

Staff Proposed Rule Change

- **Manufacturer Special Sales Permits**

July 2014 – Final Action

June 2014 – Not on Agenda for Discussion

May 2014 – Study Session

April 2014 - Up for Discussion and Possible Filing

March 2014 – Study Session

February 2014 – Study Session

ITEM: 9

a) Amendatory Section WAC 230-03-025

Applying for a manufacturer's special sales permit.

b) New Section: WAC 230-16-187

Accounting records for manufacturer's special sales permit holders.



Proposed amendments to:

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

Proposed New Rule:

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

July 2014 – Final Action

June 2014 – Not on Agenda for Discussion

May 2014 – Study Session

April 2014 – Up for Discussion and Possible Filing

March 2014 – Study Session

February 2014 – Study Session

ITEM 9 (a-b) on the July 2014 Commission Meeting Agenda.	Statutory Authority 9.46.070(4)
Who proposed the rule change?	
Staff.	
Proposed Change	
<p>The proposed change would provide clarity as to which businesses would be required to get a manufacturer's license and which would qualify for a manufacturer's special sales permit. Staff is adding language to answer questions received from applicants about this permit, including:</p> <ul style="list-style-type: none"> • Who can apply for this permit; • How long the permit is good for; • The activity allowed with this permit; and • The rules that the permit holder must follow. <p>Staff is also proposing a new rule outlining recordkeeping requirements for permit holders.</p> <p>Attachments:</p> <ul style="list-style-type: none"> • Stakeholder letter dated March 25, 2014. • Small Business Economic Impact Statement. 	
History of Rule	
<p>The special sales permit was created by rule in July 1995 to allow manufacturers to sell gambling equipment on a limited basis to a distributor or to tribal governments. The intent was that the permit would be an alternative to the manufacturer's license when demand for equipment was below the economical feasibility for the licensee or applicant to go through the manufacturer application process.</p> <p>In the past, we have issued special sales permits to businesses that built their own tables, a manufacturer of roulette wheels with an electronic reader and display of the outcome of the game, a former licensed manufacturer that makes dice and layouts, and a manufacturer that makes playing cards.</p> <p>The original rule was intended for limited sales and not for sales beyond one year or any ongoing service of the equipment after the special sales permit expired (one year). The original rule outlined:</p> <ul style="list-style-type: none"> • Criteria for obtaining a special sales permit; • Information required on the application for a permit; • Initial investigation that would be performed by staff; • Process the Director used to determine if a manufacturer's license, rather than a permit, was required; and • That a permit was only valid for one year during which time the Director could require and notify a permit holder to obtain a manufacturer's license. <p>During the 2008 Rule Simplification Project, the rule was reduced to two criteria:</p> <ul style="list-style-type: none"> • Selling authorized gambling equipment; and 	

- Demonstrating that the anticipated profits from the sales will be below the cost of obtaining a manufacturer's license.

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

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

Impact of the Proposed Change

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

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

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

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

Regulatory Concerns

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

Resource Impacts

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

Policy Consideration

None.

Statements Supporting the Proposed Rule Change

None.

Statements Opposing the Proposed Rule Change

None.

Licensees Directly Impacted By the Change

Applicants for a special sales permit.

Staff Recommendation

Final Action.

Proposed Effective Date for Rule Change

January 1, 2015

Amendatory Section:

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

- (1) You may apply for a one-time manufacturer's special sales permit if ((you)):
 - (a) You want to sell authorized gambling equipment as set forth in WAC 230-03-200; and
 - (b) ~~((Demonstrate that the anticipated profits from your sales will be below the cost of obtaining a manufacturer license.~~
- (2) ~~Otherwise, you must apply for a manufacturer license.)~~ Gross sales from authorized gambling equipment will be less than twenty-five thousand dollars during your permit year; and
- (c) You will not have an ongoing vendor/customer relationship after the sale or installation of the gambling equipment.
- (2) You may be assessed additional fees after an estimate of the permit investigation costs have been established.
- (3) The manufacturer's special sales permit will be issued for one year and is not renewable.
- (4) Manufacturer's special sales permittees must comply with all rules, including those for manufacturers in Chapter 230-16.
- (5) You will need a manufacturer's license if you:
 - (a) Fail to meet the requirements of a special sales permit; or
 - (b) Want a renewable, annual license.

New Rule:

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

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

(1) Keep a:

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

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

(ii) The number of the check; and

(iii) The name of the payee; and

(iv) Type of expense; and

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

(i) Date; and

(ii) Name of the person paying; and

(iii) Amount; and

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

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

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



STATE OF WASHINGTON
GAMBLING COMMISSION

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

March 25, 2014

To: Previous Manufacturer's Special Sales Permit Holders

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

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

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

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

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

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

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

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

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

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

April 16, 2014

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We received no feedback from former permit holders indicating that compliance with this rule will cause businesses to lose sales or revenue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Reducing the frequency of inspections;

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

d. Delaying compliance timetables;

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

e. Reducing or modifying fine schedules for noncompliance; or

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

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

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

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

The proposed special sales permit rule change was published in the March 2014 edition of our Focus on Gambling newsletter and was discussed at the February and March 2014 Commission Study Session meetings, which were open to the public. The rules package was discussed at the April 2014 Study Session. The public was able to provide comments at the Study Session as well as public testimony on the rules package at the Commission meeting on April 10, 2014. On March 25, 2014, we sent notification letters of the proposed rules package to six former special sales permit holders to solicit their feedback. As of April 16, 2014, we have received no response for comment. The proposed rules package is also posted on our website for public comment.

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

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

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

Petition from the Public

Submitted by: A licensed distributor representative for Magic Distributing.

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

July 2014 – Final Action

June 2014 – Not on Agenda for Discussion

May 2014 – Further Discussion

April 2014 – Up for Discussion and Possible Filing

March 2014 – Study Session

ITEM: 10

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



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

**July 2014 – Final Action
June 2014 – Not on Agenda for Discussion
May 2014 – Further Discussion
April 2014 – Up for Discussion and Possible Filing**

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

Who proposed the new rule?

John Lowmon, licensed distributor representative for Magic Distributing.

Proposed Change

Bold = Additions/Changes made after the May 2014 Commission meeting.

We have received a petition from a licensed distributor representative requesting the Commission adopt a new rule to require licensed manufacturers of bingo and pull-tab products and equipment to make their products and equipment available to all distributors.

On June 10, 2014, the petitioner submitted a revised rule that sets out the following:

- Manufacturers of bingo and pull-tab products and equipment must make their products and equipment available to all distributors; and
- In the absence of an established line of credit with terms, all bingo and pull-tab products and equipment must be made available on a cash basis; and
- Any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to the Commission.

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

Attachments:

- Version #1: Original proposed rule amendment submitted by petition.
- **Version #2: Revised proposal submitted by petitioner for the July 2014 Commission meeting.**
- **E-mail dated June 10, 2014, from petitioner.**
- Petition for rule change and two-page letter.
- **Small Business Economic Impact Statement.**
- **Minnesota regulations.**
- List of the 12 bingo and pull-tab product manufacturers.
- Stakeholder letter dated March 27, 2014.
- Stakeholder letter dated April 16, 2014, sent to 12 bingo and pull-tab manufacturers, H & H Pull-Tab, and the National Association of Fundraising Ticket Manufacturers (NAFTM).
- Responses supporting, opposing and neutral to the petition (see below for details).
- Memo dated August 1, 2005, from Neal Nunamaker to the Commissioners.
- #1: 2005 - Original credit and pricing rules package, 3 rules repealed and 2 amended.
- #2: 2006 - The 2 credit rules that were amended in 2005 were repealed.
- #3: 2006 - Magic Distributing Petition summary and proposed WAC, and Commission denial letter.
- #4: 2007 - John Lowmon Petition summary and proposed WAC, and Commission denial letter.
- #5: 2008 - 4 remaining credit and pricing WACs overlooked during previous rules packages were repealed during the Rules Simplification Project.
- #6: 2011 - Bob Bearden Petition summary and proposed WAC, and Commission denial letter.

- Excerpts from Commission meeting minutes when this topic was previously discussed: June, August and September 2005; March, April, June and July 2006; January 2007; September 2009; July 2011.

History of Rule

In 1973, the first rule concerning manufacturers of gambling equipment, distributors and operators was filed. It was WAC 230-12-200 Prohibited practices-contracts-gifts-rebates, etc.

In 1977, this rule was amended to add the following sentences: Each licensed manufacturer or distributor of gambling devices, equipment or other gambling paraphernalia selling such items or related services in the state of Washington shall make such items or services available to all persons licensed to sell or operate such items or receive such services in Washington without discrimination and on the same prices and terms for all persons: Provided, that a manufacturer, by policy of the manufacturer, may choose to sell and provide services only to distributors.

In 1998, these two new rules were adopted:

- WAC 230-12-330 Availability of gambling equipment and related products and services – prices - contracts – discounts – restrictions – exceptions. This rule required manufacturers and distributors to make their products and services available to all licensees without discrimination for the same price and terms with some exceptions.
- WAC 230-12-340 Sale of gambling equipment, devices, supplies, paraphernalia, and related service - credit prohibited – exceptions. This rule prohibited manufacturers and distributors from offering credit to operators in the sale of gambling equipment, devices, supplies, and services, but did allow the use of trade accounts with certain conditions spelled out in rule.

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

Licensees have submitted three petitions (listed below) to reinstate the rules. Each time, the Commission denied the petitions.

- In 2006, Magic Distributing submitted a rule petition requesting that discriminatory pricing restrictions be reinstated.
- In 2007, John Lowmon, a distributor representative from Magic Distributing, submitted a rule petition that would require all manufacturers to sell their products to any licensed distributor without prejudice, to accept any cash purchase, and authorize the Commission to indefinitely revoke the license of any licensee who interfered with the rule.
- In 2011 Robert Bearden, representing various licensed and unlicensed, charitable and nonprofit organizations, submitted a rule petition that would require manufacturers to make their products and services available to all distributors without discrimination.

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

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

Impact of the *Revised* Proposed Change

- The petitioner's proposal would require manufacturers of bingo and pull-tab products to provide products to all distributors.
- In absence of credit, manufacturers would be required to make their products available on a cash basis.
- Any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to the Commission.
- **A Small Business Economic Impact Statement was prepared and is attached.**

Regulatory Concerns

In order for the Commission to fully regulate this area, staff would have to add back provisions for bingo and pull-tab manufacturers that are substantially similar to the credit/pricing rules that were repealed in 2005. For example, subsection (1) states the credit terms are between the manufacturer and distributor and will not be monitored by us. In addition, subsection (4) says if a manufacturer denies selling to a distributor that information must be provided in writing to the distributor with a copy to us, putting the Commission back into monitoring sales.

State by State Research:

Minnesota is currently the only state that has a regulation stating the following: No licensed manufacturer may refuse to sell gambling equipment to a licensed distributor unless the distributor is delinquent on any payment owed to the manufacturer (relevant portions of Minnesota's rules are attached).

Staff confirmed that the following states do not have any rules or regulations requiring manufacturers to sell to all distributors: Arizona, California, Colorado, Delaware, Georgia, Iowa, Kentucky, Michigan, Nevada, Ohio, Oklahoma, Oregon and Virginia.

In addition, manufacturers verified there were no other states besides Minnesota with rules requiring manufacturers to sell to all distributors.

Resource Impacts

Before the repeal of the pricing and credit restrictions in October 2005, staff spent an equivalent of .5 FTE enforcing these regulations.

Staff would need to create a new compliance program for manufacturers and distributors that is consistent with these rules.

In addition, when complaints are received, staff would be required to investigate them. Staff believes this will initially require .25 FTE until the program is established and evaluated.

Policy Considerations

- The Commission repealed discriminatory pricing restrictions in 2005 because these restrictions did not have a direct impact on the gambling activity (See September 2005 Commission meeting minutes, which are attached).
- Whether a problem exists that justifies rules that restrict a business' ability to set their own prices and make their own decisions as to credit, purchasing requirements, etc.
- There are other legal remedies that the petitioner could pursue other than rely on Commission rules.
- Before repealing the credit rules in 2005, the Commissioners carefully considered all arguments for three months, and had given them due consideration.

Statements Supporting the Proposed Rule Change

Letters and e-mails from:

- **Lowell Haugen, CEO, Gasperetti's Distributing, licensed distributor (one letter and one e-mail).**
- Steve Thompson, distributor representative for Magic Distributing.
- Ellie Coffey, Owner, Magic Distributing, licensed distributor.
- Walt Antoncich, Owner, Tri-Focus Enterprises, licensed distributor.
- 19 form letters signed by operators submitted by the petitioner.

At the April 2014 Commission meeting, the following testified in support of the petition:

- John Lowmon, the petitioner.
- Ellie Coffey, Owner of Magic Distributing.
- Lowell Haugen, CEO Gasperetti's Distributing.
- Patrick Buck, distributor representative for Gasperetti's Distributing.
- Monty Harmon, licensed service supplier.

At the May 2014 Commission meeting, the following testified in support of the petition:

- John Lowmon, the petitioner;
- Walt Antoncich, Owner, Tri-Focus Enterprises, licensed distributor; and
- Don Harris, H & H Distributing, licensed distributor.

Statements Opposing the Proposed Rule Change

Letters and e-mails from:

- Wendy Winsor, CFO, WOW Distributing, licensed distributor.
- Melanie Keser, President, ZDI Gaming, licensed manufacturer and distributor.
- Fred Graf, Vice President, Arrow International, Inc., licensed manufacturer.
- **Mary Magnuson, National Association of Fundraising Ticket Manufacturers (two letters).**
- **Dan McCoy, McCoy's Distributing, Inc., licensed distributor.**
- **Scott Johnson, Spokane Pull-Tab and Bingo Supply, licensed distributor.**

At the April 2014 Commission meeting, the following testified against the petition:

- Lane Gormly, Arrow International, manufacturer.
- Jay Gerow, ZDI Gaming, manufacturer and distributor.

