

## **Staff Proposed Rule Changes**

- **Clarifying requirements for authorized card games.**

**February 2014 – Final Action**

**January 2014 – Study Session**

**December 2013 – No Meeting**

**November 2013 - Up for Discussion and Possible Filing**

**October 2013 – Study Session**

**September 2013 – Study Session**

**August 2013 – Study Session**

### **ITEM: 1**

- a) **Amendatory Section WAC 230-15-040**  
Requirements for authorized card games.

## **Staff Proposed Rule Changes**

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**February 2014 – Final Action**

**January 2014 – Study Session**

**December 2013 – No Meeting**

**November 2013 - Up for Discussion and Possible Filing**

**October 2013 – Study Session**

**September 2013 – Study Session**

**August 2013 – Study Session**

### **ITEM: 1**

- a) **Amendatory Section WAC 230-15-040**  
Requirements for authorized card games.



Proposed Amendments to  
**WAC 230-15-040** Requirements for authorized card games.

February 2014 – Final Action  
 January 2014 – Study Session  
 December 2013 – No Meeting  
 November 2013 –Up for Discussion and Possible Filing  
 October 2013 – Study Session  
 September 2013 – Study Session  
 August 2013 – Study Session

ITEM 1(a) on the February 2014 Commission Meeting Agenda.	Statutory Authority RCW 9.46.070 & 9.46.0282
Who proposed the rule change?	
Staff.	
Proposed Change	
<p>Staff is proposing an amendment to clarify the rule to allow more than one “envy” and “share the wealth” “bonus features” to be offered in a single card game. Staff proposes adding definitions and clarifications to bring agency rules in-line with current practice.</p>	
<p><b>Adding new definitions for:</b></p>	
<ol style="list-style-type: none"> <li>1) “Separate game”;</li> <li>2) “Bonus features”; and</li> <li>3) “Envy” and “share the wealth” “bonus features”.</li> </ol>	
<p><b>Clarifying that:</b></p>	
<ol style="list-style-type: none"> <li>4) Card games and “bonus features” must be approved by the director or the director’s designee;</li> <li>5) The prize in a “bonus feature” is based on achieving the predetermined specific hand;</li> <li>6) “Bonus features” may not be combined with a progressive jackpot;</li> <li>7) Approved card games must be operated as documented on our agency website;</li> <li><b>8) Only one player may place a wager per wager area in the game of Mini-Baccarat;</b></li> <li>9) Other game features that do not require a separate wager are considered “bonus features”; and</li> <li>10) For variations of the game of Pai Gow Poker, a player may bank every other hand as authorized in approved card game rules.</li> </ol>	
<p><b><u>Changes made after the November 2013 Commission Meeting:</u></b></p>	
<p><b>WAC 230-15-040 (4)(c): Staff proposes not including 8) above in this amendment because this limitation is already addressed in WAC 230-15-055 and is included in the approved games rules posted on the Commission’s website.</b></p>	
<p>Attachment:</p>	
<p>Stakeholder letter dated October 15, 2013, which was e-mailed to manufacturers, distributors, service suppliers, and Tribal Gaming Agencies.</p>	
History of Rule	
<p>“Envy” and “share the wealth” “bonus feature” wagers were authorized for house-banked card games in April 2000 when the rules were adopted at the conclusion of the Card Room Enhancement Program for house-banked card games.</p>	

<b>Impact of the Proposed Change</b>
<ul style="list-style-type: none"> <li>• Definitions and requirements for card games will be clarified in rule for licensees and staff.</li> <li>• More than one “envy” and “share the wealth” “bonus feature” may be offered in a single card game.</li> </ul> <p>A Small Business Economic Impact Statement was not prepared because the rule change would not impose additional costs on any licensees. Licensees are not required to offer “envy” and/or “share the wealth” “bonus features.”</p>
<b>Regulatory Concerns</b>
None.
<b>Resource Impacts</b>
Including definitions in the rule should help reduce questions we receive from licensees.
<b>Policy Consideration</b>
None.
<b>Statements Regarding the Proposed Rule Change</b>
None.
<b>Statements Opposing the Proposed Rule Change</b>
None.
<b>Statements Supporting the Proposed Rule Change</b>
None.
<b>Stakeholders Directly Impacted By the Change</b>
<ul style="list-style-type: none"> <li>• House-banked card game licensees, manufacturers, distributors, and service suppliers.</li> <li>• If approved, Tribal casinos would also be able to offer these game features.</li> </ul>
<b>Staff Recommendation</b>
Final Action.
<b>Proposed Effective Date for Rule Change</b>
Staff recommends an effective date of 31 days from filing the adopted rule.

(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.

