The free market society provides the ability to run a business like a business should be run. Mr. Murray commented that it wasn't the Gambling Commission's job to protect a business from going into debt, if that is part of their business plan, or to save them from their bad business practices. Buying something on 30-day net is standard business practice. Having different offerings of the same product from different distributors and knowing that business owners were going to get the best deal for their business is sound business practice. Competition creates a healthy industry. Mr. Murray addressed WAC 230-12-340, stating it was his understanding that the credit restriction was going to be an eliminated, but that restriction is still in the rule. Next, under capital leases the word "licensed" was eliminated. Was the Commission's intent to get involved in regulating the leases for non-gambling equipment or non-licensed manufacturers who provide equipment? Mr. Murray thought the Commission was only interested in licensed manufacturers that are providing licensed gaming equipment to licensed operators and urged the Commission to look at the logic behind eliminating the word "licensed."

Dan McCoy, McCoy's Distributing, reported that McCoy's Distributing is a mid-size company that distributes pull-tabs and bingo supplies in Eastern Washington. Mr. McCoy voiced his opposition to the proposed repeal of the pricing and credit rules. He referenced two letters he had written describing the benefits and importance of these rules to the health and well being of the pull-tab industry and the chaos that could ensue in the pull-tab industry

if these rules are repealed. Mr. McCoy said that the Commission is not being asked to regulate or collect debt, just to leave the credit rules as they are. As required, when distributors are out of compliance, the manufacturers communicate with each other. It is in their best interest to do so, and they will continue so long as the rules in place. Mr. McCoy quoted from the response letter he received from staff: "It is unclear to say that the current market would become unstable if we withdraw the rules." Mr. McCoy expressed his concern about the potential of repeating the past. Mr. McCoy commented that the percentage of the industry focused on pull-tab sales has declined 35 percent. It is an undeniable fact that increased competition for the gaming dollar has caused a decrease in pull-tab sales. Equally undeniable is the fact that the top agency revenue source is generated by pull-tabs. Which for 2005 was nearly double that of card rooms. Dedicating 1/3 to 1/2 of an FTE to manufacturers and distributors of pull-tabs, does not seem excessive. Mr. McCoy asserted that changing the pricing rules would force small businesses out of business, and pointed out that the only two voices for distributors speaking in favor of de-regulation were two of the largest four distributors in this state. It is only these four distributors, out of the twenty, that are likely to benefit from de-regulation at the expense of smaller distributors. Mr. McCoy reminded the Commission of their discussion on the health of the industry as it relates to anticipated revenue for the Commission budget. It is important for everyone to be working in a healthy industry. These pricing and credit rules have been critical in creating and maintaining a healthy pull-tab industry in Washington State. Regardless of what is happening in other states, this system is working exceptionally well in Washington. It is truly remarkable that we have such an orderly, problem free manufacturing and distribution network at a cost of only 1/3 to 1/2 of an FTE. Mr. McCoy urged the Commission to reject the proposal to repeal these rules.

Walt Antoncich, Tri-Focus Enterprises, has held a distributors license since 1988. Mr. Antoncich testified in opposition to the change in these rules. He commented that there is no comparison between the gambling industry and other industries in the state. Mr. Antoncich stated that competition in this industry is very important because of the tax dollars generated by pull-tabs. He argued that dollar-for-dollar, pull-tabs equal or exceed any tax dollars generated for this state. Mr. Antoncich agreed with Deputy Director Mr. Nunamaker's figures showing two of the manufacturers controlling 66 percent of the market at present and four distributors at 65 percent. Mr. Antoncich felt that if this proposal is passed, there would be two manufacturers in the 90 percent range and four distributors in the 90% range. Operators have no control over the cost of their product, so when the cost goes up, there will be a decrease in licensees, which will cause a decrease in gambling tax to local municipalities and a decrease in sales and B&O taxes to the states, in addition to loss of jobs. Mr. Antoncich argued that even today there are different credit limits existing for different distributors. Mr. Antoncich referred to a statement made by Mr. McCoy that two distributor licensees testified that deregulation would help them, but what was not said was that nine other distributor licensees wrote or endorsed letters against deregulation. What could happen if this rule is removed is an increased cost to the operators, fewer licensees, less tax dollars, and possible collusion and manipulation that do not now exist. Mr. Antoncich stated that his speculations are based on fact, on history of other states, and on his 20-years of experience in

this industry. He did not think all the ramifications were thoroughly considered by the staff of the Gambling Commission.

Commissioner Ellis asked Mr. Antoncich if his comments were about the increased competition in the pull-tab industry or the overall gambling industry. **Mr. Antoncich** responded his comments were directed strictly to pull-tabs and punchboards. Commissioner Ellis asked whether Mr. Antoncich thought a manufacture and a distributor of all pull-tabs and all punchboards would have their ability to increase prices at the consumer level be constrained by the availability of consumers to go to a casino and have access to pull-tabs and punchboards. Commissioner Ellis thought Mr. Antoncich's focus was rather limited as to what constitutes the industry? Mr. Antoncich agreed that he was testifying for the pricing from manufacturer, distributor, and the free market pricing in pull-tabs and punchboards. He added that the pull-tab and punchboard business is the most recreational form of gambling and that it helps support many small businesses, like taverns, lounges, restaurants, and bowling alleys. The customers in their business that play $5 or $10 a day are usually not going to leave if that business loses that industry, that business just loses that particular sale. Commissioner Ellis wondered at what point, if the industry raised the cost of a pull-tab or a punchboard chance to $10 or $15, the consumer investing $5 in pull-tabs or punchboards would decide it would be more fun to spend the money at a tribal casino or card room. Mr. Antoncich responded that the operators of the pull-tabs would be the ones that would give it up, not the players. He asked Commissioner Ellis if he was familiar with the tax structure of the gambling tax this year on pull-tabs? Commissioner Ellis replied that he was familiar with the revenue figures alluded to earlier between pull-tabs and punchboards vs. card rooms. Mr. Antoncich explained that a 5 percent tax on pull-tab gross ends up being closer to a 20 percent tax for the operator because of the definition of gross receipts. It's an arbitrary definition and the margins for the operators are pretty small. They are not making the money reflected by the figures. Commissioner Ellis commented it was another reason the monopolistic manufacturers and distributors were going to be limited on increasing prices to the consumer. They are not only going to potentially lose the consumer, but they may also lose the operator. By raising prices, they would be cutting their own throats, which is a part of our free-market economy and how we ensure the prices remain competitive at the consumer level.

Chair Ludwig called a recess at 11:25 a.m. and reconvened the public meeting at 11:35 a.m. Commissioner Niemi stepped out during the break.

Lane Gourley, Arrow International, representing one of the two large manufacturers that Mr. Antoncich referred to. The Commission should understand that both of those manufacturers have locations in Washington State and provide more variety than any of the other manufacturers. Mr. Gourley addressed the opportunity for the four large distributors to buy at volume pricing or volume discounts, which current rules allow so long as they are on one invoice and paid with one check. He also explained that some smaller distributors are able to buy their product at less cost from another distributor as opposed to the manufacturer because they can pick one game at a time off the shelf and make the delivery. Those smaller

distributors are typically paying 5 to 10 percent more than if they bought the full case from a manufacturer.

15. **Credit and Pricing Restrictions:**
WAC 230-12-330, WAC 230-12-340, WAC 230-12-345, WAC 230-12-350, and **WAC 230-12-320**
Deputy Director Nunamaker reported that these rules are up for discussion. WACs 230-12-330, 12-345 and 12-320 are for repeal and WACs 230-12-340 and 12-350 are to be amended. Deputy Director Nunamaker pointed out that there had been much discussion on these rules and they would be on the agenda again next month and would have an answer to the question raised about public disclosure of pricing information. Deputy Director Nunamaker explained that the .5 FTE included only the duties of the coordinator's position and did not include the time spent by the agency's special agents in checking the manufacturer and distributor price lists and the comparisons. There is considerably more time involved than the .5 FTE. Deputy Director Nunamaker explained that the portion of the rule prohibiting division of territories remains on the books. The rules being revised in this package primarily involve the terms of sales between manufacturers and distributors. **Chair Ludwig** asked about the suggestion Mr. McCoy had made regarding the coordinator position and a simpler way to get information to the involved agency's field agents involved. **Deputy Director Nunamaker** explained that when information is submitted, staff have to do more than just file it. So, even if the mechanics of how the agent receives the information is simplified, the work still needs to be done, like verifying the information is accurate, checking price lists, and the condition of sales. Some distributors have multiple price lists and different conditions of sale, which have different prices. .

Lane Gourley, Arrow International, asked which marketing level was under discussion, between manufacturer and distributor or between the distributor and the operator. **Deputy Director Nunamaker** replied that the rule covers both. Mr. Gourley said if the rule covers both then how the rule is written needs to be looked at. Most of the people testifying are arguing that this is going to cause upheaval in the industry, which it will. Mr. Gourley was not sure how staff decided these revisions would not cause any change or instability in the industry because there will be major changes from the manufacturer/distributor side. Mr. Gourley suggested staff take another look at the issues between the operator and the distributor and how those rules can be made more efficient. He felt the issues need to be divided and added that it would probably address some of the concerns of the card room and recreational clubs. Mr. Gourley reported that Arrow International has not had a price increase in the nine years he has been there. They have had to do things more efficiently, have discounted their products, and created more games than ever before. Mr. Gourley explained that the assumption that the rules protect the manufacturers from distributor debts is misplaced. If distributors cannot pay their bill to the manufacturer, they are not going to do it, and the current rule does not stop that. What the rule does is keep the honest distributor and the competitive nature of the industry in place. Mr. Gourley took exception to the opinion that this was just a minor change, and he hoped that with all the testimony heard, the Commission understood that this is a big deal that requires more thought and another look at the approach being taken.

Gary Murray, Recreation Gaming Association, stated that WAC 230-12-230 allows credit for distributors and manufacturers but now excludes the operators from being allowed to pay on credit. The licensed gaming operators are not afforded the same conditions as licensed manufacturers, distributors, or charities. It is only the commercial operators that have been left out of being allowed to buy their licensed gaming equipment on credit.

Chair Ludwig closed the public testimony, adding that this will be on the agenda again next month for testimony and final action

Excerpt from September 2005 Commission Meeting Minutes

11. **Credit and Pricing Restrictions:**
WAC 230-12-330, WAC 230-12-340, WAC 230-12-345, WAC 230-12-350, and **WAC 230-12-320:**
Deputy Director Nunamaker reported that Item 11 contains a series of five rules involving credit and pricing restrictions, and they are all up for final action. He noted at the August Commission meeting there were three questions that were asked of the staff. The first question was whether the price lists filed by manufacturers and distributors were subject to the Public Disclosure Act. Mr. Nunamaker affirmed the lists are subject to public disclosure. The second question related to the Model State Charitable Gaming Act. Mr. Nunamaker explained the Model State Charitable Gaming Act was written by a subcommittee of the National Council of Legislators from Gaming States. The drafting began in 1997, and took approximately a year and a half. In Section 8, the Act suggests that manufacturers report delinquent accounts to the "department" after 60-days, while distributors should report after 30-days. Nothing in the Act calls for any further action such as stopping sales to delinquent account holders. The third question was raised by a licensee who asked why the Commission did not address the issue of credit between distributors and operators in the amendment to the current rule. **Mr. Nunamaker** explained the rule amendments and repeals were suggested to allow for a reduction in staff workload as a result of the budget reduction package. Distributor to operator credit has been prohibited since inception of regulated gambling in Washington, and staff saw no budgetary impact in changing the rule.

Commissioner Ellis referenced the Model State Charitable Act and questioned whether there was anything in the Act that addressed how firms may price their products. **Mr. Nunamaker** responded that it does not address that issue at all.

Mr. Nunamaker addressed WAC 230-12-330, noting the rule currently requires providing services and products to all licensees without discrimination, and that they shall be offered for the same price and terms. The current rule contains a number of exceptions including marketing level, short term price reductions (such as sales), delivery location differences, discounts based on transaction size and payment methods, and minimum purchasing requirements. The staff is recommending repeal of this rule.