At the May 2014 Commission meeting, Lane Gormly, Arrow Manufacturing, testified against the petition.

Other Statements Regarding the Proposed Rule Change

Mark Greenspan, President, Free State Products, licensed manufacturer, stating this change would not affect him.

Licensees Directly Impacted By the Change

Manufacturers, distributors and operators of pull-tab and bingo products and equipment.

Staff Recommendation

Not approve based on regulatory concerns, resource impact and policy considerations.

Proposed Effective Date for Rule Change

The petitioner requests the new rule become effective 31 days from filing.

Version #1

Original version filed for discussion at the May 2014 Commission meeting.

New Section:

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

- (1) Manufacturers must make all bingo and pull-tab products and equipment available to all distributors for the same price and terms. Credit terms are between the manufacturer and distributor and are not to be monitored by us.
- (2) In the absence of an established line of credit with terms, all bingo and pull-tab products and equipment must be made available on a cash basis.
- (3) Manufacturers must not dictate purchasing requirements to distributors, such as the quantity of items and product mix to be purchased.
- (4) Any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to us.

Version #2

Revised version submitted by the petitioner for the July 2014 Commission meeting.

New Section:

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

- (1) Manufacturers must make all bingo and pull-tab products and equipment available to all distributors ((for the same price and terms)). Credit terms are between the manufacturer and distributor and are not to be monitored by us.
- (2) In the absence of an established line of credit with terms, all bingo and pull-tab products and equipment must be made available on a cash basis.
- (3) Manufacturers must not dictate purchasing requirements to distributors, such as the quantity of items and product mix to be purchased.
- (3) Any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to us.

Newer, Susan (GMB)

From: John Lowmon [johnlowmon@gmail.com]
Sent: Tuesday, June 10, 2014 10:57 AM
To: Harris, Mark (GMB); Newer, Susan (GMB)
Cc: coffey, ellie; Tri Focus Ent; donnabuck@clearwire.net
Subject: WAC 230-16-003 Bingo and pull-tab manufacturers must make related products and equipment available to all distributors.

Hi Mark and Susan - would you be able to redistribute this email as I have no direct contact info for the Commissioners. Thank you, John

Commissioners: Mike Amos, Julia Patterson, Chris Stearns, Kelsey Gray, Bud Sizemore and Senator Steve Conway

- I have some quick comments below followed by an email excerpt from commission staff & myself and ending with a proposed revision to my rule petition for this WAC.

At the onset of my petition I worked with Commission Staff to construct the WAC as proposed.

The most important aspect of the proposed rule is access to pulltab and bingo products for any and all distributors that are is business now and in the future. Also having a copy of correspondence between the manufacturers and distributors aids as an indicator of the health of the industry.

Who knows if there will be a time that an individual or a group may choose to operate a distributorship.

It will be a problem if the WSGC issues them a license and sends them out with no access to the products they are required to sell. Under the current scheme all manufacturers could stop selling to all distributors as there is no requirement.

The fact that some are and some aren't giving access is not a controlled environment. It is chaotic and volatile.

Why should small distributors suffer because a manufacturer is vested wholly in a few distributors as your findings have shown? Not far from a half a million dollars in one instance yet a manufacturer complains about losses that they themselves are complicit in.

Email excerpt from Mark Harris March 3, 2014

Hi John,

Here is what I came up with (see below) in rule format based on the request letter you submitted for a rule change and what we discussed on the phone to clarify the request. Please take a look and let me know if it hits the mark or if there are changes or additions you want, as this is your petition. I cc'd Susan too as the Rules Coordinator to keep her up to date.

Thanks, Mark

New Section:

WAC 230-xx-xxx Availability of bingo and pull tab products and equipment.

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

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

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

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

Reply from John Lowmon March 3, 2014:

Thanks Mark - this will be a good start for discussion. I'm sure there will be resistance to the "same price and terms" insertion which will most likely be removed or written differently.

John

(Suggested Revisions to the original draft language of proposed rule):

New Section:

WAC 230-xx-xxx Availability of bingo and pull tab products and equipment.

(1) Manufacturers shall make all bingo and pull tab products and equipment available to all distributors ~~for the same price and terms~~. Credit terms are between the manufacture and distributor and are not to be monitored by the Commission.

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

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

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

Respectfully - John Lowmon

Please feel free to reply or give me a call if you choose to.

John Lowmon - Magic Distributing- 360-201-0255

JohnLowmon@gmail.com

JAN 31 2014



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

Gambling Commission
Comm. & Legal Division

Print Form

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

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

CONTACT INFORMATION (please type or print)

Petitioner's Name John Lowmon
Name of Organization Magic Distributing
Mailing Address 26018 25th Ave N.E.
City Arlington State WA Zip Code 98223
Telephone 360-201-0255 Email johnlowmon@gmail.com

COMPLETING AND SENDING PETITION FORM

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

RECEIVED
JAN 31 2014
GAMBLING/LICENSING

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: WSGC

[X] 1. NEW RULE - I am requesting the agency to adopt a new rule.

Access to stamped pulltabs and bingo supplies without discrimination

[X] The subject (or purpose) of this rule is:

A monopoly exist whereby one company controls over 95% of all production and is withholding access to the there product line with directed discrimination against our company only.

[X] The rule is needed because:

All pulltab distributors and manufacturers of pulltabs for the State of Washington

[X] The new rule would affect the following people or groups:

John Lowmon – Magic Distributing

1/28/2014

360-201-0255

RECEIVED
JAN 31 2014
GAMBLING/LICENSING

Re: Access to pulltab and bingo supplies.

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

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

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

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

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

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

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

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

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

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

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

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

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

Suggested WAC language could be as follows:

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

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

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

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

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

Thank you,

John Lowmon

RECEIVED
JAN 31 2014
GAMBLING/LICENSING

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

Date: May 30, 2014

Rules Package: WAC 230-16-003 Availability of bingo and pull-tab products and equipment.

John Lowmon has petitioned to amend the rule to require licensed manufacturers of bingo and pull-tab products and equipment to make their products and equipment available to all distributors for the same price and terms. Mr. Lowmon states in his petition there are licensed distributors unable to purchase bingo and pull-tab products from manufacturers.

The proposed new rule also provides:

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

Notification and Involvement of Small Businesses: Licensees impacted by this proposal were notified of the petitioner's proposed changes on March 4, 2014, through the Washington State Register, WSR No. 14-06-092, direct notification, providing information to publications likely to be obtained by small businesses, and posting on the agency website.

Letters were sent to licensed manufacturers and distributors and a trade association asking for feedback and response to five questions:

- (1) What kinds of additional professional services will you need to comply with the proposed rule(s)?**
- (2) Is there an increased cost in equipment, supplies, labor or administrative costs to comply with the proposed rule(s)?**
- (3) Will complying with the proposed rule(s) cause your business to lose sales or revenues?**
- (4) Do you have an estimate for the number of jobs created or lost as a result of complying with the rule(s)?**
- (5) About how many employees do you have?**

As of May 30, 2014, Commission staff received 23 letters or e-mails supporting the proposal (19 were form letters), 5 letters or e-mails opposing the proposal, and 1 letter from a person who was neutral.

Summary of letters supporting the petition:

- The petitioner, John Lowmon, distributed form letters asking for support for the rule change. The form letter stated:
 1. Major pull-tab manufacturers are intentionally discriminating against Washington State pull-tab distributors by blocking access to their product lines without cause.
 2. This is an intentional and willful attempt to force some distributors out of business.
 3. This is wrong and blocks businesses and non-profit organizations from access to the variety of products they want for their customers and could ultimately force them to deal with distributors they may not wish to do business with.
 4. Many business owners and non-profit organizations are directly affected when they cannot get the available product to their customers and members due solely to discriminatory acts by these same manufacturers.
- It is only fair all licensed distributors can buy product licensed by the state because it is a state regulated product. Should be able to buy product just like other distributors. Arrow International has a monopoly on the market, and they decline product to certain manufacturers. The rule will put the market back on a level playing field. All licensed manufacturers should have to sell product to all licensed distributors. It's not a fair market when my competition can get product I can't.
- Arrow International said they would not sell to me because of a credit issue, and they have said this for ten years; it's false and defamatory. Arrow has discriminated and slandered my company for ten years.
- Testified several years ago opposing de-regulation of the pull-tab industry and everything I predicted that would happen with de-regulation has happened: number of distributors has been reduced by more than 50%; predatory pricing by some distributors occurs regularly; manufacturers have greater control of whom and under what terms they sell product to.

Summary of letters opposing the petition:

- A distributor said he's been licensed since 1972. He was very concerned about potential negative impact and testified in the past in opposition to changing the rules. Nine years later since deregulating WSGC oversight of the credit and pricing rules, his concerns "turned out to be unfounded as I have experienced no negative impact to my business." His company has six employees and in response to the questions about the small business economic impact, he cannot predict what may happen if the rule change is adopted. He has witnessed the "detailed investigation and exhaustive public debate the WSGC has committed to this subject in previous years," and wonders "why we are still being asked to comment on this issue, now for the fourth time in nine years, since the original discussion." Enough time and energy has been spent on this subject and "I would prefer the rules be maintained as they are currently written."

- The proposal is bad business. “What smart businessperson would continue to sell to someone who owes him/her money? What smart businessperson would charge the same price to a customer that buys 10,000 items as he/she charges another person that buys just 1 of the same item?” The proposal will hurt manufacturers, bingo players and the charities, organizations and taverns relying on our products. Will require manufacturer to sue or write-off outstanding debt owed. Manufacturer’s reputation and brand value would be seriously hurt because it is the manufacturer’s name and logo players see on the product, not the distributor’s. A bad distributor can tarnish a manufacturer’s name and reputation, and choosing who it does business with, helps prevent that. By working with a select few distributors, a manufacturer can better handle inventory needs for a more efficient and cheaper business operation. Requiring a manufacturer to sell to every distributor in the state will cause more paperwork and administrative costs handling and coordinating returns.
- The proposed rule is a “throw-back to an earlier time, but without the safeguards that existed during that earlier time.” Nothing has happened in the past 7 years that “would make restrictions on the business relationship between a bingo and/or pull-tab manufacturer and distributor a part of the Commission’s core mission.” The proposal is similar to previous proposals brought forward in 2006 and 2007 and is unfair and unworkable. There is no rational basis for singling out bingo and pull-tab manufacturers for regulation, but leaving other manufacturers and distributors free to set their own prices and terms. The proposal should be rejected by the Commission for all the same reasons the rule was repealed in 2005, and similar proposals were rejected in 2006 and 2007. If the Commission adopts the proposal, it must reinstate the rules prohibiting extension of credit between manufacturers and distributors for over 60 days, and allow a manufacturer to refuse to sell to any distributor delinquent on its account.
- Forcing manufacturers to sell to every distributor is beyond the scope of the Gambling Commission’s duties. Manufacturers and distributors should do whatever legal business practices are required to ensure the viability of their business. WSGC would need additional staff to police the changes, the agency already is facing budget issues, and the agency has reviewed this issue several times and realized they should not regulate commerce.

Commission staff discussed the petitioner’s proposal during study sessions in March, April and May, 2014. Comments were solicited at the open, public meeting(s) of the Gambling Commission in April and May, 2014. About four persons testified to support the proposed rule change at the April and May 2014 Commission meetings, and about three persons testified in opposition to the proposal.

May 2014 Commission meeting:

Persons testifying in support:

- The petitioner, John Lowmon, said as a distributor, he wasn't given access to certain products.
- Another distributor said he wanted to encourage adherence to the spirit of the rule if it passed.

Persons testifying in opposition:

- A manufacturer said the Commission needed to decide whether it wanted to regulate business practices. Has seen the industry shrink nationwide, not just in Washington. Seems a few distributors are in a bad position and it is a capital intensive business. They've invested in certain distributors and should get to choose who represents their product.

April 2014 Commission meeting:

Persons testifying in support:

- The petitioner, John Lowmon, said he's concerned about pull-tabs, not as concerned about bingo paper, and the problem is one licensee in Washington. If there is a state ID stamp on the product, then the Commission should be involved with this.
- A distributor said his sister owned the company since 1972. He joined the company about two years ago. When Gasperetti's started, they did over \$6 million in business a year. They started being "punished" in July 2012 and they have lost half of their sales since then. If Gasperetti's closes, 19 employees will lose their jobs and there'll be impacts on several other businesses.
- A distributor said she's been in the industry for 35 years. Worked for Mr. Ed's for 25 years. She's been dealing with this issue for 10 years. She was told at one point they stopped sales due to her credit worthiness. She discussed issues she's had about a bad check and some history related to that. She said she feels the Gambling Commission, Attorney General's Office, and Arrow have made this bad debt follow her even though she was not the owner of the company that issued the bad check.

Persons testifying in opposition:

- Manager of a manufacturing plant in Lynnwood said he has been involved in the business since 1983. If distributors will be representing their brand, they should have some say in who does. Doesn't believe these types of business relationships are part of the Commission's business. Doesn't see the harm done.
- A distributor/manufacturer said the rules were taken out because it was a regulatory nightmare for the Gambling Commission and for distributors.
- Thinks it has been fine without the rules. The Commission's role is to make sure that gambling is safe for the public. This rule proposal is not related to this.