(3) Players must:

(a) Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game, except as authorized in approved card game rules for variations of the game of Pai Gow poker where a player may bank the game every other hand; and

(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager; and

(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:

(i) An insurance wager placed in the game of Blackjack; or

(ii) "Envy" or "share the wealth" "bonus features" ((An "envy" or "share the wealth" wager which allows a player to receive a prize if another player wins a jackpot or odds-based wager)); or

(iii) A tip wager made on behalf of a dealer.

(4) Mini-Baccarat is authorized when operated (~~(in the manner explained for Baccarat in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Encyclopedia of Card Games*, or similar authoritative book on card games we have approved, and))~~ as ~~((further))~~ described in the commission approved game rules on our web site. However:

(a) Card game licensees may make immaterial modifications to the game; and

(b) Subsection (3) of this section does not apply; and

(c) The number of players is limited under WAC 230-15-055(~~and only one player may place a wager per wager area~~)).

(5) A player's win or loss must be determined during the course of play of a single card game, except for a carryover pot game. A carryover pot is an optional pot that accumulates as a dealer and participating players contribute to the pot. The winner of the pot is not necessarily determined after one game and the pot can be carried over to more than one game. Carryover pots must not carryover more than ten (10) games. Participants must include at least one player and the dealer competing for the highest qualifying winning hand. Game rules must state how the pot is distributed. If the carryover pot has not been won by the tenth game, the dealer will divide it equally between the remaining players still participating in the pot and the house or, if allowed by game rules, only the players still participating in the pot.



STATE OF WASHINGTON  
GAMBLING COMMISSION

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

October 15, 2013

To: House-banked card game, manufacturer, distributor and gambling service supplier licensees.

Subject: **NOTICE OF PROPOSED CHANGES TO CARD GAME RULES**  
WAC 230-15-040 Requirements for authorized card games.

We have received a petition for rule change requesting a change to the card game Mini-Baccarat (See attachment #1 for proposed rule change):

- The petitioner is requesting in the game of Mini-Baccarat that a player be allowed to make an optional wager on either the player hand or banker hand winning the next three consecutive games. Under the current rule, a player's win or loss must be determined during a *single* card game. Mini-Baccarat uses community cards where two shared hands are dealt to positions called the "bank" and the "player;" but, unlike other card games, players are not dealt their own individual hands. Players bet on one of the two shared hands dealt, rather than on their own hand.

Additionally, staff is proposing the following changes to this rule (See attachment #2 for proposed rule change):

- Allowing more than one "bonus feature," including "envy" and "share the wealth" to be offered per card game.
- Adding definitions and clarifications to bring agency rules in-line with current practice.

**Public Comment:** Please submit your comments by **November 12, 2013**.

**Mail:**  
Rules Coordinator  
Gambling Commission  
P.O. Box 42400  
Olympia, WA 98504-2400

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(360) 486-3625

For questions, please contact Susan Newer, Rules Coordinator, e-mail above or (360) 486-3466.

These proposed rule changes will be considered at the November 15, 2013, Commission meeting ([Click here for meeting dates and locations](#)). Visit our website about two weeks before each meeting to confirm meeting dates and start times. Commission meetings are open to the public and you are invited to attend.

If you can't attend the November Commission meeting, we will give your written comments to the Commissioners at that if you get your feedback to us by **November 12, 2013**.

## **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.**

**February 2014 – Final Action**

**January 2014 – Further Discussion**

**December 2013 – No Meeting**

**November 2013 – Up for Discussion and Possible Filing**

### **ITEM: 2**

**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.

February 2014 – Final Action  
January 2014 – Further Discussion  
December 2013 – No Meeting  
November 2013 – Up for Discussion and Possible Filing

ITEM 2 (a) on the February 2014 Commission Meeting.	Statutory Authority 9.46.070 & 9.46.110
Who proposed the rule change?	
Staff.	
Proposed Change	
<p>This rule proposal is in response to a recent 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.</p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• In September 2005, the manufacturer submitted a request to Commission for a declaratory action authorizing the VIP.</li> <li>• In October 2005, the Commissioners referred the matter to an ALJ for an Initial Order.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>	

- 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.

Attachments:

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

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.

## **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.

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EXPEDITE  
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 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.