WAC 230-12-340 currently requires that gambling equipment must be purchased on a cash basis. The current rule contains a number of exceptions from manufacturer or distributor sales. They may utilize trade accounts for Bingo cards and supplies provided payment is made no later than 30-days. The amended rule would allow operators to use credit cards to make purchases and it removes provisions for manufacturers reporting of delinquent distributor accounts. It also allows a rental of non-consumable gambling equipment to licensed operators. Staff is recommending adoption.

WAC 230-12-345 is a repealer. Sections of this rule have been moved to WAC230-12-340 where the principal issues are covered. One item that was not included in the prior rule was

the provision for notification to the Commission should lease or rental payments become delinquent, and subsequent action by the Commission to commence administrative action based on receipt of credit. The agency will no longer be involved in the collection of lease or rental payments. Staff is recommending repeal of this rule.

Mr. Nunamaker advised that WAC 230-12-320 currently prohibits gifts, free merchandise, service credit, or rebates by manufacturers and distributors. It prohibits the solicitation of gifts by operators. It provides a number of exceptions such as: promotional merchandise with nominal value, promotional merchandise to distributors, and nominal value to operators that are $15 in value. It provides exceptions for promotional merchandise to distributors of $25 per item and $1,000 cumulative to distributor employees, and it provides exceptions for entertainment of distributors to a collective value of $1,000. There are exceptions for trips to manufacturer facilities and exceptions for loaning equipment for displaying and training purposes. The repeal removes the current restrictions. Staff is recommending repeal of the rule.

WAC 230-12-350 stipulates how checks will be used to purchase gambling equipment services, and how these checks are handled to make sure that they are not utilized in a way of unauthorized credit. The amendment would allow the use of credit cards as a use of payment and keeps the Commission from handling dishonored checks. Staff is recommending adoption of WAC 230-12-350. **Chair Ludwig** called for public comments.

Dan McCoy, McCoy's Distributing, again voiced his opposition to the proposed repeal of the pricing and credit rules. His opposition to the proposal has been documented in letters and testimony over the last several months. He noted he has spoken about the 32-year history while the five rules have been in place and the impressive results the credit policy had in stabilizing an "out of control" industry. He also spoke about the importance of the pull-tab industry being the biggest revenue source to the Commission budget. The pull-tab industry has also offered overwhelming opposition to the proposed rule change.

Mr. McCoy acknowledged there has been some support for this proposal for budgetary and philosophical reasons. With regard to the staff's budgetary concerns, he noted a solution has been presented which effectively takes Commission staff out of any involvement and dissemination of the price list and the sales notices. That solution involves manufacturers and distributors being responsible for the promotion of their own price lists and sales notices on the Commission web-site. Field agents would then able to independently access the information as needed. With regard to the amount of time agents dedicate to the auditing of manufacturers and distributors, Mr. McCoy explained that when the casino industry became a huge and necessary focus of time for staff several years ago, the amount of time dedicated to the auditing of the pull-tab industry correspondingly diminished. He agreed that random and occasional spot checks are all that is needed. He affirmed the industry has become accustomed to living with the rules, self regulating, and voluntarily complying; however, he emphasized it will only work as long as the rules are in place.

With regard to the philosophical reasons for repealing these rules and why the prices should be a concern to the Commission, **Mr. McCoy** believed the answer related to the fact that the Commission made it their concern 32 years ago when the rules were created. He noted licensees that have been involved in the industry for 32 years have made investments and business decisions based on these rules. McCoy's Distributing was one of the first companies granted a license in 1973 and they have made the business decision to remain a regional mid-sized company based on the fact that the rules package made for a level playing field for big and small companies. Mr. McCoy emphasized his opinion that it would be highly inappropriate and very unfair to make such an industry changing rule given the successful history with the rules and the opposition which has stated the rules have created, not hindered, a highly competitive industry. He noted that Washington State is reported to have the lowest price per game of any state in the country; a direct result of the competitive nature of the industry. Mr. McCoy believed if the budgetary concerns could be solved effectively and the rules kept intact with a practical solution for all, the Commission shouldn't be opposed to maintaining a set of rules that have had a beneficial impact on the industry.

Responding to the casino industry support of the proposed repeal of the pricing and credit rules, **Mr. McCoy** offered an alternative resolution. He reported the original rules of 1973 and in 1997 were written specifically for the pull-tab and bingo industry. The mini casino industry was not yet established. While the rules have served the distributors and manufacturers with exceptional results, he acknowledged they have caused the casino industry to be burdened with rules that don't work well for them. **Mr. McCoy** proposed that staff add language at the start of the pricing and credit WACs (230-12-320, 330, 340, 345 and 350) to make the rules punch board/pull-tab and bingo specific. The pull-tab industry would be able to keep the much-desired rules in place, and the casino industry would be free to do business in a way more applicable to their needs. The proposal would also free Commission staff from collecting and maintaining price lists and sales notices, and would significantly reduce the time spent auditing manufacturers and distributors. Mr. McCoy respectfully asked the Commission to reject the proposed rules package repeal and to request that Commission staff hold industry meetings to pursue the recommendations presented as well as other possibilities.

Chair Ludwig asked Mr. McCoy when he addressed "casinos" whether he was referring to card rooms or tribal casinos. **Mr. McCoy** responded strictly the mini-casinos/card rooms. Chair Ludwig inquired if Mr. McCoy's suggestion was to reject the proposal and wait for some other proposal. Mr. McCoy affirmed.

Commissioner Ellis asked Mr. McCoy if he has discussed his proposal to retain the rules as being applied strictly to the pull-tab, punchboard, and bingo industry with Commission staff. **Mr. McCoy** advised he was new to the process; he wrote letters, attended the meetings, and provided testimony when he became aware of the proposal and the potential impacts to the industry. Mr. McCoy explained that he formulated his proposal within the last ten days and therefore hasn't discussed the proposal with Commission staff. Commissioner Ellis said he

appreciated Mr. McCoy's efforts in gathering the historical background material and information regarding the rules and the insights relating to the effect of the proposed changes.

Commissioner Parker asked staff to comment on Mr. McCoy's proposal. **Deputy Director Nunamaker** didn't believe it would be as simple of a fix as presented. The rules apply across the board for manufacturers and distributors; they are not only for pull-tabs. He suggested that segregating the rule to only make it applicable to pull-tabs would eliminate the regulation—then there would have to be new rules to regulate the rest of the industry. While the process would be more complicated than suggested, he affirmed it certainly was a direction that could be pursued if desired.

Director Day noted the basic question raised in this process hasn't been answered; whether the rules that are subject for amendment and repeal fit in with what the Commission is responsible to do within its mission and statutory foundation. Staff reached the conclusion it did not and subsequently proposed the rules package identifying the rules that could be eliminated. Director Day clarified this particular rule package represents five rules that either are being amended or reduced fairly significantly—the five rules require enforcement by this agency from agents, all the way through the specific designated half time position that was previously addressed. **Director Day** cautioned against focusing on just the half-time position. He recalled the budget decisions necessary required the Commission to reduce over 20 positions. In that process, staff identified the exact mission of this agency and tried to balance the budget/staff reductions against eliminating tasks and holding the line on fee increases. The budget reduction decisions resulted in a conservative budget based on a concept of eliminating tasks in the rules that may not be directly connected to the statutory responsibility of the Commission.

Chair Ludwig inquired how many staff members were involved just in credit and pricing responsibilities. **Director Day** identified a coordinator that spent half her time specifically on that issue. However, he emphasized that each one of these rules is enforced by Commission agents; therefore that responsibility is spread throughout the entire agent staff. He noted the Commission has not increased agent staff—agent staffing has been reduced under the concept of trying to hold the line on some of these activities. Every rule adds another duty, and the question remains whether these rules are something the Commission wants the agents to enforce.

Dan McCoy rebutted Mr. Nunamaker's comments suggesting a rewrite of additional rules for the casino industry. He commented that staff is proposing repealing three-fifths of the rules as it is—leaving the casino industry without a guideline anyway. He again suggested that by leaving the pull-tab industry as is and specifying specifically that the rules apply to the punch-board/pull-tab bingo industry only wouldn't affect what the future would have been for the casino industry. In response to the time spent in the field enforcing the rules pertaining to punchboards, pull-tabs, and bingo, Mr. McCoy reiterated that it is significantly less than it ever was—Commission staff have been doing this a long time, they know what they are looking for, they know the random aspects regarding audits, and they are very

efficient. He emphasized that agents do not need to spend great amounts of time enforcing what he considered to be extremely effective rules that have served the industry well.

Mary Magnuson representing the National Association of Fund Raising Ticket Manufacturers (NAFTM) affirmed she also provided letters over the course of the last couple of years. She thanked the Commission for their thoughtful and careful consideration on this issue. She noted that NAFTM is most concerned about two particular rules—they do not oppose the amendment to allow operators to purchase products via credit card, and they don't oppose the Recreational Gaming Association's desire to see the rules not apply to them. Ms. Magnuson agreed that if the rules simply were applied to manufacturers of pull-tab and bingo paper (which they were designed to apply to initially), that would be fine. In an April 2005 letter, Ms. Magnuson advised she attached some proposed amendments. Those amendments were written in such a way that the rules would have only applied to manufacturers of consumable gambling products—the producers of bingo paper and pull-tabs. Ms. Magnuson noted that during the May Study Session, a conversation was held about whether there may be a difference between consumable and fixed products, and whether or not it may make sense to apply these rules to consumables rather than fixed products. She explained that when there is a fixed product such as tables and chairs and things like that, if somebody is in default in payment, that product can be recovered—or at least a portion of what one may be entitled to—that would not be the case in consumables because the product is typically gone. Ms. Magnuson suggested one option might be to simply apply these rules to the consumable product vs. the fixed product, or possibly apply them simply to pull-tab and bingo manufacturers, which again would be the people the rules were designed to apply to in the first instance.

With respect to the staff time, **Ms. Magnuson** advised that NAFTM is very open and always has been very open to work with the staff to try to figure out how the rules might be able to stay in place with a very minimal impact on the staff. NATFM continues to be willing to sit down and try to work something out. Ms. Magnuson said she understood that the Commission has budgetary concerns. She acknowledged every state has issues with budgetary concerns and everyone is grappling with fewer dollars to do more work. She pledged that NAFTM would do whatever they could to accommodate those concerns and she hoped to minimize the staff's concerns while at the same time keeping the rules in place.

Ms. Magnuson agreed the philosophical issues were more difficult. She stated it is the Commission's business to control or at least regulate and oversee prices and credit. As previously stated, some of these rules have been in effect for 32-years and people have built their businesses on the existing playing field. There has been control over who licensees may sell their product to, how they may sell that product, and the price at which the product may be sold. The credit rule has only been in existence for approximately 10-years, but it was designed to deal with some very serious problems. She explained the scenario of a $5.1 million debt—distributors who were not able and never could have paid that debt had the Commission not intervened and allowed for the opportunity to convert that debt into promissory notes and pay over a period of time. NAFTM believes these rules make good sense from a regulatory perspective and that they should be continued to be part of the

Commission's regulatory activity to retain the stable competitive environment that exists. She emphasized the rules have created a regulated competition; but a good and fair competition for large distributors, small distributors, large manufacturers, and small manufacturers. They have a very competitive but a very level playfield in which to operate.

Ms. Magnuson believed that by repealing the rules, it would create unfettered competition—competition that wouldn't be an equal playing field for the large and small companies to co-exist. She believed there will be some significant changes in the market if these rules are repealed and noted that some people think it's a good idea that will bring about good changes. Most people think it would be bad—the small distributors and small manufacturers would be disproportionately affected. There would be some who would exist and would gain in business because they have the financial where-with-all to offer large pricing discounts, kick-backs, rebates, and other incentives to certain people who are capable of buying the product. Ms. Magnuson stressed that it will be a big change, it is a big deal, and a very significant decision. She believed some industries such as liquor, utilities, and gambling, are better suited to regulation and a more controlled environment. Historically they have always been more regulated.

Ms. Magnuson commented that this industry has done very well. It is not as robust as it used to be from the pull-tab and bingo perspective. There is a lot of competition and people are trying very hard to keep their businesses intact. She suggested the repeal of these rules will be a major change in the way that business is conducted in Washington, and probably not for the best—there are going to be some people who will have to close their doors because they won't be able to compete in the market place.