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

- (1) Manufacturers shall make all bingo and pull tab products and equipment available to all distributors for the same price and terms. Credit terms are between the manufacture and distributor and are not to be monitored by the Commission.
- (2) Absent an established line of credit with terms, all bingo and pull tab products and equipment must be provided on a cash basis.
- (3) Manufacturers shall not dictate purchasing requirements to distributors; such the quantity of items and product mix to be purchased.
- (4) Any denial by a manufacture to sell to a distributor must be detailed and provided in writing to the distributor with and reported to the Commission.

2. Describe the kinds of professional services a small business is likely to need to comply.

We do not expect there will be any professional services needed to comply with this rule. We have not received feedback from the industry about needing professional services to comply with the petitioner's proposal from persons supporting and opposing the petition, however, one distributor said additional professional services will not be known until they understand the reporting requirements.

3. Costs of compliance, including costs of equipment, supplies, labor and increased administrative costs.

We cannot predict the costs of compliance. We received feedback from two persons in the industry anticipating an increase in costs:

- One manufacturer states there will be an increase in paperwork and administrative work, and "costly and time-consuming litigation" costs associated with collecting on past due amounts for being forced to sell to a distributor with "a large accounts receivable balance." The manufacturer states it will be a "costly and time-consuming process" to deal with returns of product from distributors spread out all over the state, rather than from a select few distributors.
- A distributor anticipates increased costs of product passed on to distributors by the manufacturers.

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

We cannot predict whether there will be a loss in sales or revenue.

Most persons in the industry supporting the petition say they expect an increase in sales and revenue. One distributor stated they anticipated a loss in sales and revenues due to price increases.

5. **A determination of whether the proposed rule will have a disproportionate impact on small businesses. In making this determination, the costs of compliance for a small business must be compared with the cost of compliance for 10 percent of businesses that are the largest businesses required to comply with the proposed rule using one of the following as a basis for comparing costs:**
1. **Cost per employee; or**
 2. **Cost per hour of labor; or**
 3. **Cost per \$100 of sales.**

There are no disproportionate impacts because there are no costs for compliance for a small business. Many persons in the industry said they anticipated increased sales or revenue because of the proposed rule change. One small business anticipated an increase in the price of the product.

6. **List the steps taken to reduce the costs of the rule on small businesses or state the reasonable justification for not doing so. If there is a disproportionate impact on small business (as determined in #5 above), we must, where legal and feasible, reduced the costs on small businesses. We must consider each of the following methods of reducing the impact on small businesses**
1. **Reducing, modifying, or eliminating substantive regulatory requirements.**
 2. **Simplifying, reducing, or eliminating recordkeeping and reporting requirements.**
 3. **Reducing the frequency of inspections.**
 4. **Delaying compliance timetables.**
 5. **Reducing or modifying fine schedules for noncompliance.**
 6. **Any other mitigation steps/techniques.**

We have not identified a disproportionate impact on small businesses in the costs of compliance.

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

All rules are discussed at Study Sessions held prior to the start of Commission meetings before they are put on the Commission's agenda. The purpose of these Study Sessions is to get input from the industry. Letters were sent to manufacturers, distributors and a trade organization. This rule was discussed at three Study Sessions. The proposal has been filed for further discussion. The Commission took public testimony at the April and May 2014 meetings.

8. **A list of industries required to comply with the rule.**

Gambling industries are identified by a four-digit number, 7132, designated by the North American Industry Classification System, and published by the U.S. Department of Commerce.

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

We have identified no loss or creation of jobs resulting from compliance from the proposed rule. However, one distributor anticipates 1-2 jobs may be lost due to operators closing and lower sales and revenues, while three other distributors believe 1-2 jobs will be created.

Minnesota Regulations
See Subd 9. Sales Required.

349.163 LICENSING OF MANUFACTURERS.

Subdivision 1. License required.

No manufacturer of gambling equipment may sell any gambling equipment to any person for use or resale within the state, unless the manufacturer has a current and valid license issued by the board under this section and has satisfied other criteria prescribed by the board by rule. A manufacturer licensed under this section may also be licensed as a linked bingo game provider under section 349.1635.

A manufacturer licensed under this section may not also be directly or indirectly licensed as a distributor under section 349.161.

Subd. 1a.

[Repealed, 1994 c 633 art 5 s 99]

Subd. 1b. Applications; information.

An applicant for a manufacturer's license must list on the license application the names and addresses of all subsidiaries, affiliates, and branches in which the applicant has any form of ownership or control, in whole or in part, without regard to whether the subsidiary, affiliate, or branch does business in Minnesota.

Subd. 2. License; fee.

The annual fee for a manufacturer's license is \$9,000.

Subd. 2a.

[Repealed, 1994 c 633 art 5 s 99]

Subd. 3. Prohibited sales.

(a) A manufacturer may not:

(1) sell gambling equipment for use or resale within the state to any person not licensed as a distributor, except that gambling equipment used exclusively in a linked bingo game may be sold to a licensed linked bingo provider; or

(2) sell gambling equipment to a distributor in this state that has the same serial number as another item of gambling equipment of the same type that is sold by that manufacturer for use or resale in this state.

(b) A manufacturer, affiliate of a manufacturer, or person acting as a representative or agent of a manufacturer may not provide a lessor of gambling premises or an appointed official any compensation, gift, gratuity, premium, contribution, or other thing of value.

(c) A manufacturer may not sell or otherwise provide a pull-tab or tipboard deal with the symbol required by subdivision 5, paragraph (d), imprinted on the flare to any person other than a licensed distributor unless the manufacturer first renders the symbol permanently invisible.

Minnesota Regulations
See Subd 9. Sales Required.

Subd. 4. Inspection of manufacturers.

Employees of the board and the Division of Alcohol and Gambling Enforcement may inspect the books, records, inventory, and business premises of a licensed manufacturer without notice during the normal business hours of the manufacturer. The board may charge a manufacturer for the actual cost of conducting scheduled or unscheduled inspections of the manufacturer's facilities, where the amount charged to the manufacturer for such inspections in any year does not exceed \$7,500. The board shall deposit in a separate account in the state treasury all money received as reimbursement for the costs of inspections. Money in the account is appropriated to the board to pay the costs of the inspections.

Subd. 5. Paper pull-tab and tipboard flares.

(a) A manufacturer may not ship or cause to be shipped into this state or sell for use or resale in this state any deal of paper pull-tabs or tipboards that does not have its own individual flare as required for that deal by this subdivision and rule of the board. A person other than a manufacturer may not manufacture, alter, modify, or otherwise change a flare for a deal of paper pull-tabs or tipboards except as allowed by this chapter or board rules.

(b) The flare of each paper pull-tab and tipboard game must have affixed to or imprinted at the bottom a bar code that provides all information required by the commissioner of revenue under section 297E.04, subdivision 2.

The serial number included in the bar code must be the same as the serial number of the tickets included in the deal. A manufacturer who manufactures a deal of paper pull-tabs must affix to the outside of the box containing that game the same bar code that is affixed to or imprinted at the bottom of a flare for that deal.

(c) No person may alter the bar code that appears on the outside of a box containing a deal of paper pull-tabs and tipboards. Possession of a box containing a deal of paper pull-tabs and tipboards that has a bar code different from the bar code of the deal inside the box is prima facie evidence that the possessor has altered the bar code on the box.

(d) The flare of each deal of paper pull-tabs and tipboards sold by a manufacturer for use or resale in Minnesota must have imprinted on it a symbol that is at least one inch high and one inch wide consisting of an outline of the geographic boundaries of Minnesota with the letters "MN" inside the outline. The flare must be placed inside the wrapping of the deal which the flare describes.

(e) Each paper pull-tab and tipboard flare must bear the following statement printed in letters large enough to be clearly legible:

"Pull-tab (or tipboard) purchasers -- This pull-tab (or tipboard) game is not legal in Minnesota unless:

-- an outline of Minnesota with letters "MN" inside it is imprinted on this sheet, and
-- the serial number imprinted on the bar code at the bottom of this sheet is the same as the serial number on the pull-tab (or tipboard) ticket you have purchased."

Minnesota Regulations
See Subd 9. Sales Required.

(f) The flare of each paper pull-tab and tipboard game must have the serial number of the game imprinted on the bar code at the bottom of the flare in numerals at least one-half inch high.

Subd. 6. Samples of gambling equipment.

(a) The board shall require each licensed manufacturer to submit to the board one or more samples of each item of gambling equipment manufactured for use or resale in this state. For purposes of this subdivision, a manufacturer is also required to submit the applicable version of any software necessary to operate electronic devices and related systems.

(b) The board shall inspect and test all the equipment, including software and software upgrades, it deems necessary to determine the equipment's compliance with law and board rules. Samples required under this subdivision must be approved by the board before the equipment being sampled is shipped into or sold for use or resale in this state. The board shall impose a fee of \$25 for each item of gambling equipment that the manufacturer submits for approval or for which the manufacturer requests approval. The board shall impose a fee of \$100 for each sample of gambling equipment that it tests.

(c) The board may require samples of gambling equipment to be tested by an independent testing laboratory prior to submission to the board for approval. All costs of testing by an independent testing laboratory must be borne by the manufacturer. An independent testing laboratory used by a manufacturer to test samples of gambling equipment must be approved by the board before the equipment is submitted to the laboratory for testing.

(d) The board may request the assistance of the commissioner of public safety and the director of the State Lottery in performing the tests.

Subd. 6a.

[Repealed, [2002 c 386 art 1 s 12](#)]

Subd. 6b. Commercial products.

The board shall not deny approval of a pull-tab or tipboard game solely because the game is similar to or bears the name or image of a licensed commercial product.

Subd. 7. Recycled paper.

The board may, after January 1, 1991, by rule require that all pull-tabs sold in Minnesota be manufactured using recycled paper.

Subd. 8. Paddle ticket card master flares.

Each sealed grouping of 100 or fewer paddle ticket cards must have its own individual master flare. The manufacturer must affix to or imprint at the bottom of the master flare a bar code that provides all information required by the commissioner of revenue under section [297E.04, subdivision 3](#).

Minnesota Regulations
See Subd 9. Sales Required.

Subd. 9. Sales required.

No licensed manufacturer may refuse to sell gambling equipment to a licensed distributor unless:

- (1) a specific type of gambling equipment sold on an exclusive basis is at issue;
- (2) the manufacturer does not sell gambling equipment to any distributor in Minnesota;
- (3) a Minnesota statute or rule prohibits the sale; or
- (4) the distributor is delinquent on any payment owed to the manufacturer.

Licensee**Notes****Products Manufactured**

AMERICAN GAMES
COUNCIL BLUFFS IA

Licensed 11/22/2013

Bingo Paper
Pull Tabs

ARROW
BROOKLYN OH

- CAPITAL
- SPECIALTY
- TRADE
- BINGO KING

One Legal Entity with
Different Product Lines
Doing Business As (DBA)

Bingo Paper
Pull Tabs

DOUGLAS PRESS
BELLWOOD IL

Bingo Paper
Pull Tabs

SERVI-JEUX
MONTREAL NORD
QUEBEC

Bingo Paper

BONANZA PRESS
WOODINVILLE WA

Pull Tabs

FREE STATE PRODUCTS
BALTIMORE MD

Pull Tabs
Punchboards

**INTERNATIONAL GAMCO/
GAMETEC**
OMAHA NE

Pull Tabs

PARAMOUNT GAMES
WHEATLAND PA

Pull Tabs

**ZDI GAMING/
MANUFACTURING**
VANCOUVER WA

Pull Tab Dispensers

FORTUNET
LAS VEGAS NV

Electronic Bingo Card Daubers

VIDEO KING
OMAHA NE

Electronic Bingo Card Daubers

GAMING ARTS
LAS VEGAS NV

Electronic Bingo Card Daubers



STATE OF WASHINGTON
GAMBLING COMMISSION

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

March 27, 2014

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

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

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

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

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

- (1) What kinds of additional professional services will you need to comply with the proposed rule(s)?**
- (2) Is there an increased cost in equipment, supplies, labor or administrative costs to comply with the proposed rule(s)?**
- (3) Will complying with the proposed rule(s) cause your business to lose sales or revenues?**
- (4) Do you have an estimate for the number of jobs created or lost as a result of complying with the rule(s)?**
- (5) About how many employees do you have?**

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

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



STATE OF WASHINGTON
GAMBLING COMMISSION

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

April 16, 2014

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

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

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

The petition was filed for discussion at the April Commission meeting and will be discussed further at the May 9, 2014, Commission meeting. The May 9th meeting will be held at the Comfort Inn Conference Center, 1620 74th Avenue SW, Tumwater, Washington 98501, (360) 352-0691. Please visit our website about one week before the meeting to confirm the date and start time, which will be posted under Public Meetings. Commission meetings are open to the public and you are invited to attend.

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

- (1) What kinds of additional professional services will you need to comply with the proposed rule(s)?**
- (2) Is there an increased cost in equipment, supplies, labor or administrative costs to comply with the proposed rule(s)?**
- (3) Will complying with the proposed rule(s) cause your business to lose sales or revenues?**
- (4) Do you have an estimate for the number of jobs created or lost as a result of complying with the rule(s)?**
- (5) About how many employees do you have?**

Send your comments by May 5, 2014, to:

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



STATE OF WASHINGTON
GAMBLING COMMISSION

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

April 16, 2014

To: H & H Pull Tab

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

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

The petition was filed for discussion at the April Commission meeting and will be discussed further at the May 9, 2014, Commission meeting. The May 9th meeting will be held at the Comfort Inn Conference Center, 1620 74th Avenue SW, Tumwater, Washington 98501, (360) 352-0691. Please visit our website about one week before the meeting to confirm the date and start time, which will be posted under Public Meetings. Commission meetings are open to the public and you are invited to attend.