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

4 1.3 The Commission did not comply with the Administrative Procedure Act ("APA"),  
5 RCW 34.05.464(4) and .570(3)(f) when it did not decide all issues requiring resolution by the  
6 agency upon ZDI's petition for declaratory relief. Specifically, the Commission erred as a  
7 matter of law when it failed to decide the issue of whether ZDI's VIP was a gambling device in  
8 its August 2006 Final Order.  
9

10 1.4 The Commission engaged in unlawful procedure or decision-making process under the  
11 APA, RCW 34.05.570(3)(c), when it considered the issue of whether ZDI's VIP was a  
12 gambling device in 2012.  
13

14 1.5 The Commission's determination in its 2012 Final Order on Remand that ZDI's VIP is  
15 a gambling device under RCW 9.46.0241 is vacated as outside the statutory authority of the  
16 agency under the APA, RCW 34.05.570(3)(b), and as an erroneous interpretation or  
17 application of the law under the APA, RCW 34.05.570(3)(d). The portion of the  
18 Administrative Law Judge's Initial Declaratory Order determining that ZDI's VIP is not a  
19 gambling device is reinstated as the correct application of the law. ZDI's VIP is not a  
20 gambling device under RCW 9.46.0241. ZDI's VIP is not prohibited under the Gambling Act,  
21 RCW 9.46, or the Commission's regulations.  
22

23 1.6 The Commission is ordered to allow ZDI's VIP for manufacturing, distribution, and use  
24 in the State.

25 ///

26 ///



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:

<sup>[1]</sup> 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

<sup>[2]</sup> 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)

#### <sup>[1]</sup> 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.

#### <sup>[2]</sup> 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

#### <sup>[3]</sup> Courts

← Grounds and essentials of jurisdiction

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

1 Cases that cite this headnote

#### <sup>[4]</sup> 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

<sup>[5]</sup> **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.

<sup>[6]</sup> **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.

<sup>[7]</sup> **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.

<sup>[8]</sup> **Constitutional Law**  
↔ Presumptions and Construction as to Constitutionality

Court interprets statutes as constitutional if possible.

1 Cases that cite this headnote

<sup>[9]</sup> **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

<sup>[10]</sup> **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).

<sup>[11]</sup> **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).<sup>1</sup> 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.

<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

<sup>2</sup> We are mindful of the fact that the State has acted forthrightly by bringing this issue to ZDI Gaming’s attention.

<sup>3</sup> 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

<sup>11</sup> <sup>121</sup> ¶ 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 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.

<sup>[8]</sup> ¶ 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).<sup>4</sup> We therefore hold that the statute establishes the proper venue for judicial review of cases involving the Gaming Commission ruling in Thurston County.

<sup>4</sup> 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

<sup>[9]</sup> ¶ 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

¶ 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).<sup>1</sup> 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.

<sup>1</sup> 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<sup>2</sup> 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.

<sup>2</sup> 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),<sup>3</sup> \*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.

<sup>3</sup> 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.<sup>4</sup>

<sup>4</sup> 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.

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

### 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.

### Parallel Citations

268 P.3d 929

## **Staff Proposed Rule Change**

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

February 2014 - Up for Discussion and Possible Filing  
January 2014 - Study Session

### **ITEM: 3**

- 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.

**February 2014 – Up for Discussion and Possible Filing.**

**January 2014 – Study Session**

ITEM 3(a) on the February 2014 Commission Meeting Agenda.	Statutory Authority 9.46.070
<b>Who proposed the rule change?</b>	
Staff.	
<b>Proposed Change</b>	
<p>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.</p> <p>The proposed change also clarifies stay hearings must be conducted as brief adjudicative proceedings (BAP) as required by WAC 230-17-150.</p>	
<b>History of Rule</b>	
<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>• They are likely to prevail on the merits of the evidence at the administrative hearing.</li> <li>• Without relief, the licensee will suffer irreparable injury. Elimination of income from licensed activities must not be deemed irreparable injury.</li> <li>• The grant of relief will not substantially harm other parties to the proceedings.</li> <li>• 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.</li> </ul>	
<b>Impact of the Proposed Change</b>	
<p>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.</p> <p>This rule only impacts licensees who are summarily suspended. Summary suspensions are only used when a licensee has demonstrated they pose an immediate threat to public health, safety, or welfare, such as cases involving physical harm, cheating and theft. Licensees may need to wait up to 14 days for a stay hearing under the proposed rule change.</p>	
<p><b>A Small Business Economic Impact Statement</b> 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)).</p>	

<b>Regulatory Concerns</b>
None.
<b>Resource Impacts</b>
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.
<b>Policy Consideration</b>
None.
<b>Statements Supporting the Proposed Rule Change</b>
None.
<b>Statements Opposing the Proposed Rule Change</b>
None.
<b>Licensees Directly Impacted By the Change</b>
This rule only impacts licensees/permittees who are summarily suspended.
<b>Staff Recommendation</b>
File for further discussion.
<b>Proposed Effective Date for Rule Change</b>
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

- **Gambling Equipment**

February 2014 - Up for Discussion and Possible Filing

January 2014 - Study Session

### ITEM: 4

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.