Gary Murrey on behalf of the Recreational Gaming Association pointed that in WAC 230-12-340, the operator or the end user, is not included in the repeal of the credit opportunities that exist between manufacturers and distributors. He questioned if there was a statutory responsibility to regulate whether or not credit may be used between manufacturers and distributors, why there is one between an operator and not the other levels. Regarding staff time, he commented that additional staff time is needed to ensure that bills are paid on time, that invoices are paid immediately, and that the credit isn't being extended. He inquired if the credit elimination was approved, why it wouldn't be eliminated for the industry rather than only the manufacturers and distributors. **Mr. Nunamaker** acknowledged that Mr. Murrey had raised this issue before, and frankly, the staff just didn't consider it—and affirmed it is something that could be considered. He noted that credit has never been allowed on this level and the Commission has had very few problems. Because there wouldn't be a lot of savings in manpower by changing the rule, it was simply put off the table and never considered for its own merits.

Commissioner Parker inquired if this is a policy consideration that staff is now aware of and giving fuller consideration. **Mr. Nunamaker** responded that staff has not discussed the matter further. He indicated that he was aware there may be a petition submitted to the Commission requesting a change to the rule—or that it may be something staff could discuss with the licensees and it might be handled at the time staff addresses the rules within the rules

simplification process. Commissioner Parker commented that since the rules were up for final action, wouldn't it suggest holding off on that particular piece of the package. **Director Day** clarified that the package of rules are primarily directed to the manufacturers and their general relationships. The question is whether the Commission should go further than that and eliminate credit restrictions at the operator level. Director Day believed that staff was prepared to recommend that may be the next logical step; however, because it is a larger issue, the staff would want to address it at a later time. He affirmed there are two separate issues—credit vs. operators and essentially wholesale manufacturers.

Mr. Murrey affirmed that the distributor cannot deal credit to the licensee. As an example he explained that he could not buy anything from a distributor on credit as the rule is proposed; however, that distributor may buy on credit from the manufacturer, and he must sell it on a cash basis. He questioned why the distributor (in the middle in this example) is allowed to buy on credit but has to sell on cash—and why they can't extend that credit basis to the operator/end user that is really using the item. He suggested the middleman gets all the benefit. **Mr. Nunamaker** replied that WAC 230-12-340 currently allows operators to use credit cards to purchase items—that would be recognized as making a cash purchase.

Mr. McCoy responded to Mr. Murrey's concern about the lack of credit being offered to the operator level, and reiterated that his proposal solved this issue for the casino industry. He went on to say that separating the industry from the casino industry is reasonable when it comes to Mr. Murrey's concerns. The end user of pull-tabs actually consumes the product, it can no longer be repossessed—it has been opened and it is a dead product. Mr. McCoy affirmed the casino industry has hard goods; therefore, adopting the proposal he presented makes sense for Mr. Murrey's concerns. Credit being offered to the operators of pull-tabs allows for the product to be consumed and not retrievable

Mr. Ackerman commented that the Commission was about to consider a number of policy arguments from the industry and from staff. He affirmed the Commission is well informed with regard to the policy on the issues the presenters have raised; however, he felt obliged to remind the Commission that to the extent the Commission makes policy decisions, the Commission must do so within their legal authority. The Commission exists to effectively regulate gambling—that is the authority for the Commission's ability to promulgate rules. Mr. Ackerman advised he was not involved in 1993 or 1997 when the rules came into effect. However, he has considered them to be within the Commission's rulemaking authority because when the rules were enacted, they were deemed to be necessary to the regulation of gambling. Mr. Ackerman commented that the Commission is not the Federal Trade Commission, it is not the Utilities and Transportation Commission, and it doesn't exist to control monopolies or to do anti-trust work. The Commission exists by statute to make sure that gambling is honest and legal. It does not exist to level playing fields or to control commercial competition. Mr. Ackerman suggested that if the Commission can no longer identify a regulatory purpose for these rules, then these rules no longer fit within the Commission's statutory authority. On the other hand, if they are deemed to be necessary and right for the effective regulation of gambling, then he continued to believe that they were within the Commission's authority.

Commissioner Parker concurred that Mr. Ackerman's comments were very much on point. He advised he wasn't entirely comfortable about whether or not there is an unforeseen consequence to withdrawing a regulatory system that might have some impact on the public beyond that which the Commission can identify at this point and time. Commissioner Parker also expressed concern regarding an appearance that the Commission was "backing into" this issue—the Commission was forced to do some budget cutting—and management came up with a good proposal to cut the budget. He questioned if the Commission would be making a policy change as a consequence of budget cutting that really is a different issue than budget cutting issues. He believed the policy that is on the table is questionable as to the proper roll of the Commission given the environment of the 21st Century. Commissioner Parker advised that he was comfortable with the proposal to put the rules into place because he agreed with the interpretation of the Commission's role and the policy that was attempting to be achieved. He explained that he was not particularly comfortable with how the Commission got here in the first place. Commissioner Parker advised he would be prepared to vote in favor of the rules package because of the policy issue and that he would like to keep that as a separate issue from the budget issue. He acknowledged the arguments made on behalf of the proponents not to adopt this rule change; however, the argument that he was persuaded by was that this was an appropriate way to refine the role of the Commission given the environment the Commission is currently operating in, and, he was in favor of these changes.

Commissioner Ellis agreed with much of what Commissioner Parker said and he indicated that he could understand Commissioner Parker's concern. Commissioner Ellis suggested the tail might be wagging the dog in the sense of the regulatory issues and the issues concerning the appropriate role of the Commission, the associated legal issues that Mr. Ackerman outlined, as well as the long run to cure the Commission's budget issue. He acknowledged that the Commission was having to cut back (as are other state agencies), and therefore identified some areas that do not appear to be crucial to the central mission. **Commissioner Ellis** didn't think the enforcing of the credit or the pricing rules was crucial to the Commission's performance. He advised that he has not been able to identify any way in which they directly or indirectly further the Commission's important business of keeping organized crime out of gambling and protecting the public from fraudulent gambling practices; therefore, these cuts were certainly easier than most.

Commissioner Ellis expressed concern after listening to Mr. McCoy and other speakers about the potential impact on small business; however, he felt that would lead to the question of why small businesses in this industry need price and credit regulation by a government agency in order to avoid being forced out of business. He explained this country relies on free enterprise and free economic systems, and normally small businesses come before the Legislature or an agency to complain about the impact of regulatory rules that are being imposed on them by government—rather than asking government to retain the rule. Commissioner Ellis affirmed it was unusual that the roles were reversed in this case. While concerns have been expressed that perhaps consumers could be impacted by the repeal of these rules in the form of higher prices from a concentration in the industry; he suggested that economically speaking, the quick answer to that scenario is that if concentration develops and

if prices are raised to non-competitive levels, then absent any entry barriers, new firms will enter the market and take advantage of the unreasonably high prices—and that shouldn't be a long term problem. He affirmed that he understood the legal issues raised by Mr. Ackerman; but, preferred to not proceed on that basis and not to spend a lot of time examining whether the Commission has the authority to maintain these rules. Commissioner Ellis believed the underlying policy considerations were paramount; that it is difficult to justify the different types of restrictions on a firm's ability to set their own prices and make their own decisions as to credit. He didn't believe that a real showing had been made to continue that kind of restrictive business environment. Therefore, based on the policy question and not the question of the agency's authority, he advised he would vote in favor of the proposals as made by staff.

Commissioner Niemi questioned whether the Commission should look at the economics in relation to the staff cutbacks. She believed a good argument was made that if the Commission was trying to save a half an FTE, this probably wasn't the correct way to go. She emphasized that if the Commission experiences staff problems that interfere with the Commission's regulation of gambling, something besides cutting things that are important will need to be done—and, if this is an important issue, it is worth doing something about. Commissioner Niemi expressed concern that in the future this issue might have some effect on gambling which directly related to the Commission's prime mission. She advised she would also vote in favor of this package.

Commissioner Ellis made a motion seconded by **Commissioner Niemi** to adopt an order repealing WAC 230-12-330, WAC 230-12-345, WAC 230-12-320, and amending WAC 230-12-340, and WAC 230-12-350, in the form recommended by staff, to be affective 31-days after adoption. *Vote taken; the motion passed with four aye votes; Chair Ludwig voted nay.*

Excerpt from March 2006 Commission Meeting Minutes

11. <u>Petition for Rule Change – Magic Distributing, Inc. - Discriminatory Pricing Restrictions:</u> WAC 230-12-330:

Mr. Nunamaker reported this petition was filed by Magic Distributing Inc. They have requested that the restrictions formerly found in WAC 230-12-330 which were repealed in October 2005, be reinstated. The petitioner believes that gambling equipment and related products should be available to all licensees without discrimination. Discriminatory pricing restrictions were repealed effective October 10, 2005, which opened the market and allowed manufacturers and distributors to sell their products for different prices to different customers. The agency is no longer involved in how companies price their products. Staff no longer conducts discriminatory price checks; however, the restoration of this rule would reinstate the agency's role in pricing schedules for manufacturers and distributors. Before pricing and credit restrictions were repealed in October 2005, staff spent at least an equivalent of a halftime FTE enforcing the regulations. Approximately that equivalent would again be required to monitor these restrictions if reinstated. Staff recommends denial of the petition for the reasons set forth in the September 2005 Commission Meeting Minutes, which were the basis for the repeal of the rules in the first place.

Commissioner Parker commented that the Commission settled this issue after quite a bit of discussion. He suggested that if the Commission wanted to reconsider the rule, that would normally only be done if there was some significant new development or change. He inquired if there were any. **Mr. Nunamaker** responded that he was not aware of any. **Mr. Ackerman** commented that he understood Commissioner Parker's comment; however, for APA purposes the petition has been filed and presented to the Commission for possible filing. He advised that it has to be treated as if it has never happened before in terms of the action the Commission must take; whether or not to file the petition, and to state the reasons which may be exactly as articulated—that the Commission sees no reason to revisit the matter. **Chair Ludwig** called for public comments on the proposed petition.

Eleanor Coffey form Magic Distributing, Inc. thanked the Commission for reviewing the petition. She reported that since the rule was repealed in October, she has had a hard time getting products from any of the manufacturers. She affirmed that she was aware that several of the larger distributors asked for the rule to be repealed. Ms. Coffey shared her belief that that it is the job of the Washington State Gambling Commission to regulate pull-tabs. With the current environment of the restrictions being repealed, she felt it created an unfair and uneven market. She believed it conflicted with many federal and state laws such as the Sherman Act, the Clayton Act, general rules of reason, anti-trust laws, illegal practices, and boycotts. Ms. Coffey affirmed that Mary Magnusson, Dan McCoy, and Walt Antoncich did an excellent job in June 2005 when they asked the Commission not to repeal the restrictions; but, it was done, which has resulted in allowing the large distributors and manufacturers to cut off the smaller distributors. **Chair Ludwig** asked if Ms. Coffey had any examples of specific distributors. Ms. Coffey responded that she had been advised by her customers that other distributors contacted them and told them that as of November 2005, the smaller distributors would be cut off and no longer around. She noted this occurred before the rule was even put into effect—as a way of getting rid of the smaller distributors. Specifically, Ms. Coffey reported that a representative from Wild Distributing told customers that Magic Distributing

would no longer be around as of November 1 and their customers should buy from Wild Distributing since Magic Distributing would not be able to get the product. Since the larger distributors called the manufacturers, they refused to sell to several smaller distributors. She reported that a total of five manufacturers would not sell to her.

Chair Ludwig noted Ms. Coffey's attorney wrote a letter to one specific manufacturer. **Ms. Coffey** affirmed a letter was written to Trade Products and they responded by stating that due to the Commission repealing the rules, they didn't have to sell to Magic Distributing—and they are not. Chair Ludwig inquired if Ms. Coffey made any effort to file a complaint with the Commission staff about Trade Products and she reiterated that her attorney wrote to the manufacturer.

Commissioner Niemi commented that in her opinion, at least her vote at the meeting last year was based on the fact that this function was not within the Commission's mission. She emphasized that Ms. Coffey had not given her any reason to believe that it is, and she suggested there may be other places Ms. Coffey could go to for relief. Commissioner Niemi expressed her opinion that it is the Commission's mission to make sure that gambling is fair and to make rules dealing with gambling. She said the Commission is not here to regulate the market. **Commissioner Bierbaum** concurred with Commissioner Niemi that the mission of the Commission is to protect the players not necessarily the members of the industry. She had no idea why a manufacturer would not want to sell to someone who has money; and she suspected that there are other agencies that might be able to assist in that endeavor.