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

- (1) What kinds of additional professional services will you need to comply with the proposed rule(s)?**
- (2) Is there an increased cost in equipment, supplies, labor or administrative costs to comply with the proposed rule(s)?**
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STATE OF WASHINGTON
GAMBLING COMMISSION

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

April 16, 2014

To: NAFTM

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Gasperetti's Distributing Inc.
a commitment to quality & integrity

Mark Harris
Washington State Gambling Commission
P.O. Box 42400
Olympia, WA 98504
☎ 360-486-3440
F: 360-486-3629

Re: Rule Change WAC 230.12.231

Dear Mark:

I am writing this letter to you as a response to the four views opposing the new rule change. I will address the responses collectively as one whole response.

First, The WSGC is empowered by the Washington State Legislature to administer and regulate the entire Gambling industry and its economic participation in the Washington State Tax and Revenue system. In fact, the WSGC does regulate and control a quazzi monopoly. It has nothing to do with capitalism and everything to do with the regulation, oversight, enforcement of rules and regulation in order to properly control and protect the public from the devious, harmful, unscrupulous and unlawful conduct so often found (historically throughout), this type of industry. By the mere fact that this industry is not open capitalism (more correctly free enterprise), is exactly the very reason for the mission of the Gambling Commission. If that were not true then ZDI, Arrow, and WOW could tell you who is and is not o.k. to be a distributor.

My company is the one Arrow, Specialty, and Trade, (herein referenced as Arrow et. al.) refers to in their response. For over 15 years they (NOT GDI) controlled everything about this company including what and when we sold and to whom. There was NO free enterprise. We were financially overloaded, legally controlled by fine print, threatened by fax and e-mail, and punished at will when we did not comply. There was NO free enterprise period.

The very fact that the WSGC was created is to establish a level playing field for all licensees. It is within the rules and regulations that you conduct your business. It is the result of no rules and regulations that situations like the current one we are going thru takes place. As far as Arrow et. al. claim to selling for different prices for different quantities that exists today. They just have to sell to everyone who is willing to buy large orders and you can't "fix prices" or discriminate even at the federal

level of our laws. Arrow et. al. doesn't create any good will or customer loyalty the distributors do. We had that until Arrow et. al. sent one of their representatives into our customers and personally ruined the good will and customer loyalty that was rightly GDI's. They are acting like they are the distributor which, is highly illegal.

The regulatory authority of WSGC and its established legislative regulatory powers are legally and constitutionally established by the State of Washington and the Washington Legislature, thus you make the rules and regulations by law. The mere fact that the WSGC approves who is licensed in this state supersedes all individual actions to mimic your requirement. To possess and have affixed the WSGC seal on every game is total recognition of this, as property by the State of Washington. It is your rules and licensees must play by them. It is very very clear, that states must enforce the rules and regulations for both manufacturer and distributor. The right to make an honest living especially when regulated must be given to both sides. It is found in our 14th amendment to the constitution and reinforced by the Supreme Court in May of 1999.

Secondly, the claim by W.O.W., Arrow et. al. and ZDI, inc. to some special pricing right can only exist if the special pricing is offered to ALL distributors licensed in the State of Washington. There are kick-backs on games to ZDI, Inc., W.O.W. Distributing and Tabs Plus of \$5.00 per game on Arrow et. al. games but, only if the product is sold to a G.D.I customer and not offered to any of these 3 regular customers. This has been documented and supplied to the WSGC. There is absolutely no substantive proof to any of the 5 objections in W.O.W.'s response, In fact, it is amazing that they would even object since they themselves had to borrow over 1-million dollars from the family to get out of Arrow's "clutches" about 10 years ago. The remaining paragraphs in W.O.W.'s response are totally without merit. Currently NO manufacturer puts out a dealer policy, terms, and condition's pamphlet, or manual. It's all word of mouth. Buying is done by games and payouts, not by one game or 50! In fact GDI wanted to downsize the weekly orders from 300-1000 cases a week to 70-100 cases per week and this is what brought on our punishment. If GDI, was to order 300 cases from each of Mr. Gallagher's Company he would be fine with the amount of debt Mr. Gallagher put onto our billing. However, if we did not order what Mr. Gallagher's representative requested that we order, our order would be put on hold and Mr. Gallagher would demand payment. So, as long as GDI was ordering what Arrow et. al.'s representative requested we could get all the product we chose, and for greatly extended payment terms. Verbal of course. However, if we put in an order different from what Arrow wanted then the order would be put on credit hold and no orders shipped. But as soon as that order was upgraded by as many as 200 cases our order was released. Clearly the conduct by Arrow et. al. needs to be investigated by the Federal agencies who can exercise the authority over the conduct of Arrow et. al.

With regard to Arrow et. al. response I reply the following rebuttal:

- ¶ 1. Conversely small business would be greatly improved if Arrow had competition.
 - ¶ 2. Same response
 - ¶ 3. Arrow is not guaranteed success in business by any government. It's own conduct and business policies are the governing factor of how successful any company should be.
 - ¶ 4. Owing money is Arrow's issue. It has over and over again and again gotten small mom and pop businesses into financial trouble because they didn't comply. Examples in
-

Washington are: Gasperetti's distributing – current, W.O.W. Distributing – about 10 years ago, American Pull Tabs – 10-15 years ago – Bankrupt.

There is also at least one distributor in California that had the exact same situation. Arrow's requirements to purchase are very aggressive, always more than needed, tightly controlled by a money manager to insure the amounts wanted are in fact paid. You really have no control of what you want for your business, it's what Arrow wants. Please keep in mind American Games is now licensed in Washington and can replace Arrow if necessary.

All pricing for different levels of quantity are a good idea. However, Arrow has never given GDI a price savings and they actually sold to GDI 2 million dollars a year in their "Heyday". What Arrow does is offer gifts; Cash, rebates, under the table deals based on Arrows quantities demanded. There has never been a price list for different level or quantities or purchasing.

I also want to point out that Arrows products were sold thru a licensed distributor already vetted by WSGC. Therefore, all goodwill reputation and face contact belongs to the distributor, and not the manufacturer. In fact, most of our Arrow customers describe the games they want from Arrow as "the one in the white box or brown bag. Flares and pay-outs make the game, and not the label. If you look at a game, the manufacture of the game is hardly visible. Gamblers do not know who makes the game or care who makes the game. It's the winnings that count.

With respect to the manufacturers carrying large accounts receivables GDI is the only one he is referring to. We owe Specialty Manufacturing money today. Please note that GDI has a ZERO balance with Arrow Intl' and Trade Products YET, we still cannot purchase from those two companies due to a small balance owing to Specialty Manufacturing. We owe Specialty because Mr. Gallagher has gone after our business and customers personally. We have lost 20% of GDI's business to Arrows new distributors because of their conduct. Let's be accurate. When I came to GDI in May of 2012, GDI owed Arrow, Specialty and Trade combined \$550,000.00. I tried to reduce purchases that year and was cut off because I couldn't pay all the balance IMMEDIATELY. In March of 2013 I borrowed \$208,000.00 and paid Arrow, Specialty and Trade off in total. That's right zero was owed. I made it clear not to ship any orders not agreed to. In July of 2013 and upon my absence for vacation, Mr. Gallagher got my company right back in debt to \$164,000.00. When I cut the orders down again he refused to do business with GDI at the end of 2013. He threatened to sue GDI so I tried to negotiate with him. He still went after our business with his company employees. He has threatened his own dealers if they sell to GDI and has waged a "Put GDI out of business campaign" since Jan of 2014. He is scared to death of these regulations coming up since they will regulate him as he should be today, (May 12, 2014). I currently owe Specialty Manufacturing \$34,000.00, Hardley a "very large sum or balance!" Paying him off has become almost negative but we will get there and soon.

Arrows paragraph about choosing to do business with their choice and not the state choice holds no water. This is not an open and free market place. It is regulated and the states job is to make sure all players play equally.

The paragraph on inventory needs, flow, spikes and peaks is just plain baloney. Arrow makes 28 new games a month and if you don't order you get left out. You also get a lot of games that are

overstock, old, didn't sell well or you don't want. GDI has gotten as many as 28 cases: that's over 160 games that we did not order, did not want, and could not return. It's against Arrows policy to give any returns except defective games; the rest of the paragraph is just hot air. The principle of manufacturing applies to not just one customer but many. The steps are the same and quite frankly the income revenue should be great. The more customers; the more orders; the more sales – pretty much boilerplate!

The next paragraph refers again to a free market, and again it is not.

With regard to the paragraph in regards to car manufacturers as an example I would like to state the following. The automobile sales industry is a regulated industry. Those dealers are and do choose to own, sponsor, sell, and service many brands of automobiles. The following are examples of some of those dealers having more than one manufacturer's brand of vehicle to offer it's customers.

Titus Will Ford of Tacoma – over 30 dealerships selling Ford, Chevy, Toyota, Scion, Cadillac, GMC Trucks, Hyundai.

Korum Ford of Puyallup – over ½ dozen dealerships selling both foreign and domestic.

Larson Motors – Seattle, Bellevue, Fife, Tacoma, Puyallup. Over 35 dealerships, selling over 40 different vehicles.

By this writers own incriminating words, he is telling the commission that they must allow:

- a. No competition
- b. Exclusive license to Arrow
- c. All decisions relating to the product and the public to be governed by Arrow.

By Arrows response to the commission's proposed rule making one can see how important it has become to take the very needed steps proposed as they are today.

It is vitally important to restore regulatory authority that covers both the manufacturers and the distributor. If left to the billionaire manufacturers to literally trample on everyone who gets in their way it will only lead to more resentment by all affected in the nontribal gaming industry. A unhealthy industry cannot grow and will only stagnate and fail. Arrow international et. al. has run roughshod over all players in the Washington State gaming industry and it's about time they and their cronies are brought under supervision.

Respectfully,



Lowell D. Haugen, C.E.O.

Gasperettis Distributing

Newer, Susan (GMB)

From: Lowell@gasperettisinc.com
Sent: Wednesday, April 02, 2014 10:51 AM
To: Newer, Susan (GMB)
Cc: Danielle Sprague
Subject: Gasperetti's Distributing response to WAC 230-16-003

Dear Susan,

We have received your letter regarding the Proposed New Rule WAC 230-16-003.

Here is GDI's response to your questions:

1.

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

GDI's response: None

2.

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

GDI's response: No

3.

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

GDI's response: None - It will increase sales, revenue and profits for everyone.

4.

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

GDI's response: 1-3 new jobs could potentially be created as a result of complying with the new rule.

5.

About how many employees do you have?

GDI's response: 19 employees

This is long overdue for everyone. It is a good rule and should be passed.

Lowell Haugen, C.E.O.
Gasperetti's Distributing

Received
APR 07 2014
Gambling Commission
Comm. & Legal Division

April 6, 2014

Washington State Gambling Commission

P.O. Box 42400

Olympia, Wa. 98504-2400

Attn: Susan Newer

Regarding: WAC 230-16-003

I feel this rule should be in place. WAC 230-16-003. Why the gambling commission ever removed this WAC Rule in the first place, should be investigated.

My name is Steve Thompson, I have been in this industry for 37 years. It is only fair that all license distributors should be able to buy product that is licensed by the state. Now it is state regulated product. I feel my company should be able to buy product just like the other distributors.

Arrow International has a monopoly on the market. And now they have purchased Universal Mfg.

A company that has always sold to everyone, Arrow purchases it and declined product to certain distributors. If you put this rule back in place, it will put the market back on a level playing field.

All licensed manufactures should have to sell product to all license distributors. It's not a fair market that my competition can get product from a company that owns a majority of the market.

With this rule in place I can offer my customer more variety, just like the other distributors.

I feel this rule will help distributor to make more revenue.

It will help distributors to hire the people in the industry that want jobs. And get product.

Sincerely,

Steve Thompson

April 6, 2014

Washington State Gambling Commission
P.O. Box 42400
Olympia, Wa. 98504-2400
Attn: Susan Newer
Regarding : WAC 230-16-003

Yes I want this new rule put into place. WAC 230-16-003 my company has been dealing with this issue ever since it was removed. Why it was ever removed needs to be investigated.

My name is Ellie Coffey . I own Magic Distributing. This has been a problem for me for 10 years. My competitors can get state stamped regulated product that I cannot get. Why?

Arrow International said they would not sell to me because of a credit issue. Well they have said this for ten years. This is false and defamatory. They have discriminated and slandered my company in the industry for ten years. With this so called BAD CHECK. Who has this so called bad check? I want to see it. Who signed this so called check? Was I licensed distributor then. NO

Back in 2009 Mark Harris told the Attorney General, that Arrow Int have a reasonable reason not to sell to Magic Dist. And for that reason they don't have to sell to me. That reason is a lie. There is no bad check. And I'm sick of this allegation with no evidence.

Some of the manufactures said they did not have enough product made to sell to Magic Dist, but it was alright to sell to a licensed distributor that was licensed after Magic Dist. They had enough product for him. But not Magic Dist. This does not make sense. Sounds like discrimination to my attorney.
How can Arrow Int have a so called bad check from me, when they have never sold to me?

I work very hard for my company, if my company is growing it's because I have to drive all over the state to get product for my salespeople. This takes a lot of my time and gas, pay 20 % more just to get product. I want it delivered to my warehouse just like all the other distributors and for the same price.

Question #1 NONE

#2 NO

#3 NO

#4 I think this would create some new jobs.

#5 I have 5 employees

WAC 230-16-003 needs to be put back in place. It will make it a level playing field. For 10 year my competitors have been able to get state regulated product that I cannot get.

At the study session in March Mr. Gomley said there is new manufactures in this state. Yes there is a new manufacture, but they do not make Jar tickets or Bundles or U- Pick. Product all distributors need. I hope the WSGC does the right thing and and files this ruling.