February 2014 – Up for Discussion and Possible Filing  
January 2014 – Study Session

ITEM 4 (a) on the February 2014 Commission Meeting Agenda.	Statutory Authority 9.46.070
Who proposed the rule change?	
Staff	
Proposed Change	
<p>The proposed changes to <b>WAC 230-06-050</b> will codify our current practice of:</p> <ul style="list-style-type: none"> <li>• Requiring all costs associated with the review of gambling equipment to be paid in full at the completion of the review.</li> <li>• 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.</li> <li>• Including any security and surveillance requirements in our approval letter that must be met to operate the equipment.</li> </ul> <p>It also clarifies that gambling equipment must be approved and the business licensed before selling, or leasing may begin in Washington State.</p> <p>The proposed new rule <b>WAC 230-06-054</b> 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.</p> <p>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 and revised WAC 230-06-050 and added WAC 230-06-054 to this rule change proposal.</p> <p>Staff sent a letter to stakeholders notifying them of the proposed rule changes and asking for additional feedback. 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.</p> <p>Attachments:</p> <ul style="list-style-type: none"> <li>• Gambling Equipment Malfunction Report.</li> <li>• 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.</li> <li>• E-mail dated November 5, 2013, from Victor Mena, Washington Gold Casinos.</li> <li>• E-mail dated November 19, 2013, from Leonard Faircloth, SHFL Entertainment.</li> <li>• E-mail dated November 25, 2013, from Ryan Harris, SHFL Entertainment.</li> </ul>	

### History of Rule

This rule was implemented in its original form in 2003. The only change since then was updating it 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 can't 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 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 the past, manufacturers have not always submitted the exact same equipment for review that they later placed in operation. 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.

<b>Resource Impacts</b>
The proposed amendment will save staff time responding to questions about the gambling equipment submissions process.
<b>Policy Consideration</b>
None.
<b>Statements Regarding the Proposed Rule Change</b>
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:
<ul style="list-style-type: none"> <li>• November 5, 2013, from Victor Mena, Washington Gold Casinos.</li> <li>• November 19, 2013, from Leonard Faircloth, SHFL Entertainment.</li> <li>• November 25, 2013, from Ryan Harris, SHFL Entertainment.</li> </ul>
<b>Statements Supporting the Proposed Rule Change</b>
None.
<b>Statements Opposing the Proposed Rule Change</b>
None.
<b>Licensees Directly Impacted By the Change</b>
Manufacturers and operators.
<b>Staff Recommendation</b>
File for further discussion.
<b>Proposed Effective Date for Rule Change</b>
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: [gef@wsgc.wa.gov](mailto:gef@wsgc.wa.gov) Questions? (360) 486-3571

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

- |  |   |
|--|---|
| <input type="checkbox"/> Progressive/Bonusing system           | <input type="checkbox"/> Shuffler with Integrity or Randomness Issues<br>(Excluding routine shuffler malfunctions/jams) |
| <input type="checkbox"/> Electronic Card Facsimile             | <input type="checkbox"/> Electronic Bingo Dauber System   |
| <input type="checkbox"/> Electronic Pull-Tab Dispensing Device | <input type="checkbox"/> Other  |
| <input type="checkbox"/> Electronic Raffle System              |   |

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

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](mailto: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](http://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](mailto: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@wsqc.wa.gov>]  
**Sent:** Tuesday, November 05, 2013 4:05 PM  
**To:** [VMena@wagoldcasinos.com](mailto: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*  
G O L D

**Victor Mena** | VP WA Operations Nevada Gold, Chief Operating Officer WA Gold | [VMena@wagoldcasinos.com](mailto: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:hollie.aronna@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)

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**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

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**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.

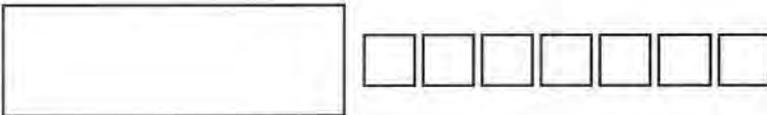
We would like to get this reworded since the gaming supplier should not be responsible for the casino to maintain surveillance equipment. This should be a requirement for the casino and not a condition for approval.

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)**

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**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 5<sup>th</sup> 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

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## Staff Proposed Rule Change

- **Background checks on landlords.**

### **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: 5**

#### **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.



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ITEM 5 (a) on the February 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 as 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 license 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 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.

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
<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p><b>A Small Business Economic Impact Statement</b> was not prepared because this proposed rule change will not impose additional costs.</p>
Regulatory Concerns
Minimal.
Resource Impacts
<p>Minimal.</p> <p>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. Therefore, the resource impacts will be minimal for both staff time and agency expenses.</p>
Policy Consideration
None.
Statements Supporting the Proposed Rule Change
None.
Statements Opposing the Proposed Rule Change
None.
Licensees Directly Impacted By the Change
<ul style="list-style-type: none"> <li>• Applicants for a house-banked card room license or a charitable or nonprofit license in regulatory groups III, IV, or V; and</li> <li>• 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.</li> </ul>
Staff Recommendation
File for further discussion.
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.