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** that the Commission opposes filing the petition for the reasons previously stated; and which also relates to the fact that it is not the mission of the Gambling Commission to regulate the market.

Mr. Ackerman noted the Commission has heard from Commissioner Niemi and Commissioner Bierbaum and that it would be an appropriate time for those who have not spoken to the issue to make a comment so that it may be reflected in the record. The APA requires that if the Commission denies a petition, it must do so in writing (through the minutes that are transcribed), unless the Commission would rather submit something later in writing.

Chair Ludwig reported that he felt the same way he did when he voted against the repeal in October. If the motion is to deny, he advised he would probably vote against that motion for the same reasons. **Commissioner Ellis** stated he would be consistent with what he said when the issue was before the Commission in October. He emphasized that attempting to police relationships between manufacturers, distributors, and retailers is not part of the mission of the Commission. He preferred, rather than addressing that sort of a jurisdictional issue, to simply indicate his feeling that there are other legal remedies available for the petitioner. Accordingly, he felt that it would be inappropriate for the Commission to use its resources and staff in that area and that he would adhere to the same rational in voting to deny the petition.

Commissioner Parker advised that he supported the motion for the reasons he stated earlier. **Chair Ludwig** closed the public testimony. *Vote taken; the motion passed with four aye votes—Chair Ludwig voted nay.*

Excerpt from April 2006 Commission Meeting Minutes

5. **Allowing Credit between Operators and Manufacturers/Distributors**
WAC 230-12-340 and **WAC 230-12-350**

Ms. Hunter reported the proposed rules relate to repealing the credit restrictions between operators and distributors, and manufacturers. At the September meeting, the credit rules that dealt with credit between distributors and manufacturers were repealed. At that time, the Commissioners asked staff to look into the rules that prevent credit between operators and distributors and whether those could be repealed as well. Staff concluded that the rules could be repealed—staff does not have regulatory concerns with allowing this type of credit. Repealing the rules would allow the operators to pay on credit and they would also be able to use credit cards for their purchases.

Ms. Hunter explained the second rule repeal proposal deals with the acceptance of checks and how many days the licensee has to bring them to the bank. She noted if the Commission gets out of the business of being involved in the credit issue, the existing rules are not necessary. The staff checked with four other states as to whether they allow credit. New Mexico didn't have any regulations on this matter, Alaska required payment within 30 days, and Idaho and Oregon requires buying their pull-tabs from the state—in approximately three weeks (after they receive the product) an electronic transfer is executed for payment.

Letters were sent to all of the manufacturers and distributors letting them know about the rule proposal. Staff recommends filing both rules for further discussion. **Chair Ludwig** questioned how these rules related to the rule passed in September. **Ms. Hunter** replied these rules deal with a different person in the chain—it deals with the operators (the restaurant or tavern that has the pull-tab license), and their business relationship with the manufacturer/distributor they are buying their pull-tabs from. It involves different marketing levels. Chair Ludwig asked if it was the same people regarding credit between the manufacturers and distributors. Ms. Hunter explained the difference now is the rule adds the operators; the actual person (restaurant owner or tavern) who is selling the pull-tabs to the playing public. **Director Day** recalled that at the time of the discussions regarding the pricing and credit restrictions the Commissioners repealed, the operators asked staff to look at the similar restrictions between distributors and operators and to determine whether or not those should go forward for the same treatment. Staff has looked at the rules as requested and is now suggesting that these restrictions should be removed as well.

Mr. Ackerman inquired if the repealers were intended to apply to anything other than pull-tabs. He noted the proposed rules appear to talk in very sweeping terms about gambling equipment devices, related supplies, paraphernalia, and services. **Ms. Hunter** affirmed it would apply to all activities, not just pull-tabs. There were no further questions or comments.

Commissioner Ellis made a motion seconded by **Commissioner Bierbaum** that the Commission accept the proposed rule change to be filed for further discussion. **Chair Ludwig** called for public testimony.

Dolores Chiechi, Executive Director for the Recreational Gaming Association (RGA) thanked staff for bringing the rule forward. She commented that since last fall when the rules were discussed and then eventually repealed, the RGA felt it wasn't consistent to allow for credit to be offered to one segment of the industry and not apply those rules across the board for the rest of the industry. Ms. Chiechi affirmed the RGA believes this is a business decision—if a distributor wants to have an operator pay in cash, they still have the opportunity to do that. This rule doesn't require them to do that; however, it allows them to continue to make that business decision. **Ms. Chiechi** reported that the RGA looked forward to further discussion about this rule, and an eventual change of the rule.

With no further discussion; **Chair Ludwig** called for a vote. *Vote taken; the motion passed unanimously.*

Excerpt from June 2006 Commission Meeting Minutes

13. **Allowing Credit Between Manufacturers/Distributors:**
WAC 230-12-340 and **WAC 230-12-350:**
Ms. Hunter advised that Item 13 is a rule to repeal the credit restrictions between operators and distributors. She noted the credit rules between distributors and manufacturers were repealed last fall. At that time, the Commission asked staff to look at whether the rules preventing credit between operators and distributors could be repealed also. Staff has concluded the Commission wouldn't have regulatory concerns about allowing this sort of credit. Currently the operators must pay for products such as pull-tabs in cash—repealing the rules will allow operators to pay on credit. They would be able to follow business practices or they could also use credit cards.

The second rule staff is recommending be repealed deals with checks and how they have to be presented for payment. If credit between the operators is allowed, staff won't need to have all of the detailed requirements about checks and how they have to be accepted. Staff checked with other states as to whether they allow credit or not. New Mexico's regulations don't address this issue, Alaska allows 30 days to pay, and in Idaho and Oregon they are required to buy their pull-tabs from the state and there is an electronic fund transfer that occurs about three weeks after the product is received. Ms. Hunter advised that staff sent letters to all of the manufacturers and distributors letting them know about the rule proposal and haven't heard anything back. Staff recommends filing the rule for further discussion. **Chair Ludwig** called for public comments, there were none, and he noted the item would be scheduled for the July meeting.

Excerpt from July 2006 Commission Meeting Minutes

11. **Allowing Credit between Operators and Manufacturers/Distributors:**
WAC 230-12-340 and WAC 230-12-350:
Ms. Hunter reported the rules package to repeal the credit restrictions between the operators and the distributors/manufacturers are up for final action. The credit rules between distributors and manufacturers were repealed last fall. At that time, the Commission asked the staff to look into whether or not the rules preventing credit between operators and distributors could also be repealed. The staff concluded the regulations could be repealed—staff does not have regulatory concerns with allowing this type of credit. Repealing these rules would allow operators to pay on credit. Item 11 (b) deals with very specific information about how checks have to be presented for payment. If credit is allowed, the restrictions on checks aren't necessary. Staff checked with other states on whether they allow credit: in New Mexico the rules don't address it, in Alaska operators have 30 days to pay, and in Idaho and Oregon, they buy the pull-tabs from the state and are billed through an electronic funds transfer that happens about three weeks after they get the product.

Letters were sent to all of the manufacturers and distributors letting them know of this proposal and the Commission didn't receive any response. Staff recommends final action. **Chair Ellis** called for public comments.

Dolores Chiechi-Recreational Gaming Association (RGA) reiterated their request for an effective date 31-days after filing. She noted that since the other credit purchase rules for manufacturers and distributors has been repealed since last October, the RGA was hopeful this package could become effective sooner than January 1.

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** to repeal WAC 230-12-340 and WAC 230-12-350, to become effective 31-days after filing. *Vote taken; the motion passed with four aye votes.*

Excerpt from January 2007 Commission Meeting Minutes

17. **Petition for Rule Change-Manufacturers Selling Product to Distributors: WAC 230-12-231**

Assistant Director Mark Harris: Chair Ellis, Commissioners. Item number 17 is a petition for rule change by John Lowmon requesting that would require all manufacturers to make their licensed product available to any licensed distributor without prejudice. The petitioner is also requesting that all manufactures be required to accept any cash purchases in the absence of credit terms; and for the Commission to indefinitely revoke the license of any manufacturer, distributor, and their representatives who interfere with this rule. He reported that prior to October 2005; the Commission had rules that required manufacturer/distributors to offer their products and services to all licensees without discrimination. The rules were intended to prevent discriminatory pricing and to prevent market control. After discussion at three Commission meetings, the Commission decided to repeal these rules and the agency is no longer involved with pricing or determining which licensee manufacturers sell to; as long as the distributors they sell to are licensed.
[Commissioner Parker left the meeting at 11:15]

A similar petition was submitted in March of 2006 by Magic Distributing, requesting discriminatory pricing restrictions be reinstated, and that discriminatory pricing restrictions required manufacturers and distributors to offer their products and services to all licensees without discrimination. The Commission denied that petition for the following reasons: regulating business relationships between distributors and manufacturers is generally outside the Commission's mission, and because there are other legal remedies (like antitrust laws) the petitioner could pursue instead of relying on the Commission. Before repealing the credit rules, the Commission carefully considered all the arguments for three months.

Mr. Harris noted that in June of 2006, Special Agents contacted six distributors and two manufacturers to find out how things were going now that the rule had been repealed. Four of the distributors said there was no impact. One said that a manufacturer had reduced the discount and required larger purchases from them; and, one said that one of the manufactures wouldn't sell to them anymore because they were too small. Of the two manufacturers that were contacted one said that there was no impact and the other said things were going okay. The impact of this proposal would require manufacturers to sell their products to distributors regardless of the distributor's business practice, credit problems, or bad debt. In the past, credit restriction rules (which have also been repealed) would have prevented the sale for products on past due accounts. The regulatory concerns—regulating the business practices between manufacturers and distributors are generally outside the scope of the Commission's mission to keep gambling legal and honest. Mr. Harris stated that if the request is adopted, it would add new regulatory requirements that would require the Commission to indefinitely revoke the manufacturer's license if they don't

comply. He noted that prior to the rule being repealed it took approximately half an FTE to enforce the regulations; that half of an FTE would again be required if the rule is reenacted. Licensees that would be directly impacted would be the manufacturers, distributors, and operators.

Mr. Harris advised the Commission has three options for the petition, to file the petition, deny and state reasons, or file an alternative version. Staff recommends denying the petition for the similar reasons discussed with the prior recommendation. Regulating business relationships between distributors and manufacturers is generally outside the Commission's mission; and, there are other legal remedies that licensees could pursue outside Commission rules. The petitioner would request this rule become effective 31-days after filing. **Chair Ellis** called for questions and public comments.

John Lowmon licensed with Magic Distributing advised that he has been in the gambling business for about 20 years. Approximately three months ago, he and five of the seven other people that work for Mr. Ed's Distributing in Bellingham received a phone call on a Monday saying that as of Thursday the business sold, and they were terminating staff by that Friday. Another distributor bought the business and put two of the remaining people in the field. Mr. Lowmon noted that in the 20 years working with his customers he developed quite a few personal relationships—they always relied on him to be the person to bring them their product. When he found out he was no longer employed, he was forced out of distributing because that was the closest distributor servicing Whatcom County, Skagit County, and Point Roberts. He also reported that he called Ed Finnegan, the sales rep at Trade, who advised him their credit department decided they were not going to take on any new distributors in the State of Washington even if they pay cash. He affirmed there are distributors who want products and they are willing pay cash.

Mr. Lowmon stated that his original proposal reads "access to devices, materials, products, equipment or services defined. All manufactures licensed in Washington State shall make their licensed product available to any licensed distributor without prejudice provided that the distributor is current in the agreed upon method of purchasing terms, wherein there is an established credit. However, if the distributor has not previously entered into a credit method and is purchasing C.O.D. or F.O.B. there will be no interference by the manufacturer with respect to inventories and distributors access to the same." When the proposal didn't get anywhere, he reported that he contacted the Attorney General via e-mail and asked them to look into the antitrust matter, and he waited. When he followed up on his request, the Attorney General's Office advised they had no record of it and they suggested he resubmit his proposal and his request to look into the antitrust complaint. Surprisingly, they found it and responded; they said this wasn't an antitrust issue. Mr. Lowmon indicated he resubmitted his request with the WAC regarding the grievance for buying self prohibited (WAC 230-12-230); and asked if his complaint wasn't indeed valid. At

that point, they refered Mr. Lowmon back to the Gambling Commission, which resulted in the request for a new rule.