Sincerely,
Ellie Coffey

Newer, Susan (GMB)

From: tri-focus@comcast.net
Sent: Tuesday, April 08, 2014 10:41 PM
To: Newer, Susan (GMB)
Subject: Proposed rule change

Susan,

My name is Walt Antoncich and I am the owner of Tri-Focus Enterprises. We have been a licensed distributor for 25 years. Several years ago when de-regulation of the pull tab industry was proposed, prior to passing, I spoke out (at a WSGC meeting) strongly against it. With the passage of all of the de-regulation everything I predicted has come true. The number of distributors has been reduced by more than 50%. Predatory pricing by some distributors occurs on a regular basis.

Manufacturers have greater control of who and under what terms they sell product to. If this trend continues there will be in a short time a "de facto" monopoly of this industry. The losers in all of this are the state...the cities and counties(who lose tax revenue) small businesses who get so discouraged, or cannot compete, that they do not re-license. I contend that dollar for dollar the pull tab industry generates more tax dollars and jobs than any other form of gambling in the state. There are many other issues that should be addressed but this (WAC 230-16-003) would be an excellent first step. What I would encourage you to consider is the possibility that "creative" credit or purchasing policies may be implemented in order to circumvent the intent of this WAC change. Fair competition forces everyone to perform better for the greater good.

Sincerely,
Walt Antoncich

- #1 none
- #2 no
- #3 no
- #4 improve health of industry
- #5 2 employees

Are you opposed to discriminatory acts that affect your business or non-profit organization?

If you believe that all Pulltab Distributors should have access to the variety of licensed pulltabs made for you in this State please sign this letter below:

Here are some of the facts that have been at issue for many years and have worsened as of late 2013:

1. Major pulltab manufacturers are intentionally discriminating against Washington State pulltab distributors by blocking access to their product lines without cause.
2. This is an intentional and willful attempt to force some distributors out of business.
3. This is wrong and blocks businesses and non-profit organizations from access to the variety of products they want for their customers and could ultimately force them to deal with distributors they may not wish to do business with.
4. Many business owners and non-profit organizations are directly affected when they cannot get the available product to their customers and members due solely to discriminatory acts by these same manufacturers.

I am petitioning the Washington State Gambling Commission to create a new rule, WAC 230-16-003, which will require Pulltab and Bingo manufacturers to make their products available without discrimination.

I have been a pulltab distributor for 27 years and many accounts I do business are like family to me.

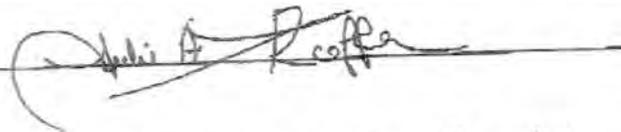
I ask for your support to end this unjustified direct and targeted discrimination.

Thank you,

John Lowmon 360-201-0255 Dist. Rep - Magic Distributing - johnlowmon@gmail.com
Fax: 360-631-5154

Dear WSGC: I support a new rule, WAC 230-16-003 that John Lowmon is petitioning the Washington State Gambling Commission to create.

Signed



Print your name

Julie Lennartz-Reppen

The 2nd Corner Tavern
My Business / Organization & City

Comments:

RECEIVED
MAY 06 2014
GAMBLING/LICENSING

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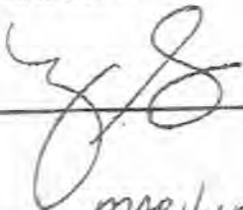
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Dear WSGC: I support a new rule, WAC 230-16-003 that John Lowmon is petitioning the Washington State Gambling Commission to create.

Signed _____



Print your name _____

Marilyn Guthrie

Stanwood Hotel Saloon

My Business / Organization & City

Comments:

RECEIVED

MAY 06 2014

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Fax: 360-631-5154

Dear WSGC: I support a new rule, WAC 230-16-003 that John Lowmon is petitioning the Washington State Gambling Commission to create.

Signed Jordynn Burnham

Print your name Jordynn Burnham

Magic Distributing

My Business / Organization & City

Comments:

RECEIVED

MAY 06 2014

GAMBLING/LICENSING

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Fax: 360-631-5154

Dear WSGC: I support a new rule, WAC 230-16-003 that John Lowmon is petitioning the Washington State Gambling Commission to create.

Signed Connie Iiams

Print your name CONNIE IAMS

Eagles 4122

My Business / Organization & City

Comments:

RECEIVED

MAY 06 2014

GAMBLING/LICENSING

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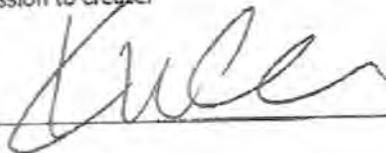
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Fax: 360-631-5154

Dear WSGC: I support a new rule, WAC 230-16-003 that John Lowmon is petitioning the Washington State Gambling Commission to create.

Signed



Print your name

Ken Wiles

Mustard Seed Gaming & Pub, Bellevue WA

My Business / Organization & City

Comments:

RECEIVED

MAY 06 2014

GAMBLING/LICENSE

Are you opposed to discriminatory acts that affect your business or non-profit organization?

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I ask for your support to end this unjustified direct and targeted discrimination.

Thank you,

John Lowmon 360-201-0255 Dist. Rep - Magic Distributing - johnlowmon@gmail.com
Fax: 360-631-5154

Dear WSGC: I support a new rule, WAC 230-16-003 that John Lowmon is petitioning the Washington State Gambling Commission to create.

Signed



Print your name

DAVID NORSTROM

THE BULLPEN SPORTS BAR & GRILL

My Business / Organization & City

Comments:

RECEIVED

MAY 06 2014

GAMBLING/LICENSING

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Signed Cheryl Kilpatrick

Print your name CHERYL KILPATRICK

ANACORTES EIKS #1204 - ANACORTES

My Business / Organization & City

Comments:

RECEIVED

MAY 06 2014

GAMBLING/LICENSING

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Signed

Stephen R Williams

Print your name

Stephen R Williams

My Business / Organization & City

Big Lake Bar Grill MT Vernon Wash 98274

Comments:

RECEIVED

MAY 06 2014

GAMBLING/LICENSING

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Signed

Bill McMoran

Print your name

Bill McMoran

Mt Vernon Elks Lodge # 1604

My Business / Organization & City

Comments:

RECEIVED
MAY 06 2014
GAMBLING/LICENSING

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Signed

Nancy Harvin

Print your name

Nancy Harvin

Anacortes Eagles

My Business / Organization & City

Comments:

RECEIVED

MAY 06 2014

GAMBLING/LICENSING

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Signed

Debi Sophus

Print your name

Debi Sophus

Moose Lodge 1640 / Mt. Vernon

My Business / Organization & City

Comments:

RECEIVED

MAY 06 2014

GAMBLING/LICENSING

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Signed Cherie A. Kjolso

Print your name Cherie A. Kjolso

Heads or Tails Karaoke Sports Bar

My Business / Organization & City

Comments:

RECEIVED
MAY 06 2014
GAMBLING/LICENSING

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Signed

S G Johnstonbaugh

Print your name

S G Johnstonbaugh

Check or Tails Karaoke Sports Bar

Seattle Wa 98133

My Business / Organization & City

Comments:

RECEIVED

MAY 06 2014

GAMBLING/LICENSING

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Signed

Stanley Groszek

Print your name

STANLEY GROSZEK

JOJO'S HARBOR LIGHT TAVERN, OAK HARBOR, WA 98277

My Business / Organization & City

Comments:

RECEIVED
MAY 06 2014
GAMBLING/LICENSING

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Signed

Gay Randall

Print your name

Gay Randall

Gentlemen Gaps PLS Mt Vernon

My Business / Organization & City

Comments:

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GAMBLING/LICENSING

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Signed

Print your name

John Vargas
LaConner Party & Pub LaConner WA

My Business / Organization & City

Comments:

RECEIVED

MAY 06 2014

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Signed



Print your name

Ray White

My Business / Organization & City

Comments:

Genes Pub Inn Buxleyton

127 N. Oak St

Buxleyton WA 98233

RECEIVED

MAY 06 2014

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Signed *Diane Eden*

Print your name DIANE EDEN

American Legion #96 Snohomish, Wa

My Business / Organization & City

Comments:

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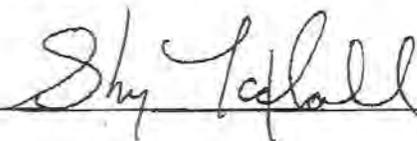
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Signed



Print your name

Sherry Taxdahl

Old Timers

Sedro Woolley WA

My Business / Organization & City

Comments:

Newer, Susan (GMB)

From: Wendy Winsor [wendyw@wowdistributing.com]
Sent: Friday, April 04, 2014 11:53 AM
To: Newer, Susan (GMB)
Subject: Proposed New Rule re: mfg & dist

To: WSGC
Attn: Susan Newer

I am writing to give feedback on the proposed rule to require bingo and pull tab manufacturers to make related products and equipment available to all distributors. This rule was in place when we began as a distributor back in 1990. There are many reasons it is no longer in place. First and foremost it is not the WSGC mission to regulate capitalism. Beyond that simple fact this rule does nothing to protect the public. It also does not help smaller distributors. When this rule was removed we were not among the top grossing distributors. We were in fact one of the smaller distributors. Since the rule was removed we have grown our distributorship with practical business practices and hard work.

Economic Impact questions:

- 1) Additional professional service needs will not be known until we understand the reporting requirements.
- 2) We anticipate increased costs of products from the manufacturers as they will have increased costs that will be passed on to the distributors.
- 3) We anticipate a loss of sales and revenues due to price increases and our need to raise prices causing us to price operators out of business.
- 4) We anticipate needing to lay off 1-2 sales reps due to operators closing and lower sales and revenues - this is 10% of our staff.
- 5) We currently have 12 full time employees - all earning living wages and with health care coverage.

If this rule is implemented, I see more reporting and administrative costs. More regulation seems to bring on more reporting and increased costs. Forcing Manufacturers to sell to every distributor, regardless of their business practices is not practical. Eliminating quantity requirements would increase costs to everyone. It is unrealistic to imply that selling one case of product versus 50 cases at a time does not have a higher cost, any more than a distributor selling one game to an operator versus 24 games at a time. Quantity discounts and minimums are a reality based on a need to operate at a profit.

Selling to someone on a cash basis has costs and risks as well. Many products are produced to order, especially bingo paper. By committing the expense to produce these items, with no minimum requirement is poor business. Even if the distributor is required to pay cash. If a business has a cash flow problem or even becomes insolvent the Manufacturer is left with this product and all the related expenses. Those costs will in turn be passed on to other distributors in the form of increased prices and in turn to the operators.

We run a quality business. We sell quality products. We compete at fair prices and sell to operators that run quality establishments. Running of a profitable business in the current economic climate, in a shrinking industry already facing regulation challenges, is tough. Giving up the right to choose to sell to those we feel will give us the best chance to stay in business is wrong.

WOW Distributing opposes this rule.

Wendy Winsor
CFO
WOW Distributing, Inc
4424 Chennault Beach Rd, Suite B



April 4, 2014

WSGC
Attn: Susan Newer
PO Box 424000
Olympia, WA 98504

Dear Susan,

We are writing to adamantly oppose the new rule change to require bingo and pull-tab manufacturer's to make related products and equipment available to all distributors.

First and foremost the gambling commission was put into place to regulate and control gambling for the safety of the general public. It was not created to regulate what would be deemed reasonable and widely excepted business practices.

By forcing manufacturers to essentially sell to every licensed distributor that want's to sell pull-tabs, is beyond the scope of the gambling commission's duties. Manufacturers and distributors should be able to do whatever legal business practices are required to ensure the viability of their businesses.

If the commission were to force manufacturers to be required to sell to everyone, they would need additional staff to police these changes. The agency already is facing budget issues. Consideration of this proposed rule seems very imprudent. Bear in mind that this subject has been reviewed several times since the agency realized they should not be in the business of regulating commerce.

This would be a huge step backwards for the industry. The commission has already deemed this is not in their scope of duties and never should have been. In closing this proposed rule change should not even be filed for consideration.

Sincerely,

Melanie Keser
President
ZDI Gaming Inc.

Lynnwood Office
800 . 414 . 8227

Corporate Office
4117 NE Minnehaha
ancouver, WA 98661
360 . 694 . 6639 Fax
360 . 693 . 6200
800 . 456 . 3973



Arrow International, Inc.

*Helping You To Accomplish
Great Things!*

May 2, 2014

VIA E-MAIL & OVERNIGHT MAIL

Ms. Susan Newer
State of Washington
Gambling Commission
P.O. Box 42400
Olympia, WA 98504-2400

Re: Proposed WAC 230-16-003

Dear Ms. Newer,

This correspondence is in response to your April 16, 2014 letter soliciting feedback as to how adopting proposed WAC 230-16-003 (the "Proposal") would adversely affect small businesses.

Arrow International, Inc. ("Arrow") firmly believes that adopting the Proposal will have an adverse economic impact on its business and ultimately, the local communities and the State.

Arrow has been doing business in Washington since the 1970s, and currently has 132 full-time employees within the State. The economic benefits from those jobs, and the corresponding wages paid to those employees, permeate throughout the local communities in which those employees and their families live. It goes without saying that those jobs, and benefit to the greater community, are possible only because Arrow is profitable. As this Commission is aware, when a business encounters economic difficulty, the inevitable fallout is a wage freeze or smaller pay raises and, ultimately, the loss of jobs. The ripple effect of a downturn in business's profitability – on both the economies of the communities and the human toll – is legion, and adoption of the Proposal would have such a negative effect.