Addressing the WAC, **Mr. Lowmon** felt the first section of WAC 230-12-230 clearly says "no person shall enter into any agreement expressly or implied with any other person which prohibits any person from purchasing or selling to any person any devices, materials, parts, equipment or services which are used or offered in any way with any gambling activity." Mr. Lowmon emphasized this rule is important because it will protect manufacturers that may not sell to some distributors—perhaps due to some outside influence or for their own reasons. He indicated that some of the manufacturers don't want to lose business from their customers that buy more product volume. Mr. Lowmon stressed the importance for the manufacturers to have a tool that allows them to say, "Hey Mr. Big Distributor, the Gambling Commission says I have to sell to everybody and I don't need your pressure."

Don Harris - H & H Pull-Tab in Yakima advised he was one of the little guys "they" said was too small to sell too—apparently $800,000 worth of product a year was not enough for Trade. He reported that Trade, Paramount, and Douglas will not sell to him for any reason. As a result, he reported he lost over $140,000 by not being able to get his product. His salesmen apparently said that he couldn't talk about the issue, and the sales manager would not return Mr. Harris' calls. He emphasized that even the little guys have to have product. He expressed his belief this was a discriminatory practice. As a former law enforcement officer, it was also his opinion this was racketeering. Don Harris emphasized the Gambling Commission needed to do something about this issue—if not, why have a Commission, and he assured the Commission there will be federal suites initiated that might involve the Commission; because in his view the Commission was allowing the larger companies (Mr. Ed's, Gasperetti's, and ZDI) to break the antitrust laws and the Rico Act. He advised that he argued against repealing the rule in 2005 along with Danny McCoy and Jim Lowmon.

Chair Ellis acknowledged there were a number of pages of material that were submitted to the Commission and distributed in connection with this petition which involved a rather extensive discussion of what was and what was not the Commission's job. The Commission has concluded twice in the recent past that it is not. If in fact there is an agreement between distributors and a manufacturer to refuse to deal with other distributors—that is an antitrust violation, assuming other requirements are met. Chair Ellis explained that is a matter for which there are extensive antitrust remedies, including triple damages, attorney fees, and etc, and state agencies and federal agencies may pursue those remedies as well as private litigation. Regarding the Commission's decision to repeal the rule, Chair Ellis clarified his rational in voting in favor of previous limitations in this area of the Commission's responsibility--noting that the Legislature, at least arguably, has not authorized the Commission to get involved in this area and that it was not central to the Commission's mission. Chair Ellis affirmed that clearly the Legislature wants the

Commission to deal with keeping organized crime out of gambling and keeping any criminal element out of gambling. However, the Legislature has not made it clear that the Commission should be involved in terms of dealing with business relationships between manufacturers, distributors, and operators. Chair Ellis noted that some of the other Commissioners felt very strongly that way, and there is background on the Commission's thinking.

Don Harris responded that he has talked to Alex Deccio, Jim Clements, and Mary Skinner, and they all agree with him. He reported that then Representative Clements was an ex officio member of the Commission, and, "he said that is bull, you can't be doing that stuff." Mr. Harris became argumentative stating the Commission should know this is discrimination; that it is violating people's civil rights, and that racketeering is involved. He emphasized that the Commission charges enormous fees and "now you want a raise, why should we pay you guys—I mean, you guys aren't earning it."

Senator Prentice affirmed that now "Senator" Clements was briefly on this Commission and left when then "Representative" Cheryl Pflug was appointed and she served out the rest of his term. She also reported that Senator Alex Deccio and Representative Mary Skinner were very good friends and have never had anything to do with this gambling issue. Senator Prentice advised Mr. Harris that if she were his senator, she would be extremely sympathetic; however, she agreed with Chair Ellis and made it clear there are laws and agencies that deal with those remedies. The applicable laws are not initiated by the Gambling Commission, and it was her understanding that the Legislature has never even attempted to include that responsibility upon the Commission. **Don Harris** disagreed, stating the Legislature leaves it up to the Gaming Commission because that is what the Commission is for. He reiterated that he brought this scenario to Alex Deccio and Jim Clements; and, while they have not gotten involved they are saying this is what the Commission's job is supposed to be. Mr. Harris demanded to know why the Commission even passed this law; and who the people were that were for and against the law.

Director Day responded that Commission staff proposed the change because it was staff's determination during the debate and after looking at the rules and laws, that the regulation of the business practice between the manufacturers and distributors was not the Commission's direct responsibility—there were other agencies that had a direct responsibility. Director Day assured Mr. Harris that if there was some threat of violence or some criminal practice going on behind the scenes of gambling, that may implicate something the agency is responsible for; however, at this point the Commission hasn't received any evidence that has occurred.

Chair Ellis advised Mr. Harris that he had his opportunity to speak. He asked Mr. Harris to please sit down so that any other citizens who would like to address this proposal could have the same opportunity—he then called for other public comments.

Evonne Laisure - a licensed distributor representative for over 10 years from the Bellingham area reported that she was also part of the people that were let go when Mr. Ed's dissolved. She advised that she was given 48 hours to relinquish her license and position. Ms. Laisure reported that she and other employees that were released had a base of customers for 10, 15, and 20 years; and none of the people released were prepared to be without a job in 48-hours. She commented that the staff released didn't know that "our company, Mr. Ed's had been taking part in business practices to work with other manufacturers and distributors to keep the small guy out." She advised that she was told by representatives and manufacturers that Mr. Ed's, ZDI, and Weill were all very instrumental in making compacts with each other to get rid of the smaller guy. **Ms. Laisure** thought that when a small company can't get products, it borderlines on criminal, especially when the licenses have been paid for and the licensees are operating legally. She emphasized the importance of having an equal opportunity to go to another distributor or even open a company of her own in the Bellingham area. Ms. Laisure explained she currently works for Magic Distributors and she reported that Douglas Press won't sell to Magic Distributors. She questioned who the licensees should go to in order to present this case, and how can they get products to sell. She said she felt like she was being forced out of business, and now she was beginning to feel like the Washington State Gambling Commission was becoming a part of that force to force her out of business. She reported the General Attorney's Office is referring the licensees back to the Gambling Commission and the Gambling Commission's response is that it isn't the Gambling Commission's responsibility. She inquired if there was there anything that could be done in order to help her stay in business.

Chair Ellis responded that contacting the Attorney General's Antitrust Division and contacting the Seattle Regional Office of the World Trade Commission would be the most immediate ways to determine whether or not the affected licensees have a case. He assured Ms. Laisure that the Commission was very sympathetic with the situation and the Commission was aware that the business world is a tough world. In reference to the people being out of business and in this situation being out of jobs, he affirmed everyone was sympathetic with that; however, at the same time the Commission must deal with a legal structure and an authorization from Legislature. He emphasized the Gambling Commission does not have a universal band-aid to take on every conceivable problem in the gaming industry.

Chair Ellis explained that the Commission looked at this issue very carefully about a year ago and reached some clear cut understandings of the Commission's authority. He stated that in our economic system, companies that manufacture products are going to sell to companies that distribute the products. The basic understanding is that you don't need any laws to ensure that distributors get products because manufacturers can't make money making products and putting them in warehouses and not selling them to anybody. If there is a problem and the distributors aren't getting the product; for it to become an antitrust problem, it requires in classic province a conspiracy. An agreement classically between the manufacturer and a

dominant distributor that the dominant distributor is going to be the only distributor in an area and to the exclusion of all others—and if that agreement can be proven, it may be an antitrust issue and the Attorney General's Office or the Federal Trade Commission should be willing to sit down and see whether it is something they believe they can pursue. Chair Ellis cautioned that these aren't easy cases. People aren't stupid. The manufacturers and dominant distributors don't enter into written contracts invariably, although in some cases they do. He explained that exclusive dealing arrangements can be lawful.

Chair Ellis advised this was a tough area and while the Commission was sympathetic, it is not something the Commission is mandated to deal with. **Ms. Laisure** responded that when powerful distributors get together and threaten and work with manufacturers to put the little guy out of business, she believed that did fall under the Commission's heading. **Chair Ellis** again responded that was an antitrust issue and the licensees should contact the Attorney General's Office, or the Federal Trade Commission, or perhaps the Antitrust Division of the Federal Department of Justice; and, to inform them that the Gambling Commission has responded to the effect that they have no jurisdiction in this matter. He then called for further public testimony.

Eleanor Coffey Owner, Magic Distributing referenced Case Report #2006-02016, noting that Special Agent, Jennifer Kapp talked to some of the manufacturers and they stated that they had credit issues with Magic Distributing. She suggested there might have been some confusion and went on to explain there used to be a company called Bingo Magic solely owned by Wayne Crumb. Ms. Coffey advised she was one of four employees that worked for Mr. Crumb, and when he closed that company in May of 2005, she started Magic Distributing in June of 2005. Ms. Coffey advised she owns Magic Distributing solely and there has never been a credit issue with Magic Distributing and her company has an excellent credit history. Ms. Coffey stated that she agreed with the comments offered by the other speakers today.

Chair Ellis inquired if anyone else in the audience would like to address this petition. Seeing none, he closed the public hearing. He asked if there was a motion concerning the proposal that the Commission accept for filing and further discussion, the petition for the rule change. Hearing none, he announced the request for the Commission to accept the petition for the rule change for filing and further discussion will be denied, on the grounds that no Commissioner moved that the petition be accepted.

Assistant Attorney General Jerry Ackerman noted that Chair Ellis spoke at some length explaining the Commission's reasons regarding the proposed petition. The agenda packet also contains the minutes from the last two decision making hearings that were held on this topic. Mr. Ackerman noted that under the rules, the Commission is required to state the reasons for denying the petition even though there was no vote. The fact that no motion was made effectively denies the petition. He suggested that if any of the individual Commissioners wish to add to what Chair Ellis

has already said, and to what is in the packet, they should do so. However, if the Commissioners wish to rely upon the Chair's comments and the information which is in the packet, then that is an option for them also. He affirmed the written minutes and the transcript of this hearing will serve as the writing that is required under the APA.

Commissioner Niemi responded that her comments have also been included in the packet in the other meetings. She emphasized that as sympathetic as she may be to the people who spoke regarding this matter, she firmly believed that this is not within the mission of the Gambling Commission. This matter has nothing to do with gambling—it has a lot to do with antitrust. She totally concurred with Chair Ellis that the Attorney General, the Federal Trade (FTA), and the U. S. Attorney should put in writing why they won't take this matter up because they are the agencies that should be involved in this issue.

Commissioner Bierbaum commented that she practices law and often times she will have clients that ask her to do something that she is not good at. It may be something that she just don't know enough about; and while they really need her help, she sends them somewhere else to somebody who knows more about that area of law. She explained that bankruptcy is a good example—it is very complicated and it is like antitrust where there aren't that many lawyers that are good at it. Commissioner Bierbaum emphasized that in this case, it isn't that the Commission doesn't want to help; it's just not something the Commission is charged with doing, and it is something the Commission isn't necessarily good at doing. The other organizations identified would be so much better suited to serve the affected licensees. The Commission's agents are not trained in this area, the Commission doesn't have the resources, and it's not within the Commission's central mission. She hoped the licensees didn't feel put off by this vote.

2. **Agenda Review / Director's Report:**

Director Day asked for a moment of silence to acknowledge the passing of Joel Wong, Muckleshoot Tribal Gaming Agency Director. Staff wanted to extend sympathy and prayers to Joel's family and co-workers. Many people had the privilege of working with Joel and he will be missed. He was a friend and constant advocate of effective and fair regulation.

Director Day briefly reviewed the agenda, noting the "60 Minutes" video clip would be moved forward, followed by the Texas Hold'em demonstration.

Representative Alexander arrived at 1:50 p.m.

"60 Minutes" Video Clip

Director Day explained Version Two of the "60 Minutes" video clip is about an internet gambling poker cheating operation and describes some of the threats to internet gambling which is not really monitored or regulated. The only difference staff could see between the two versions was that Version Two clarified that no action had been taken and that nobody suffered any consequences.

Summary of Repeal of Manufacturer/Distributor Credit and Pricing Rules

Director Day explained the Commission repealed the manufacturer/distributor credit pricing rules a number of years ago. Chair Rojecki requested a report summarizing the Commission's actions regarding the repeal of and subsequent complaints about manufacturer/distributor credit and pricing restrictions.

Assistant Director Mark Harris explained his report summarized the staff proposed rule changes, the complaints received, some public proposed rule changes, and meetings held with the Attorney General's Office, Fraud Division. AD Harris provided a brief conclusion regarding his research, which basically indicated there appeared to be legitimate business reasons why certain manufacturers were not selling to certain distributors. The Attorney General's Office, Fraud Division, said there was nothing they could do because it appeared there were legitimate business reasons and there was no legal statutory authority under the RCW to enforce anti-trust rules. The Commission would have to request the statute be changed to give them authority to enforce those types of activities. One of the complaints was against a manufacturer that did not have manufacturing capacity. That manufacturer has since had more capacity and has started selling to the couple of distributors that were complaining about the manufacturer not selling to them in the past. It was a legitimate reason that basically came full circle.

Chair Rojecki asked if Mr. [Don] Harris or any other distributor had contacted staff in the past month inquiring about this. **Assistant Director Harris** replied staff had not been contacted.

Commissioner Reichert asked if there was a door or loophole, if there was a problem for strong arming on the part of distributors, that some unethical player might be able to use

regarding, although notwithstanding, the fact of three instances that were not a problem according to the Attorney General's office in our the review. **Assistant Director Harris** replied that, not being a lawyer, he could not specifically answer that question and deferred to AAG Ackerman, but imagined that under any circumstance there would be an opportunity for somebody to do something. **AAG Jerry Ackerman** thought the conversation with the Anti-Trust Division of his office indicated it was possible to come up with combinations of businesses, individuals, or entities to do things that would violate anti-trust laws. AAG Ackerman noted he was not a party to the conversations that took place with the Anti-Trust Division, so did not know exactly what they said, but that was what he understood from the reports he received. No specific instances of that type of activity were conveyed to the Attorney General's Office, and it was decided not to open an investigation at that point. But the anti-trust laws are out there and, as far as AAG Ackerman knew, they apply the same to gambling businesses, gambling manufacturers, and distributors as to everyone else in the world in an appropriate case. Those laws could be violated and investigations and sanctions could follow. But the issue for this Commission is whether they have the statutory authority to regulate otherwise lawful business conduct between these entities, which was the subject of the initial discussion. The conclusion was that there really was not anything in the Commission's authorizing legislation that provided that. Could abusive practices take place? Sure. The question would be whether they violate anti-trust consumer protection or other fair business practice type statutes. **Commissioner Reichert** clarified his question was geared more toward whether there was something this Commission should do by way of alerting the Legislature or saying there was the potential for abusive behavior on the part of wholesalers that might lead to corruption in the gambling industry. **AAG Ackerman** recalled that at the time this first came forward one of the reasons staff asked the Commission, as a whole, to revisit the then existing rules was that they had not found the type of activities being described. Staff reported to the Commission that, given the agency's mission statement of keeping gambling legal and honest, they were not finding this to be an issue or a problem, and the reviews entailed the use of resources that could be better expended elsewhere.

Commissioner Ellis indicated the one thing that struck him, given his anti-trust background, was that all of this was apart from the fact that in most instances the evidence did not suggest anti-trust violations. But with regard to the Magic Distributing complaint, the report indicated that one of the manufacturers that was no longer doing business with Magic had received complaints from other distributors that Magic was undercutting prices, and the manufacturer did not want to be a loss leader for Washington State. If this type of issue arises again, and staff are talking again to the Attorney General's office, that is certainly anti-trust smoke that an anti-trust investigator or lawyer would want to pursue. The manufacturer has the right to make a unilateral decision that they do not want their market in the state to be undercut with lower prices, which happens quite a bit. But at the same time, if there was any coercion on a distributor to adhere to a manufacturer's recommended pricing schedule, particularly if manufacturers jointly set that pricing schedule, it would be an anti-trust violation. **Chair Rojecki** did not think that would be anything this Commission would undertake. **Commissioner Ellis** agreed, indicating he was putting it in the context of discussions with the Attorney General's Anti-Trust Division or the Federal Trade

Commission. **Assistant Director Harris** affirmed staff would keep that in mind if the issue resurfaces.

Director Day reported the intent of the demonstration on Texas Hold'em was to provide something that would depict the concept of "all-in" wagers for the Commission.

Commissioner Ellis pointed out that Senator Prentice had a very strong interest in this topic and wondered if it would be possible to hold this presentation until she arrives – if staff has an idea of her schedule. Neither **Chair Rojecki** nor **Director Day** knew her schedule, but it was assumed she would already be here. **Commissioner Bierbaum** was almost certain she had seen Senator Prentice earlier in the hotel. **Chair Rojecki** said the presentation would be held until Senator Prentice arrived or staff was informed she was not attending.

Correspondence

> Commission Fact Sheet
> Licensee Comparison Chart
> History of Card Room Regulation and Wager Limits
> Mini-Baccarat Approval Update & Financial Impact of Increasing Betting Limits
> Government Reform – Small Agency Cabinet

Director Day referred the Commission to the final version of the Fact Sheet about the history, authority, and duties of the Gambling Commission. This has already been used with legislators as a reference about why the Commission was formed, several of its current functions, and how it compares to other agencies inside and outside Washington State. Director Day explained that as part of the consolidation study process, Directors' meetings are being held with the four directors of the Liquor Control Board, Lottery, Horse Racing, and Gambling Commissions. Part of what is being looked at is cost savings issues, duplication, or regulation, which includes processing licenses. Part of the concept was whether there was an overwhelming appearance, either actual or in perception, of duplicating each other's work. There are distinct differences between the organizations. These agencies issue over 44,000 licenses, but there are no licensees in common to all four agencies. There are a small number of licensees that some of the agencies have in common – with the largest number being between the Washington Gaming Commission and the Liquor Control Board, but about a third of those (2,000) are amusement games. The Liquor Control Board and Lottery Commission do not license individuals, but the Gambling Commission licenses over 17,000 individuals in Washington State and the Horse Racing Commission licenses individuals.

Representative Gary Alexander commented that, even though it looks like there is not total duplicity here, there probably is some. He guessed he was going back and wearing his UBI hat when he was asked by the Governor to look at how to bring businesses together in terms of one-stop licensing operations. Representative Alexander asked if staff had thought about forming some sort of a task force to look at where the burden could be eased on businesses in terms of duplicate license requirements. Everywhere he goes, Representative Alexander hears that of the licenses that have to be issued, some of the licensees have the

Excerpts from the July 2011 Commission Meeting Minutes

9. **Petition From the Public – Robert Bearden** – Reinstating Requirements that Manufacturers Must Sell to Distributors

   a) New Section WAC 230-xx-xxx – Availability and pricing of gambling equipment and related products and services

Assistant Director Harris reported the petitioner was requesting that the portion of former WAC 230-12-330 requiring manufacturers to make their products and services available to distributors without discrimination be reinstated. AD Harris corrected a statement made by Mr. Bearden that there was only one licensed manufacturer of bingo paper. There are actually two licensed manufacturers that produce bingo paper. The Commission has discussed the rules about manufacturers being required to sell to all distributors numerous times since 2005. These include the staff proposal to repeal the rules that were adopted in September 2005. There were two petitions from the public to reinstate the rules, both of which were denied in 2006 and 2007 for the following main reasons: regulating business relationships between distributors and manufacturers is generally outside the scope of the Commission's authority, and there are other legal remedies that petitioners could pursue other than the Commission rule, such as anti-trust laws.

In September 2009, a staff report was prepared, which he believed Commissioner Rojecki had requested, that summarized complaints that staff had received from licensees on this issue. All those complaints were determined to be unfounded. In June 2006, the staff completed a survey of manufacturers and distributors to find out how that rule being repealed had impacted them. Six distributors and two manufacturers were contracted. Four of the distributors said that the rule change had no impact on their business; one said that the manufacturers had reduced the discount they offered and basically increased the amount they require to make a purchase. They were against allowing credit to operators because the operators could barely pay the day-to-day expenses. Another one said Bingo King would not sell to them anymore because he was too small of a business. Of the two manufacturers, one said it had no impact at all on them, and one said that things were going okay. In June 2011, staff again contacted four distributors and three manufacturers to determine how they had been impacted and whether or not they were for or against reinstating the rules. Two of the distributors said they would like to keep the rules as they are. They felt it helped improve the business, and stated it allowed them to recapture their travel costs. Two said they would like to see the old rules reinstated. One said that the manufacturers would not sell to them anymore and was trying to drive them out of business. The other stated they had not noticed a difference, but they felt that the rule change might help smaller distributors. Of the three manufacturers contacted, one said they did not do a lot of business in Washington so there really was not an impact on them. One said it would hurt their business if the rule was reinstated; they did not have a problem with selling to all, but felt it would impact their ability to do discounts and specials to different distributors. One said

they would like the rules to be left as they are, and they did not believe that the Commission should be messing with the free market as it is.

The proposal would require manufacturers to offer gambling equipment devices and related paraphernalia and supplies and services to any distributor wishing to purchase them at the same price. The petitioner used the statement discriminatory practices are prohibited in the rule, but did not define what discriminatory practices were. Staff contacted the petitioner who verbally stated that discriminatory practices were self-explanatory and sufficient, and people would know what that meant. The impact on licensees is unknown.

Regulatory and lawful business practices between licensees are generally outside the scope of the Commission's authority. The restoration of the rules would reinstate the agency's role as regulating sales, services, pricing schedules, and credit terms between licensees. This would also have an impact on our resources. Before the credit rules were repealed, our agency devoted half of an FTE to do that type of work.

The Commission repealed discriminatory pricing restrictions because the restrictions did not have a direct impact on gambling and should no longer be part of a regulatory program. The Commission may want to consider whether the problem has been shown to justify rules and restrict the business's ability to set their own prices and make their own discount decisions. There may be other legal remedies that the petitioner could pursue other than the Commission rules such as anti-trust laws. Before repealing the rule in 2005, the Commissioners carefully considered and discussed all the arguments for three months, and gave it due consideration.

Staff recommends denying the petition based on the policy considerations.

Chair Ellis asked if there were any questions; there were none. He asked if Mr. Bearden would like to speak.

Mr. Bearden stated there were two more letters in favor of the petition change. There are several people, expert distributors, and those who have worked in the industry for quite some time, that have some real feelings concerning this and getting back on line. They wonder how charities got involved in this because this is really a distributor issue to (*inaudible*). We are at the bottom of the food chain here. We are the ones who have to pay the increased fees because there is not any competition out there that we can go to for a lot of stuff. He thought that down in South Tacoma there was one distributor that they could basically use, even though there may be 47 licensed in this state. Each one has their assigned region. If we cannot have additional competition out there, or be able to get quality stuff because only one or two distributors have that quality stuff or the materials and equipment that we need, then once again, there is no competition. And we cannot take advantage because we cannot pass on these charges to our customers. We will simply lose them. We are losing them as it is now. But I do want to really kind of give up the floor as

soon as possible on this because he knew there was a lot of public comment that the Commissioners were probably going to have from the people that are here.

Chair Ellis asked Mr. Bearden if he realized that the effect of those regulations could possibly be to reduce competition if manufacturers decide it is simply not worth putting up with the regulations that they are subject to, to do business in Washington.

Mr. Bearden responded he understood that. And we know that it is kind of a do something here. We either get some competition so we can benefit from (*inaudible*) good business competition, or if the manufacturer just pulls out of the state, bingo is dead. The industry is going to die, or we are going to be using less quality stuff, or we are going to be doing nothing that we can really compete with. It is really difficult to explain – and this is where my experts are going to come into play. One of the reasons that charities got involved in it is because we need the competition. We need to be able to save money wherever monies can be saved. And the Commission is not the only one who is trying to help us out, by the way. We are redoing our entire business approach figuring out other ways. This is just one spoke in the wheel, but we are trying to touch every spoke so we can survive.