The Proposal is, simply put, bad business. What smart businessperson would continue to sell to someone who owes him/her money? What smart businessperson would charge the same price to a customer that buys 10,000 items as he/she charges the person that buys just 1 of the same item? What smart businessperson would entrust anybody – regardless of the quality of that other person's service or reputation – to sell his/her product and thereby be that businessperson's "face" to customers? Not any businessperson who wants to remain profitable and in business.



Capital Game Manufacturing • Arrow Games Corporation / Bazaar & Novelty Ltd., Canada • Gowells Arrow, UK
9900 Clinton Road, Cleveland, OH 44144-1097 Tel: 1-800-321-0757 / 1-216-961-3500 Fax: 1-216-634-7186

www.arrowinternational.com



Arrow International, Inc.

*Helping You To Accomplish
Great Things!*

Ms. Susan Newer
May 2, 2014
Page 2 of 2

Yet the Proposal would require manufacturers to do all of these things. It will hurt Arrow's business, the business of other manufacturers and, ultimately, bingo players and the charities, organizations and taverns that rely on our products for fundraising and as a commercial stimulant.

The Proposal will negatively affect our business by requiring us to continue selling to a customer who is carrying a large accounts receivable balance with the manufacturer. Without the leverage of cutting-off a non-paying distributor, a manufacturer's only means to collect on past due amounts is to engage in costly and time-consuming litigation or to simply write-off the receivable. In either case, the manufacturer's profitability takes a big hit. Arrow is, in fact, right now having this very issue with one of the main distributors pushing the Proposal. The distributor still owes Arrow a great deal of money for product it ordered and received, and has repeatedly missed installment payment dates. Nevertheless, the distributor continues to try to order new product from Arrow. Under the Proposal, Arrow would have to sell product to it. If the Proposal is adopted, and this recalcitrant distributor doesn't pay its past due amount, what, practically, is Arrow's recourse? Nothing cost effective or quick. Arrow will have to either sue or write-off the whole amount. That is patently unfair.

A manufacturer's reputation and brand value would also be seriously hurt by the Proposal's adoption. Since manufacturers do not sell directly to the players, a manufacturer's name, reputation and integrity, is in many ways dependent upon the particular distributor selling its product. A player is not likely to know, let alone care, that a problem in quality or service is due to the distributor. Because the player sees the manufacturer's name and logo on the product, he/she will unfairly judge that manufacturer by his/her experience. A bad distributor can therefore tarnish a manufacturer's name and reputation, and thereby hurt a manufacturer's sales. A manufacturer should be able to decide with whom it does and does not do business. By being able to choose its business partner, a manufacturer can ensure that the person through whom its products interact with the public is reputable and will not hurt its reputation. A manufacturer is able to focus its training efforts when it is only working with select distributors. All told, being able to select with whom a manufacturer does business results in better service and product, which in turns leads to a better player experience, and that is in everyone's best interest.



Capital Game Manufacturing • Arrow Games Corporation / Bazaar & Novelty Ltd., Canada • Cowells Arrow, UK
9900 Clinton Road, Cleveland, OH 44144-1097 Tel: 1-800-321-0757 / 1-216-961-3500 Fax: 1-216-634-7186

www.arrowinternational.com



Arrow International, Inc.

*Helping You To Accomplish
Great Things!*

Ms. Susan Newer
May 2, 2014
Page 3 of 3

By working with just a select few distributors, a manufacturer is also able to get a better handle on inventory needs and flow, and that translates into a more efficient, and cheaper, business operation. By working with the same select partners over time, a manufacturer is able to see a pattern develop as to when sales spike, and when particular products are in demand. This permits a manufacturer to better manage its business by knowing when it needs to increase its inventory of certain materials. This helps a manufacturer manage its cash flow as well as inventory. However, since the Proposal would force a manufacturer to sell to every distributor, a manufacturer will not be able to be as "lean" with its inventory. It will not be able to rely just on past sales history in setting inventory levels. The Proposal would result in manufacturers carrying more inventory, which increases costs.

Adopting the Proposal would increase a manufacturer's costs of doing business in other ways, as well. First of all, being required to sell to every distributor in the State will result in considerably more paperwork and administrative work required of manufacturers and their respective staffs. Second, part and parcel of selling to all distributors is taking returns from all distributors. Instead of coordinating and handling returns from a select few distributors, manufacturers would need to coordinate, if not go out and pickup, returns from distributors spread out all over the State. Again, this is a costly and time-consuming process.

The Proposal is unfair and, quite frankly, un-American. It seeks not only to force one person to do business with another, but to dictate important terms of that relationship. It is the very antithesis of a free market.

No one would think of ever requiring Ford Motor Company to sell its cars to every car dealer in the State, including Chevy and Hyundai dealers, and at the same price and terms. A car manufacturer carefully chooses the dealers with whom it does business. It invests time and money in training its dealers and it ensures that its dealers are not denigrating the car manufacturer's good name and reputation. Yet, the Proposal would – in a sense – require Ford to sell its cars to Chevy and Hyundai dealers, at the same cost and on the same terms and regardless of the quality of the particular dealer. No state would ever do such a thing, yet this is exactly what the Proposal asks the Commission to do.



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Ms. Susan Newer
May 2, 2014
Page 4 of 4

The Proposal would have serious adverse effects on Arrow's business if adopted. The effects would flow through to Arrow's 132 employees in the State and their families. The local communities would in turn be harmed by the Proposal. Ultimately, the effect of the Proposal would be to undermine the integrity of the bingo and pull-tab market in Washington. Accordingly, Arrow urges the Commission to reject the Proposal.

Thank you for your time and consideration.

Very truly yours,

ARROW INTERNATIONAL, INC.

Fred L. Graf - Vice President



Capital Game Manufacturing • Arrow Games Corporation / Bazaar & Novelty Ltd., Canada • Cowells Arrow, UK
9900 Clinton Road, Cleveland, OH 44144-1097 Tel: 1-800-321-0757 / 1-216-961-3500 Fax: 1-216-634-7186

www.arrowinternational.com

Harris, Mark (GMB)

From: Mary Magnuson [mmagnuson@thejacobsonlawgroup.com]
Sent: Monday, June 09, 2014 3:54 PM
To: Harris, Mark (GMB)
Subject: Proposed rule
Attachments: NAFTA-M-comments on pricing rule (WA) 2014.docx

Hi Mark- I am hoping to contact some of the commissioners to discuss with them the problems with the proposed "sell to all" rule that will come up again in July. I know my comments from May were provided to them, but because there was a significant amount of material in the packet, I was hoping that you might provide those comments to the commissioners again. If I get the chance to talk to any of them, I think it would be helpful and would give them a context and some background. I am attaching a copy of the comments again for your convenience. Thanks very much.

MARY B. MAGNUSON

THE JACOBSON LAW GROUP

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NATIONAL ASSOCIATION OF FUNDRAISING TICKET MANUFACTURERS

1295 Bandana Boulevard
Suite 335
Saint Paul, Minnesota 55108
Tel: 651-644-4710
www.NAFTM.org

May 5, 2014

Ms. Susan Newer
Washington State Gambling Commission
P.O. Box 42400
Olympia, WA 98504-2400

VIA E-Mail

Re: Proposed New Rule to Require Bingo and Pull-Tab Manufacturers to Make
Related Products and Equipment Available to All Distributors

Dear Ms. Newer:

Thank you for contacting NAFTM for comments related to the small business impact of the above-referenced proposed new rule. As you know, our association is comprised of manufacturers who produce bingo, pull-tab and other related products for sale and use in the State of Washington. Adoption of the proposed rule will have an adverse economic impact on these manufacturers, as well as on the distributors, charities and other entities that purchase their products.

The proposed rule is a throw-back to an earlier time, but without the safeguards that existed during that earlier time. Until 2005, there was a similar rule in effect and it was enforced by the Commission. Manufacturers were required to sell product to all distributors in the State at similar prices and terms. However, the rule contained a number of exceptions that do not exist in the rule as currently proposed. In the past, exceptions existed for short-term price reductions (sales), minimum purchasing, payment methods, delivery locations, and marketing levels. The rule was applicable to all manufacturers and distributors, not just those selling bingo and pull-tab related equipment. More importantly, there was a corollary rule that restricted credit sales between manufacturers and distributors to 60-day terms. The credit rule was critical to

the “sell to all” provision.¹ The credit rule allowed a manufacturer to (1) report a delinquent distributor to the Commission and (2) discontinue sales to any distributor that failed to cure the delinquency within a specified period of time. Thus, a manufacturer was not required to sell to a distributor who was delinquent on payments.

When the previous pricing and credit rules were repealed, the Commission conducted a series of public hearings and engaged in thoughtful and meaningful dialog with the industry and the public. As part of this discussion, Director Rick Day said:

“...the basic question raised in this process hasn’t been answered; whether the rules that are subject for amendment and repeal fit in with what the Commission is responsible to do within its mission and statutory foundation. Staff reached the conclusion it did not and subsequently proposed the rules package identifying the rules that could be eliminated.”²

During that same meeting, Assistant AG Ackerman indicated that “if the Commission can no longer identify a regulatory purpose for these rules, then these rules no longer fit within the Commission’s statutory authority.”³ And, Chair Ellis, in voting in favor of the repeal of the rules indicated that:

“...he didn’t think the enforcing of the credit or the pricing rules was crucial to the Commission’s performance. He advised that he has not been able to identify any way in which they directly or indirectly further the Commission’s important business of keeping organized crime out of gambling and protecting the public from fraudulent gambling practices; therefore, these cuts were easier than most.”⁴

Commissioner Ellis further indicated that he “believed the underlying policy considerations were paramount; that it is difficult to justify the different types of restrictions on a firm’s ability to set their own prices and make their own decisions as to credit.” He didn’t believe that a “real showing had been made to continue that kind of restrictive business environment.”⁵

After the repeal of the rules in 2005, proposals similar to the current one came before the Commission on two more occasions—first in 2006 and again in 2007. In both instances, the proposals were rejected by the Commission based on the same rationale as

¹ Prior to the adoption of the credit rule in 1997, distributors were in debt to manufacturers for more than \$5 million. The credit rule, when adopted, allowed the debt to be converted to promissory notes to permit the distributors to make payments over a period of several years. At least one distributor has yet to fully satisfy its note.

² Excerpt from September 2005 Commission Meeting Minutes.

³ Id.

⁴ Id.

⁵ Id.

used in 2005—restrictions on pricing are “outside the Commission’s mission.”⁶ In fact, in 2007, Assistant Director Mark Harris said with respect to a nearly identical proposal that would “require manufacturers to sell their product to distributors regardless of the distributor’s business practice, credit problems or bad debt” that it “would add a new regulatory requirement that would require the Commission to indefinitely revoke the manufacturer’s license if they don’t comply.” In making that statement, Mr. Harris specifically referred to the fact that in 2007, as now, there was no proposal to also reinstate the credit rule, which would have prevented the sale of products on past due accounts and at least, given the manufacturer a remedy for non-payment.

Nothing has transpired in the past 7 years that would make restrictions on the business relationship between a bingo and/or pull-tab manufacturer and distributor a part of the Commission’s core mission. In fact, according to the Commission’s own statistics, bingo/pull-tab net receipts have decreased substantially from \$108.6 million in 2007 to \$73.7 million in 2013. Bingo and pull-tab sales now comprise less than 2.5% of the total gaming market in Washington. Imposing punitive restrictions between bingo and/or pull-tab manufacturers and distributors on what has become a minor slice of the Washington gambling pie cannot possibly be justified as critical to the Commission’s core mission.

Moreover, the proposal, like the previous proposals brought forward in 2006 and 2007, is unfair and unworkable. First, the proposal only applies to manufacturers of bingo and pull-tab equipment and supplies. If regulating business practices between manufacturers and distributors is critical to the core mission of the Commission, the rule ought to apply to all manufacturers and distributors as in years past. There is no rational basis for singling out bingo and pull-tab manufacturers for regulation, but leaving all other manufacturers and distributors of gambling products in Washington free to set their own prices and terms.

Second, the proposal is fraught with inconsistencies and lacks clarity. As mentioned previously, it appears that manufacturers must make all products available to all distributors for the same price and terms. The proposal requires a manufacturer to (a) either establish the same credit terms for all distributors whether they qualify or not; or (b) provide no credit terms at all to anyone—meaning cash sales for all distributors. There is nothing in between—like credit terms for those that are credit worthy, but cash sales for those that are not. And, there is no way a manufacturer can discontinue sales to delinquent distributors. If this proposal goes forward, it is absolutely critical that the Commission also reinstate the credit rule—a rule that allows a manufacturer to refuse to sell to a distributor if and when that distributor becomes delinquent on an account. In addition, the Commission must also reinstate the exceptions to the pricing rule that existed prior to 2005 so that manufacturers may develop reasonable and common pricing structures based on volume of sales, payment terms and the like.

⁶ Excerpt from January 2007 Commission Meeting Minutes

Newer, Susan (GMB)

From: Dan McCoy [mccoysdis@clearwire.net]
Sent: Friday, May 16, 2014 4:47 PM
To: Newer, Susan (GMB)
Subject: Requested Response to New Rule

Hello Susan,

Thank you for the opportunity to respond to the proposed rule change to require bingo and pull-tab manufacturers to make related products and equipment available to all distributors.

We've been a licensed distributor since 1972. When the WSGC originally addressed the issues that resulted in the current set of rules, I was very concerned about the potential negative impact changing the rules might have and I spoke out in opposition to changing the rules to their current state. Now, nine years later, I can report that the concerns I had about deregulating WSGC oversight of the credit and pricing rules turned out to be unfounded as I have experienced no negative impact to my business. Manufacturers choose to do business with me at their discretion and I, too, choose to do business with manufactures at my discretion.