Chair Ellis replied that if there are bingo operations in the state, and both of the existing manufacturers leave the state, the normal way that our economy works is other manufacturers, or other potential manufacturers see that business sitting there and they go into the state to make money. If organizations are going to buy their product, that –

Mr. Bearden interrupted and said this could also be a great come on for the justification for the 144 electronic bingo daubers.

Chair Ellis called for public comment.

Mr. Don Harris, owner of H & H Pull-Tab, disagreed with everything Assistant Director Harris said. My name is in the investigation they had, but no one contacted me. Somebody did call me for three minutes, and then they put down all this information. So all the information you've got on these supposed distributors who are all for it, is all bogus. Also on there is Danny McCoy, Tri-Focus, Tabs Unlimited, myself, Magic Distributing, Ace, Spokane Punch Board, who are all against this. But nobody put that down. Staff said there were only two people that were against it. So all that information this gentleman has maybe it is the way they did it, staff just sat down at a desk and wrote. To me it is all bogus. Staff did not get people up here and ask what their opinion was, like he was doing right now. Mr. Harris stated he was going to tell the Commissioners his opinion. He thought what the agency was doing was very wrong. Commissioners should reinstate that because it is a RICO Act.

Chair Ellis recalled Mr. Harris' views from the last time.

Mr. Harris said that Arrow International, they are talking about the bingo paper, they bought out Trade and that was a Trade bingo paper. And they own Arrow, so that is all the bingo paper. They bought them out so they have control. Those two distributors that are all for not going for this are the people that they have here. Mr. Ed's took all their own employees which they bought out in 1993, which he brought to the Commission's attention back in 1995 that nobody knew about this. And all of those people are now distributors under Arrow. That is who sell almost 85 percent of their stuff to; people like me, people like Magic, people like Ace. Ace Distributing, which could not be here today, started going through the internet and selling a dollar or so under the normal price. Then he got cut off because Wow went in there and told them do not let this guy have any, so they cut him off. That is all discriminatory. That is discrimination. He did not see how the Commission cannot see that. It is discrimination. He said he had read all the Commissioners statements saying "well that was not our problem". If it was not their problem, then maybe they should just disband this whole gaming commission, because if Commissioners are not going to do it – we look to the Commission for all the rules. We can only buy from A, B, C, D, and E manufacturer, and if they do not sell to us, what the hell were they supposed to do. It is like going into Costco. Customers get a Costco card and go into Costco and buy $150 worth of groceries. When the customer gets up to the check stand they say "no, we are not selling to you, get out of here". Was there any difference? No, there was not. It is discrimination all the way. That is where the RICO comes in because – he indicated he was getting ahead of himself again, and apologized. That is what Arrow International is doing. They are creating a RICO Act in racketeering by only selling to certain people. And he did not see how the Commission did not see that, especially with a guy like Commissioner Mike Amos on there, who is ex-law enforcement. How you guys cannot see the racketeering involved there. He meant if Commissioners cannot see it – he hated to say this, but they have all these guys on the Commission here, but they do not know anything about the industry. And they are making decisions on stuff that they do not really know stuff about. Commissioners should get people on there, or get advice from people that have been in the business for a long time and ask them what is going on. And he thought what the Commission did was wrong. He thinks Commissioners need to repeal it and get it back so it is a level playing field here for everybody.

Chair Ellis informed Mr. Harris that the Commission made those decisions after extensive discussions, extensive public hearings, just like this one when experts, like him, came and gave Commissioners their views. The Commission disagreed, ultimately, that they had the authority to start telling companies what they could charge and who they could do business with, since it seemed to have, at best, any connection with protecting the public from dishonest gaming practices. Those are clearly competitive issues.

Mr. Harris confirmed he understood, but if they cannot buy from whom the state tells them to buy from, then from whom are they supposed to buy? There are a lot of people out there they could buy from, but they have to buy from people who have a state stamp number so the state can get their money. They are the only people they could buy from. He asked if Commissioners understood. **Chair Ellis** affirmed they understood, and asked if Mr. Harris

had any other points. **Mr. Harris** asked then why they cannot see that one corporation owns six of the companies. And there is only one or two out there whose customers can even get anything from. They say who is going to buy and who is not. When the truth gets known, Commissioners are going to see that one corporation probably owns those companies. He said he did not see why the Commissioners cannot see through that. **Chair Ellis** confirmed he understood Mr. Harris' point. **Mr. Harris** asked then what the point was if they can only buy from the manufacturers that Commissioners tell them to buy from and they do not sell to them, then why was there a gaming commission? He said he wanted Commissioner Ellis to answer that question. He was asking the Commissioner direct as the Chairman. Why does the Commission exist? **Chair Ellis** replied the short answer to why the Commission exists would be provided to Mr. Harris if he looked at the RCWs and the Washington Administrative Code on the various things that the Gambling Commission is responsible for, which is protecting the public by ensuring that gambling is honest and fair, and keeping the criminal element out. **Mr. Harris** replied it was not honest in this case, and he did not see how Commissioners could not see it.

Chair Ellis closed the public testimony and asked if there were any questions by Commissioners.

Commissioner Rojecki said he thought the Commission had discussed this in the past when it gets into RICO, and asked AAG Ackerman how that involves the Gambling Commission. He guessed it was a much broader question.

Assistant Attorney General Ackerman responded he would give the Commissioners a broad, general answer regarding a pretty complex subject. In essence, a RICO action, civil or criminal, requires violations of federal statute, or if one is bringing a state RICO action, violation of state statutes. A RICO action is predicated upon, depending upon which system that person is in, either two or three criminal acts that violate designated statutes that are set out in the bigger RICO statute. There is a laundry list of crimes; federal crimes for the federal RICO, state crimes for the state RICO action. To file an independent RICO action, one has to allege and prove either two or three predicate crimes. If a person is going to do a RICO action based on money laundering and some sort of theft type of case, as the basis for their RICO action, they would prove that there had been a money laundering crime, and also that there had been a theft crime. Like he indicated, the laundry list is long.

RICO actions can be brought one of two ways. The typical way is a person goes to the prosecutor, or to the US Attorney, and they say here are the crimes that were committed. And if the prosecutor agrees with that person, the prosecutor will file an independent RICO action, which is itself an allegation of a crime for which that person can obviously be convicted and punished. Individuals can also file a lawsuit, what is called a civil RICO action. And again, it will then be their responsibility to show these predicate crimes as part of their lawsuit. And if they prevail, then they can receive monetary sanctions and injunctive relief can be issued to remedy whatever the alleged problem is. The difference is, obviously, the criminal RICO action can result in prison time, jail time, typical criminal type

sanctions. And the civil RICO action is a way to recover monetary relief for something that has been done and to get a court to order that the activities cease. That is a big picture, nutshell on RICO. But the important thing to remember was that person is going to have to prove crimes. Those are what are called predicate crimes, and they form the basis for bringing any kind of RICO action, civil or criminal.

Mr. Harris asked if he could add to that. **Chair Ellis** stated he was sorry, but the public hearing is over.

Chair Ellis asked if there was a motion. Hearing no motion, he asked if it would it be correct to say that the petition be denied for the reasons specified in the staff recommendation. **Assistant Attorney General Ackerman** replied that would be sufficient if that was how the Commission wishes to proceed.

Chair Ellis indicated the petition would be deemed denied. *The petition for rule change died for lack of a motion.*

1. **Director's Report** ***(Taken out of order)***

Legislative Update

Ms. Hunter welcomed Representative Timm Ormsby to the Commission. Staff was happy to get his appointment. The Commission also received notice of the reappointment of Representative Alexander to the Commission. Staff is glad to have them both on board.

In the interest of time, Ms. Hunter stated she was going to focus on the possible agency request legislation for 2012. Staff is looking for just a nod of heads as to whether Commissioners want staff to pursue this idea further. And if so, Ms. Hunter would bring a full proposal to the August Commission meeting. Agency request legislation has to be approved by the Governor's office. Staff has not gotten notice yet whether the deadline for that would allow time for the Commissioners to take a final vote at the September meeting or whether the Commissioners will have to vote at the August meeting.

Staff is proposing that the length of time for which a license could be issued be extended up to 18 months. That would just be the first step in allowing the Commission to use the Master License Services system, which was changed to the Business License Services. That function was previously administered by the Department of Licensing, but legislation passed this year moved that function to the Department of Revenue. As of July 1, the Business License Services function is now with the Department of Revenue.

Staff has been working with the Department of Licensing on the idea of the Gambling Commission being able to use their service for the gambling licenses for about a year or two now. One of the first things that staff has determined is that during their transition time they may need to be able to issue a license for longer than one year. Commission's law says that staff can only issue a license for up to one year. Assistant Attorney General Ackerman has provided input on the proposed language. She pointed out this is only for organizations;

Staff Proposed Rule Change

- **Manufacturer Special Sales Permits**

April 2014 - Up for Discussion and Possible Filing
March 2014 – Study Session
February 2014 – Study Session

ITEM: 11

a) **Amendatory Section WAC 230-03-025**
Applying for a manufacturer's special sales permit.

b) **New Section: WAC 230-16-187**
Accounting records for manufacturer's special sales permit holders.

Proposed amendments to:
WAC 230-03-025 Applying for a manufacturer's special sales permit.
Proposed New Rule:
WAC 230-16-187 Accounting records for manufacturer's special sales permit holders.

April 2014 – Up for Discussion and Possible Filing
March 2014 – Study Session
February 2014 – Study Session

ITEM 11 (a-b) on the April 2014 Commission Meeting Agenda.	Statutory Authority 9.46.070(4)

Who proposed the rule change?

Staff.

Proposed Change

The proposed change would provide clarity as to which businesses would be required to get a manufacturer's license and which would qualify for a manufacturer's special sales permit.

Staff is adding language to answer questions received from applicants about this permit:

- Who can apply for this permit;
- How long the permit is good for;
- The activity allowed with this permit; and
- The rules that the permit holder must follow.

Staff is also proposing a new rule outlining recordkeeping requirements for permit holders.

Attachments:

- Stakeholder letter dated March 25, 2014.
- Small Business Economic Impact Statement.

History of Rule

The special sales permit was created by rule in July 1995 to allow manufacturers to sell gambling equipment on a limited basis to a distributor or to tribal governments. The intent was that the permit would be an alternative to the manufacturer's license when demand for equipment was below the economical feasibility for the licensee or applicant to go through the manufacturer application process.

The original rule was intended for limited sales and not for sales beyond one year or any ongoing service of the equipment after the special sales permit expired (one year). The original rule outlined:

- Criteria for obtaining a special sales permit;
- Information required on the application for a permit;
- Initial investigation that would be performed by staff;
- Process the Director used to determine if a manufacturer's license, rather than a permit, was required; and
- That a permit was only valid for one year during which time the Director could require and notify a permit holder to obtain a manufacture license.

During the 2008 Rule Simplification Project, the rule was reduced to two criteria:

- Selling authorized gambling equipment; and
- Demonstrating that the anticipated profits from the sales will be below the cost of obtaining a manufacturer's license.

The special sales permit costs $211. The annual manufacturer license fee for manufacturers of pull-tab dispensing devices is $659. License fees for manufacturers of all other gambling equipment ranges from $1,318 for annual gross sales up to $250,000 to $4,242 for annual gross sales greater than $2.5 million in Washington.

The original special sales permit rule as passed in 1995 allowed applicants to be assessed the actual pre-licensing costs. This allowed staff to bill manufacturers for investigative costs that exceeded the permit fee. Subsequent rule changes removed the notice of the additional pre-licensing investigative costs that can be assessed per RCW 9.46.070(5). Staff is proposing adding this language back into the rule.

For example, we have issued special sales permits to businesses that built their own tables, a manufacturer of roulette wheels with an electronic reader and display of the outcome of the game, a former licensed manufacturer that makes dice and layouts, and a manufacturer that makes playing cards.

Impact of the Proposed Change

There is a need for a one time manufacturer's license to:

- Test the market before committing to a more extensive manufacturer's license; or
- Make a one-time sale of gambling equipment without an ongoing relationship after the sale.

Currently, permit holders are not required to follow all the recordkeeping and quality control standards outlined in WAC Chapter 230-16, which is required for all other manufacturers. The proposed rule change makes it clear that holders of the special sales permit must follow all rules, including those applicable to manufacturers. However, in an effort to reduce the burden on permit holders, the new rule outlines less extensive recordkeeping requirements permit holders must maintain.

A Small Business Economic Impact Statement was prepared and is attached.

Regulatory Concerns

There are regulatory concerns with the current special sales permit rule. A very limited pre-licensing investigation is conducted on a special sales permit applicant. We require basic information on the business entity and conduct a criminal history check on just the owners and officers. We do not conduct an on-site review of the manufacturing process or verify the equipment is in compliance with our rules because the permit fee does not cover the cost of doing so, and the intent of the special sales permit was for sales of authorized gambling equipment on a limited basis.

Resource Impacts

The rule change will reduce questions received by staff and will reduce the case-by-case analysis of applicants that is presently done.

Policy Consideration

None.

Statements Supporting the Proposed Rule Change

None.

Statements Opposing the Proposed Rule Change

None.

Licensees Directly Impacted By the Change

Special sales permit applicants.

Staff Recommendation

File for further discussion.

Proposed Effective Date for Rule Change

January 1, 2015

Amendatory Section:

WAC 230-03-025 Applying for a manufacturer's special sales permit.

(1) You may apply for a one-time manufacturer's special sales permit if ((~~you~~)):

(a) You want to sell authorized gambling equipment as set forth in WAC 230-03-200; and

(b) ((~~Demonstrate that the anticipated profits from your sales will be below the cost of obtaining a manufacturer license.~~

~~(2) Otherwise, you must apply for a manufacturer license.~~)) Gross sales from authorized gambling equipment will be less than twenty-five thousand dollars during your permit year; and

(c) You will not have an ongoing vendor/customer relationship after the sale or installation of the gambling equipment.

(2) You may be assessed additional fees after an estimate of the permit investigation costs have been established.

(3) The manufacturer's special sales permit will be issued for one year and is not renewable.

(4) Manufacturer's special sales permittees must comply with all rules, including those for manufacturers in Chapter 230-16.

(5) You will need a manufacturer's license if you:

(a) Fail to meet the requirements of a special sales permit; or

(b) Want a renewable, annual license.

New Rule:

WAC 230-16-187 Accounting records for manufacturer's special sales permit holders.

Holders of a manufacturer's special sales permit must keep and maintain a complete set of records for their licensed activity. They must, at least:

(1) Keep a:

(a) **Cash disbursements book (check register)** – Permit holders must document all expenses, both gambling and nongambling related, with invoices or other appropriate supporting documents. They must enter information monthly and include, at least:

(i) The date the check was issued or payment made;

(ii) The number of the check; and

(iii) The name of the payee; and

(iv) Type of expense; and

(b) **Cash receipts** – Permit holders must keep a record of cash sales and cash received from all sources. They must enter information for each payment received monthly and include, at least, the:

(i) Date; and

(ii) Name of the person paying; and

(iii) Amount; and

(c) **Copies of all financial data** – Permit holders must keep copies of all financial data that supports tax reports to governmental agencies; and

(2) Maintain copies of all agreements regarding sales or leasing of gambling equipment and supplies that fully disclose all terms.

(3) Comply with the recordkeeping requirements outlined in WAC 230-16, except for WAC 230-16-185, 230-16-200, and 230-16-215.

STATE OF WASHINGTON

GAMBLING COMMISSION

"Protect the Public by Ensuring that Gambling is Legal and Honest"

March 25, 2014

To: Previous Manufacturer's Special Sales Permit Holders

Subject: **NOTICE OF PROPOSED RULE CHANGES:**

- **Applying for a manufacturer's special sales permit and**
- **Accounting records for manufacturer's special sales permit holders.**

Staff is proposing to amend the rule on applying for a manufacturer's special sales permit to address:

- Who can apply for this permit;
- How long the permit is good for;
- The activity allowed with this permit; and
- The rules that the permit holder must follow.

We are also proposing a new rule outlining the accounting records manufacturer's special sales permit holders will have to keep and maintain.

The proposed rules will be up for discussion and possible filing at the April 10, 2014, Commission meeting. The Commission meeting will be held at the Vancouver Heathman Lodge, 7801 NE Greenwood Drive, Vancouver, WA 98662 (360) 254-3100.

Commission meetings are open to the public, and you are invited to attend. Please visit our website at www.wsgc.wa.gov about one week before the meeting to confirm the date, time, and location.

If you are unable to attend the meeting, please send your written comments by April 9, 2014 to:

E-mail: Susan.Newer@wsgc.wa.gov
FAX: (360) 486-3625
Phone: (360) 486-3466
Mail: Susan Newer, Gambling Commission.
P.O. Box 42400, Olympia, WA 98504-2400

Small Business Economic Impact Statement – RCW 19.85.040
Washington State Gambling Commission

March 24, 2014

Rules Package: WAC 230-03-025 Applying for a manufacturer's special sales permit.
WAC 230-16-187 Accounting records for manufacturer's special sales permit holders.

Involvement of Small Businesses: We currently have no active special sales permit holders. Instead, we notified former special sales permit holders. They were provided notification of the proposed changes on March 25, 2014. Additionally, notification included discussion during study sessions in February and March 2014. We also filed the Code Revisor's 101 on November 26, 2013, under WSR 13-24-054.

If filed for discussion in April 2014, the rules package will be discussed at the April and May 2014 study sessions. Comments will be solicited at the open, public meeting of the Gambling Commission on April 10, 2014. The rules package was published in the March 2014 edition of the Focus on Gambling newsletter. The rules package will also be posted on our website for viewing by the general public. This process provided small businesses opportunities to comment on the development of the rules.

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1. **Description of the reporting, record keeping and other compliance requirements of the proposed rule.**

We closely control the use and possession of gambling equipment, as defined in WAC 230-03-200. Manufacturer special sales permit holders are authorized to sell gambling equipment they manufacture. With the rule changes proposed, special sales permit holders will be required to keep the following accounting records: sales invoices of all gambling equipment sales in the format we require, agreements relating to the sale or lease of gambling equipment, check register, cash receipts, and copies of all financial data that supports tax reports to governmental agencies.

Gambling equipment must be approved by us and is tracked through identification stamps (I.D. stamps) that the special sales permit holders purchase from us. The I.D. stamps are affixed to the gambling equipment they produce for sale to licensees. These I.D. stamps are a way for us to know the gambling equipment in use is approved. The permit holders must keep records of the I.D. stamps they purchase and attach to equipment as outlined in our rules.

Special sales permit holders will also have to comply with the manufacturing requirements of gambling equipment outlined in WAC Chapter 16. These

requirements protect the public from being defrauded and prevent cheating and other schemes.

This rules package will also require special sales permit holders to submit activity reports to us twice a year, in which they report the gross sales of gambling equipment in Washington.

2. Kinds of professional services that a small business is likely to need in order to comply.

All businesses, as an ordinary course of doing business, maintain a check register, sales invoices, cash receipts register, etc. Special sales permit holders will be required to maintain these same accounting records.

In addition to these accounting records, special sales permit holders will need to record I.D. stamps purchased and affixed to gambling equipment and submit two reports to us a year containing their gross gambling equipment sales per quarter.

Given that each business owner has a different skill level and the volume of business will vary, a bookkeeper may be needed to maintain the accounting records and complete the activity report for the business.

Each special sales permit holder will have varying sales volume based on the type of gambling equipment they manufacture, and may not exceed $25,000 in gambling equipment sales in the permit year. For example, one roulette wheel sale may account for a $25,000 sale, whereby it would take multiple sales of punch boards or pull-tabs to get to $25,000. For special sales permit holders with a larger volume of sales, there will, of course, be more records to maintain.

3. The actual costs to small businesses of compliance, including costs of equipment, supplies, labor and increased administrative costs.

We cannot determine the actual costs to small businesses of complying with the additional gambling equipment compliance, reporting and record keeping requirements as proposed by this rule package because there are too many variables based on the specific gambling equipment manufactured and competency or experience of the staffing of the business.

Future special sales permit holders may already have knowledgeable staff, such as a bookkeeper, to comply with recordkeeping and accounting functions and with the gambling equipment approval process.

If the future special sales permit holder does not have knowledgeable staff, then they would likely need to hire a bookkeeper to assist them with the recordkeeping and accounting functions. We cannot determine the actual costs to small businesses for hiring a bookkeeper to assist with the recordkeeping and accounting functions because there are too many variables that would play into determining the costs, such as experience level needed, size of the company, sales volume, and location of business.

If a future special sales permit holder does not have the equipment necessary to comply with gambling equipment standards, we cannot determine the actual costs to small businesses to comply. Variables that prevent us from determining the actual costs for compliance include, but are not limited to, the type of gambling equipment manufactured, the level of changes or reconfiguration of existing manufacturing equipment needed to comply, ability to lease new manufacturing equipment versus purchase, etc.

4. Whether compliance with the rule, based on feedback received from licensees, will cause businesses to lose sales or revenue.

We have not yet received feedback from former permit holders indicating that compliance with this rule will cause businesses to lose sales or revenue.

The manufacturer's special sales permit is a one-time, one year permit for gross sales of gambling equipment during the permit year to be more than $25,000. This affords small businesses an opportunity to see if the market in Washington will support future sales before getting a more expensive manufacturer's license.

Over the last 10 years, we have issued 20 permits. One permit holder got a manufacturer's license after their permit expired and three permit holders received a Fund Raising Equipment Distributor's license after their permit expired.

5. A determination of whether the proposed rule will have a disproportionate impact on small businesses.

The statutory method for determining disproportionate impact is: the costs of compliance for a small business must be compared with the cost of compliance for 10 percent of businesses that are the largest businesses required to comply with the proposed rule using one or more of the following as a basis for comparing costs:

a. Cost per employee; or
b. Cost per hour of labor; or
c. Cost per one hundred dollar of sales.

We cannot make this determination because we do not track the size of the businesses that apply for special sales permits. We cannot determine the costs, if any, to comply with the gambling equipment standards in the state because it depends upon the type of gambling equipment they will produce. Lastly, we do not know if a potential

special sales permit holder will already maintain the records we require as a normal course of their business or have to hire additional help.

The permit is only valid for one year and limits gross sales to $25,000 during the permit year.

In the last 10 years, we have issued 20 special sales permits. Four were to companies out of the country, such as the United Kingdom, Russia, and England. Nine were out of state, but in the United States. The remaining seven were to companies located in Washington.

6. **Steps taken by the agency to reduce the costs of the rule on small businesses or reasonable justification for not doing so. Agencies "must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:"**

   a. **Reducing, modifying, or eliminating substantive regulatory requirements;**

      We have proposed reduced recordkeeping requirements for special sales permit holders than what is required for manufacturers.

   b. **Simplifying, reducing, or eliminating recordkeeping and reporting requirements;**

      We have proposed reduced recordkeeping requirements for special sales permit holders compared to what is required from manufacturers.

   c. **Reducing the frequency of inspections;**

      Unless we receive a complaint, we do not have routine inspections we perform on special sales permit holders. The special sales permit is a one-time, non-renewable permit.

   d. **Delaying compliance timetables;**

      Reporting violations are given additional compliance time through the Paperwork Reduction Act.

   e. **Reducing or modifying fine schedules for noncompliance; or**

      For reporting requirements, first-time reporting violations are afforded seven days to come into compliance prior to being assessed civil or administrative penalties.

   f. **Any other mitigation techniques including those suggested by small businesses or small business advocates.**

We delayed the effective date of the proposed rule package to allow potential special sales permit holders more time to comment and gain an understanding of the new rules.

7. **A description of how the Gambling Commission will involve small businesses in the development of the rule.**

The proposed special sales permit rule change was published in the March 2014 edition of our Focus on Gambling newsletter and was discussed at the February and March 2014 Commission Study Session meetings, which were open to the public. We plan on discussing the rule at the April 2014 Study Session. The public will be able to provide public testimony on the rules package at the Commission meeting on April 10, 2014. On March 25, 2014, we sent notification letters of the proposed rules package to six former special sales permit holders to solicit their feedback. The proposed rules package is also posted on our website for public comment.

8. **A list of industries that will be required to comply with the rule.**
See code 7132.

9. **An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule.**

Keeping in mind that the special sales permit is a one-time permit that is only valid for one year and/or gross sales up to $25,000 during the permit period, the number of jobs that would be potentially created or lost would be minimal.