I purchase and sell various merchandise, some of which, I am not allowed to purchase directly from the manufacturer, but must instead, buy their products from a 'Master Distributor'. In some cases, I am not allowed a wholesale price at all, since I am either, not big enough, or I do not fit into their distribution preferences, as they are not willing to jeopardize long standing relationships within their distribution networks.

Examples of restricted or dictated purchasing includes New Era ball caps, Nike NFL merchandise, Ralph Lauren brand products and Arrow and Bingo King bingo paper. These manufacturers like the way their products are being distributed and, like it or not, I do understand and, ultimately, accept the way they do business. I buy their products within their terms, if they are made available to me, or I don't.

Consider also that if you require every manufacturer to sell to every distributor, will you also require every distributor to buy product from every manufacturer? I currently do not use every manufacturer, nor would I want to be required to purchase from them all. If you do not require me to support every manufacturer, how then, can you reasonably dictate to the manufacturers who their distribution network must include?

Additionally, as was addressed in the original debate: Is there really a need for the WSGC to be involved in the regulation and oversight of what is largely considered to be 'standard business practices'? And, do you have the funding to commit the full time employees to an issue that is, possibly, outside the 'mission' of the WSGC?

Regarding your questions about the small business economic impact this rule change might have: We are a small company of six employees, and I cannot predict what events may take place as a result of changing these rules.

In closing, having been witness to the detailed investigation and exhaustive public debate the WSGC committed to this subject in previous years, I do wonder why we are still being asked to comment on this issue, now for the fourth time in nine years, since the original discussion. In my opinion, enough time and energy has been spent on this subject and I would prefer the rules be maintained as they are currently written.

Respectfully,

Dan McCoy

Newer, Susan (GMB)

From: Scott Johnson [scott@spokanepulltab.com]
Sent: Friday, June 20, 2014 12:52 PM
To: Newer, Susan (GMB)
Subject: Response to New Rule

Dear Susan, this message is in regard of the possible rule change requiring all manufacturers being forced to sell to all distributors. I agree with Dan McCoys email to you.

My understanding is that there is a meeting July 11th in the Vancouver area. Please let the record show that Spokane Pulltab & Bingo Supply and its 5 licensed employees are not in favor of this rule.

Please send me any information regarding this meeting and I will do my best to be there.

Thank you
Scott Johnson

Scott Johnson
Spokane Pulltab & Bingo Supply
Spokane, Wa. 99202

509-747-1339

From: Scott Johnson
Sent: Friday, June 20, 2014 9:40 AM
To: Scott Johnson
Subject: FW: Requested Response to New Rule

Scott Johnson
Spokane Pulltab & Bingo Supply
Spokane, Wa. 99202

509-747-1339

Newer, Susan (GMB)

From: Free State Products [freestateproducts@comcast.net]
Sent: Thursday, April 24, 2014 8:29 PM
To: Newer, Susan (GMB)
Subject: Proposed Rule Change
Attachments: WSGC Letter.jpg

Dear Susan,

Attached is a copy of your letter with the proposed rule change and 5 questions. The rule change will not affect us, as we already make all of our products available to all distributors for the same price and terms. That being said, please see the attached for my answers to your questions.

Thanks,

Mark

Mark Greenspan
President
Free State Products, Inc.
425 Eastern Avenue
Baltimore, MD 21221-6715
(410) 687-4994 (Tel.)
(215) 801-6260 (Cell)
(410) 687-0711 (Fax)



STATE OF WASHINGTON
GAMBLING COMMISSION

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

April 16, 2014

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

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

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

The petition was filed for discussion at the April Commission meeting and will be discussed further at the May 9, 2014, Commission meeting. The May 9th meeting will be held at the Comfort Inn Conference Center, 1620 74th Avenue SW, Tumwater, Washington 98501, (360) 352-0691. Please visit our website about one week before the meeting to confirm the date and start time, which will be posted under Public Meetings. Commission meetings are open to the public and you are invited to attend.

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

- (1) What kinds of additional professional services will you need to comply with the proposed rule(s)? None
- (2) Is there an increased cost in equipment, supplies, labor or administrative costs to comply with the proposed rule(s)? NO
- (3) Will complying with the proposed rule(s) cause your business to lose sales or revenues? No
- (4) Do you have an estimate for the number of jobs created or lost as a result of complying with the rule(s)? No change
- (5) About how many employees do you have? 34

Send your comments by May 5, 2014, to:

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



STATE OF WASHINGTON
GAMBLING COMMISSION

P.O. Box 42400 Olympia, Washington 98504-2400 (360) 486-3440 1-800-345-2529 FAX (360) 486-3623

August 1, 2005

TO:	COMMISSIONERS Curtis Ludwig, Chair Alan Parker, Vice Chair Judge Janice Niemi (Ret.) John Ellis	EX OFFICIO MEMBERS Senator Margarita Prentice Senator Jerome Delvin Representative Alex Wood
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FROM: Neal Numamaker, Deputy Director

SUBJECT: CHANGES IN THE REGULATORY PROGRAM FOR MANUFACTURERS AND DISTRIBUTORS

In 2004, the Washington State Gambling Commission staff prepared a budget for the fiscal period 2005-2007. That budget recognized that growth of revenue had slowed in recent years, expenses continue to rise, and that the working capital balance could not be maintained at the same level previously experienced. Revenue for the 05-07 biennium, combined with available working capital, were insufficient to support an agency of 188 FTEs. The staff reviewed its options and presented to the Commission a budget proposal that would reduce the size of the agency by approximately 20 FTEs by the conclusion of the biennium. In August 2004, the Commission adopted the budget as presented.

The reduction proposals included the abolition of a class of Special Agent positions designated as "Coordinators." These positions had been established to relieve administrators and managers from oversight of certain approval processes and/or to monitor specific activities set forth in various rules. The budget presentations included information that changes in our regulatory program would be needed along with changes in the underlying rules.

One of those coordinator positions was assigned to monitor issues concerning manufacturers and distributors, including the pricing and late payment issues set forth in WAC 230-12-330 and 12-340. Assistant Director Cass has stated that 50 percent of this position's time was expended in dealing with notifications and issues concerning this rule. Additionally, the rules significantly impacted other special agent's time based on the need to perform quarterly checks of sales and pricing practices to ensure rules compliance.

The proposals before the Commission do not "deregulate" this segment of the market. The Commission has a number of important regulatory interests that the rules continue to support (Attachment "A" is a summary of rules retained, proposed amendments, and repeals). The proposal before you, at its core, removes the Commission from the business relationship between licensed entities.



The mission of the Washington State Gambling Commission is to "Protect the public by ensuring that gambling is legal and honest." Toward that end, we conduct extensive pre-license investigations and post-licensing monitoring of the organizations. We closely control and track the flow of gambling equipment and games. We check the games to ensure they are fair and provide players and operators with the opportunities advertised. The current expenditure in FTE-hours monitoring prices and payment arrangements between these market segments does not provide public benefit commensurate with the costs.

Original Manufacturer/Distributor Sales Rule

The Gambling Act provides the Commission with the statutory authority to license manufacturers and distributors (RCW 9.46.070(4) and RCW 9.46.310). Beyond that specific authorization, the statute does not speak to this segment of the industry or, unlike other activities, how the Commission may want to regulate the activity.

Punchboards and pull-tabs, although authorized by the legislature in 1973, did not become available until 1974. The Commission chose to spend its first several months on rules to allow charities to begin operating bingo, raffles, and amusement games.

Order #5, filed on 12/19/1973, established the first rules concerning manufacturers of gambling equipment, distributors, and operators. WAC 230-12-200 Prohibited practices – Contracts – Gifts – Rebates, etc. was part of that original package and was the primary regulation dealing with the business relationships of manufacturers, distributors, and operators. It should be noted that this rule was found in the General Applicability section, not the punchboards and pull-tab chapter. However, punchboards and pull-tabs were the only gambling devices over which the Commission asserted jurisdiction until the early 1990s when bingo supply manufacturers were licensed.

The rule read:

- (1) No contract shall be made or entered into whereby an operator or distributor agrees to deal in, purchase or operate any particular brand or brands of gambling device or equipment to the exclusion of any other brand of gambling device or equipment.
- (2) No manufacturer or distributor, or his employee, shall directly or indirectly, solicit, give or offer to or receive from any other licensee or any employee thereof, any gifts, discounts, loans of money, premiums, rebates, free merchandise of any kind, treats or services of any nature whatsoever; nor shall any licensee or employee thereof, directly or indirectly, solicit, receive from, or give or offer to any manufacturer or distributor, or his employee, any gift, discounts, loans of money, premiums, rebates, free merchandise of any kind, treats or services of any nature whatsoever: PROVIDED, that nondiscriminatory discounts offered to all parties on the same conditions shall be permitted.

(3) No manufacturer or distributor, or distributor's representative, shall sell to any person, or solicit from any person, any order for any device, equipment, merchandise, property or service, contingent upon that person or another purchasing or ordering some other device, equipment, merchandise, property or service. The price of any such device, equipment, merchandise, property or service charged by the licensee to another person shall not vary depending upon whether or not that person, or another, purchases or orders some other device, equipment, merchandise, property or service.

(4) In selling equipment, fixtures, supplies or commodities other than gambling devices, no manufacturer or distributor shall grant to licensee, nor shall such licensee accept, more favorable credit terms or arrangements than those extended to non-licensed parties. The price thereof shall be in conformity with the open market price in the locality where sold and the term of such sales shall not exceed those normally granted in accordance with the customary business practice of the particular trade in the locality where such sales are made.

The rule was amended only once, by Order #80, filed 12/28/1977, to add the following sentences into subsection (2):

(2) No manufacturer or distributor, or his employee, shall directly or indirectly, solicit, give or offer to or receive from any other licensee or any employee thereof, any gifts, discounts, loans of money, premiums, rebates, free merchandise of any kind, treats or services of any nature whatsoever; nor shall any licensee or employee thereof, directly or indirectly, solicit, receive from, or give or offer to any manufacturer or distributor, or his employee, any gift, discounts, loans of money, premiums, rebates, free merchandise of any kind, treats or services of any nature whatsoever. Each licensed manufacturer or distributor of gambling devices, equipment or other gambling paraphernalia selling such items or related services in the state of Washington shall make such items or services available to all persons licensed to sell or operate such items or receive such services in Washington without discrimination and on the same prices and terms for all persons: Provided, That a manufacturer, by policy of the manufacturer, may choose to sell and provide services only to distributors: PROVIDED, further, That nondiscriminatory discounts offered to all parties on the same conditions shall be permitted.

The rule change stemmed from a situation where a manufacturer provided a distributor with exclusive access to certain games that were very popular. The manufacturer refused to sell the games to other distributors. The rule was amended to prevent similar situations in the future.

WAC 230-12-200 remained in effect, unchanged, until January 1, 1998, when it was repealed by Order 97-20-026, filed 9/22/1997.

Background of Current Rules

In late 1991, a distributor closed its doors due to an inability to pay its debts. As the closure played itself out, it was found that one manufacturer had been concerned about the financial stability of the organization and had entered into UCC agreements to protect its accounts receivable. The UCC agreements covered all equipment and inventory, including the punchboards and pull-tabs of other manufacturers. When the protected manufacturer effectively walked away with everyone else's product, there was significant concern. When one of the non-owner principals of the bankrupt company immediately opened a new distributorship and the jilted manufacturers found themselves compelled by the WSGC rule (WAC 230-12-200) to sell to that new company, they were more than a bit outraged.

During the period between 1992 and 1997, Commission staff had a number of discussions with manufacturers about the situation. Manufacturers were very concerned about the mounting debt of distributors and stated that the root cause of the problem was the Commission's rule (WAC 230-12-200). The rule forced them to sell to all distributors under the same terms, which included credit arrangements. Consequently, they were forced to give credit to companies with no track record or with bad credit ratings. At the same time, manufacturers were very concerned about being seen by distributors as threatening their businesses. Distributors felt that they were only acting prudently and within the rules by taking full advantage of the credit terms provided by the manufacturers.

The Commission staff discussed whether or not the solution to the problem should be repeal of the problematic portion of the rule which, according to the manufacturers, had caused the difficulty, or devise another means of correcting the problem. Finally, based on negotiations with manufacturers and distributors, a plan was developed. That plan resulted in passage of WAC 230-12-330 and 12-340 which are at the heart of the current discussion. Rules 12-330 and 12-340 were adopted and went into effect on January 1, 1998.

Changes/Adjustments since 1998

Only minor changes have been made to the rules since 1998.

WAC 230-12-330 **Availability of gambling equipment and related products and services – prices – contracts – discounts – restrictions – exceptions**, and WAC 230-12-340 **Sale of gambling equipment, devices, supplies, paraphernalia, and related services – credit prohibited – exceptions**, were written to regulate the business interactions of licensed manufacturers and distributors. WAC 230-12-330 was amended effective July 1, 1998 to remove a provision allowing exclusivity in the sale of pull-tab dispensing devices designed specifically for use with a pull-tab series where a patent or exclusive protected right existed. It was amended a second time effective July 1, 2002. The amendments changed the rule from a question and answer format to a series of statements, added clarifying language for discounts, and clarified that if a distributor was in violation of WAC 230-12-340, the manufacturer was not required to make further sales to that distributor.

WAC 230-12-340 was amended effective July 1, 1999. Those changes included removal of the question and answer format and addition of a provision allowing charitable or nonprofit organizations to buy bingo supplies without making immediate payment (allowed up to 30 days to pay). The rule was amended again effective July 1, 2002, to clarify issues concerning equipment leasing and to simplify the notification processes.

Effects of Rules Changes

Manufacturers and distributors have testified that repeal of this rule will result in the loss of smaller operations and centralization of product availability. In 1990, the Gambling Commission licensed 15 manufacturers of punchboards and pull-tabs. That number remained steady, with minor variations, until April 1994. Since that time, the Commission has noted a slow but steady decline in the number of punchboard and pull-tab manufacturers licensed. Today, we have nine such companies licensed. Nothing in the records shows an adjustment or slowing of the trend before or after the adoption of the current rules. Market forces, including mergers and changes in product demand, are likely causes for the industry's declining numbers. Distributors have experienced a similar reduction in numbers from a high of 30 in 1995 to the current, where we have 20 reporting sales of punchboards and pull-tabs.

The gambling "market" in Washington has changed over the past 15 years. This can clearly be seen in the fiscal year net receipts comparison charts published by the Commission (see attachment B). In 1996, punchboards and pull-tabs comprised 36 percent of the total market. Today, they comprise 9 percent. Similar trends can be seen in the numbers of licensed manufacturers and distributors. In 1990, the total number of licensed manufacturers was 16 (15 of which made punchboards and/or pull-tabs). Today we have 47 manufacturers licensed, of which only 9 manufacture punchboards and pull-tabs. While pull-tabs remain a large segment of the Washington gambling industry, they no longer constitute the "only game in town." Our regulatory focus has, necessarily, been spread to include other market segments (see attachment "C").

Other States

Our research of the credit and pricing regulations of other states finds that the rules of the Washington State Gambling Commission go well beyond those of any of the 12 states reviewed (see attachment "D" and support document prepared by Assistant Director Cass).

Rules Packets from when this topic was previously discussed:

- **#1: 2005 - Original credit and pricing rules package, 3 rules repealed and 2 amended.**
- **#2: 2006 - The 2 credit rules that were amended in 2005 were repealed.**
- **#3: 2006 – Magic Distributing Petition summary and proposed WAC, and Commission denial letter.**
- **#4: 2007 – John Lowmon Petition summary and proposed WAC, and Commission denial letter.**
- **#5: 2008 - 4 remaining credit and pricing WACs overlooked during previous rules packages were repealed during the Rules Simplification Project.**
- **#6: 2011 - Bob Bearden Petition summary and proposed WAC, and Commission denial letter.**

Credit and Pricing Restrictions

Up for Final Action September 9, 2005

ITEM 11:

- (a) **Repealed Section WAC 230-12-330 (Page 1)**
Availability of gambling equipment and related products and services--Prices--Contracts--
Discounts--Restrictions -- Exceptions.
- (b) **Amendatory Section WAC 230-12-340 (Page 5)**
Sale of gambling equipment, devices, supplies, paraphernalia, and related services --
Authorized Transactions ((~~Credit prohibited~~ -- Exceptions)).
- (c) **Repealed Section WAC 230-12-345 (Page 10)**
Leases, rentals, and license agreements -- Requirements -- Restrictions.
- (e) **Amendatory Section WAC 2309-12-350 (Page 12)**
Use of checks and credit cards to purchase gambling equipment, products,
and services -- Restrictions.
- (d) **Repealed Section WAC 230-12-320 (Page 15)**
Manufacture and distribution of gambling equipment and services -- Prohibited practices --
Gifts, promotional activities, and loans -- Exceptions.



Rule Up For Final Action

Proposed Repealer to
WAC 230-12-330

Availability of gambling equipment-prices-contracts-discounts.

ITEM 11(a) at the September 9, 2005, Commission Meeting. **Statutory Authority RCW 9.46.070**

Who proposed the rule change?

Staff.

Why is this rule change proposed?

The Commission approved a reduced budget for the 2005-07 biennium. This rules package supports those budget reductions by removing credit and pricing restrictions between manufacturers and distributors.

This rule requires manufacturers and distributors to offer their products and services to all licensees without discrimination. Volume discounts are allowed only if they are offered to all licensees and based on a single sales transaction. The intent of this rule is to prevent market control and predatory pricing. Staff currently does periodic pricing checks of distributors to ensure compliance with the discriminatory pricing rules.

The proposed amendments open the market and allow manufacturers and distributors to sell their products for different prices to different customers. The agency would no longer be involved with how companies price their products. Staff would also stop conducting discriminatory pricing compliance checks. All of the entities are required to be licensed and undergo thorough background checks before they receive a gambling license.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules will impose no or minimal costs to small businesses.

- Attached after the last rule (WAC 230-12-320) Bold = New additions since the last meeting are on Blue Paper
- Repeal Nunamaker memos to the Commission dated 8/1/05 (page 18) and 8/25/05 (page 34) (blue paper)
 - Recreational Gaming Association letter supporting the amendments dated 8/23/05 (page 42) (blue paper)
 - National Association of Fundraising Ticket Manufacturers (NAFTM) dated 8/1/05 (page 44) & 8/5/05 (page 47) (blue paper)
 - Magic Distributing, Inc. dated 3/16/05, (page 58) and staff's response dated 8/9/05 (page 61) (blue paper)
 - McCoy's Distributing dated 3/9/05 and April 13, 2005, (page 63) and staff's response dated 8/8/05 (page 66) (blue paper)
 - Oceanside Distributing dated 2/22/05, (page 68) and staff's response dated 8/9/05 (page 69) (blue paper)
 - NAFTM dated 4/4/05 (page 71) & 9/29/04 (page 86) and staff's response dated 7/22/05 (page 89)
 - Mr. Roger Franke dated 5/26/05 (page 92) and staff's response dated 7/22/05 (page 93)
 - Tri-Focus Enterprises 5/21/05 (page 96)
 - ZDI Gaming dated 3/11/05 (page 97)
 - Form letters: Taps & Tabs, Jader's Inc., Bill's Distributing, Tumbleweed Tabs, Ale Pull-Tabs, Tabs Plus, and Jack's Pull-Tabs
 - Digideal dated 2/21/05: Opposes repeal of WAC 230-12-345; however, does not oppose other changes (page 105)
 - Staff's notification letters to licensed manufacturers and distributors dated 2/9/05 and 5/9/05 (pages 106 & 107)

Statements against the proposed rule change.

Numerous manufacturers and distributors have made statements against the proposed changes through letters and testimony at Commission meetings. In general, comments include concerns over market instability, lack of control in the market place, and adverse impacts on small manufacturers and distributors. These small businesses state they will not be able to compete with the larger businesses and will be forced out of business.

Which licensees will be directly impacted?

Manufacturers, distributors and operators.

What are the potential impacts to the agency?

Staff spends at least .5 FTE enforcing regulations related to this rules package. Because staffing has been reduced, reinstating .5 FTE would be needed if we continue this program.

Staff recommendation.

Adoption.

Proposed effective date.

October 10, 2005, assuming the rules are adopted at the September 9, 2005, Commission meeting to become effective 31 days from adoption.

Repealed Section:

June, August and September 2005, Commission Meeting

~~((WAC 230-12-330 Availability of gambling equipment and related products and services—Prices—Contracts—Discounts—Restrictions—Exceptions. Manufacturers and distributors shall make their products and services available to all licensees without discrimination. Except as authorized by this section, gambling equipment, devices, related paraphernalia or supplies, and services shall be offered to any licensee wishing to purchase such, for the same price and terms. The following restrictions, procedures, and exceptions apply to prices and terms related to sales of gambling-related products or services:~~

~~**Pricing shall be consistent—exceptions.**~~

~~(1) **Discriminatory prices are prohibited.** Prices are considered discriminatory when identical or similar items or services are offered to different persons for a different price or under different terms or conditions: Provided, That prices set under the following criteria shall not be considered discriminatory:~~

~~(a) **Prices that are established in advance** and available for review by the commission and customers prior to accepting a sales order utilizing such. For purposes of this section, prices are deemed to be established and available when they have been mailed or transmitted by facsimile to the commission at least forty-eight hours prior to completing sales transactions or accepting orders for products or services;~~

~~(b) **Separate and different price schedules** established by manufacturers or distributors for transactions conducted with licensees at different marketing levels when such prices are progressively lower at each marketing level above the operator level;~~

~~(c) **Prices that are based upon the delivery location** of an item or service. If the price of an item or service is based upon "free on board" (FOB) terms at a specific location, such price may be varied based upon delivery at a different location, if such is justified by objective evidence. The burden of proof regarding such price differentiation is borne by the seller. Such prices are subject to all other requirements of this section; and~~

~~(d) **Short-term price reductions or "sales"** by manufacturers or distributors are authorized when every licensee is afforded an opportunity to participate. For purposes of this section licensees will be deemed to have been afforded an opportunity to participate when:~~

~~(i) All prices and terms are clearly posted at all sales outlets for the benefit of operators and provided to all customers serviced by mobile sales representatives;~~

~~(ii) Manufacturers provide full details of the sale to all licensed distributors, including prices and terms, at least forty-eight hours prior to accepting orders for products or services being offered at a sale price. Such notice shall be by mail or telephone facsimile; and~~

~~(iii) Any limitations or conditions of the sale are clearly stated in advertisements or notices for such sale.~~

~~**Contracts restricting sales not allowed.**~~

~~(2) Except as set forth in WAC 230-12-230, licensees shall not enter into contracts that directly or indirectly restrict the distribution or use of gambling equipment, devices, paraphernalia, supplies, or services: Provided, That holders of proprietary rights to products or services that~~

have been gained through patents, copyrights, trademarks, or other similar rights bestowed by state or federal law or by courts shall be allowed to enter into license agreements with manufacturers that restrict the ability to manufacture or distribute products or services if all other requirements of this section are met. The following transactions are prohibited:

- (a) An operator or distributor shall not agree to deal in, purchase, sell, lease, or operate any particular brand or brands of gambling device or equipment to the exclusion of any other brand of gambling device or equipment;
- (b) A manufacturer or distributor, or licensed representative or employee thereof, shall not sell or offer to sell, lease, or loan any gambling related product, service, or merchandise if such is contingent upon the purchase or order of another product, service, or merchandise; and
- (c) Except as set forth in this subsection, no person shall enter into any agreement, express or implied, that prohibits a person from selling or providing any gambling related product or service within a particular geographic area: Provided, That
 - (i) Licensed manufacturers, distributors, and service suppliers may enter into such agreements with its licensed representative; and
 - (ii) An operator may enter into an agreement with a licensed service supplier that is supplying only management or consulting services when such agreement only restricts the service supplier from supplying the same or similar services to other operators within a specified geographic area.

Discounts.

(3) Manufacturers and distributors may offer discounts of base prices that are authorized by this section when such discounts are nondiscriminatory. For purposes of this title, discounts will be deemed to be nondiscriminatory when:

- (a) Offered to all licensees on the same terms;
- (b) The scheme upon which the discount is based is in writing and submitted to the commission at least forty-eight hours prior to being offered;
- (c) The discount applies to:
 - (i) A single sales transaction; or
 - (ii) Multiple sales transactions, which are made over a period of time not to exceed one week. For purposes of this section, one week shall be defined as seven consecutive days; and
- (d) The level of a discount is based only upon any of the following criteria:
 - (i) The amount of product sold or the dollar value of the sale;
 - (ii) Whether the purchaser makes full payment in cash at time of sale;
 - (iii) Whether the purchaser makes final payment for a transaction within a predetermined time period for sales made under "trade account" terms; and
 - (iv) Any other structure or terms, subject to preapproval by the director. The manufacturer shall pay for the approval process and any additional requirements necessary to assure compliance with this section.

Limiting sales to specific market levels.

(4) A licensed manufacturer or distributor may elect to limit sales of products and services to licensees at any marketing level. For purposes of this section, marketing levels are defined as manufacturer, distributor, and operator. If a manufacturer or distributor elects to make sales to

any licensee at a marketing level, sales must be made to all licensees at the same level. Provided, That if the distributor is in violation of WAC 230-12-340, the manufacturer shall not be required to make sales to that distributor. Provided further, That transactions between a manufacturer and distributor, when both are owned and operated by the same persons, are considered internal to that business. For purposes of this section, internal transactions are not considered sales at a different marketing level. All other restrictions of this section apply to such sales. For example:

- (a) A licensed manufacturer may elect to sell or provide products and services only to distributors; or
- (b) A licensed distributor may elect to sell or provide products and services only to operators.

Minimum purchasing requirements not allowed—exceptions.

(5) Manufacturers or distributors shall not set minimum purchase requirements for any product or service, except as authorized below:

- (a) Minimum purchase requirements are not allowed for purchases made under prepaid or cash on-delivery (COD) terms. Provided, That manufacturers may establish and charge a reasonable fee for services to handle an order for products or services below a specified level, if such policy is in writing and provided to distributors prior to accepting orders;
- (b) Minimum purchase restrictions may be set for transactions between manufacturers and distributors that are conducted using trade account terms, as authorized by WAC 230-12-340;
- (c) Discounts may be set based upon a minimum purchase amount as authorized by subsection (3) of this section; and
- (d) Minimum purchase restrictions may be placed on products being offered for a bargain or "sale" price if a bargain or "sale" price is established for any and all levels of purchases under such terms.

Sales of nongambling products and services.

(6) A manufacturer or distributor shall not grant licensees, nor shall such licensees accept, more favorable prices, credit terms, or other arrangements than those extended to nonlicensed persons purchasing identical or similar nongambling goods or services. The price of nongambling goods or services sold to licensees shall be in conformity with the open market price in the locality where sold. The terms of such sales shall not exceed those normally granted in accordance with the customary business practice of the particular trade in the locality where such sales are made.

Transactions with tribal casinos.

(7) This section shall not apply to transactions conducted with tribal governments operating class III casinos under tribal/state compacts or with management companies operating such casinos on the behalf of tribal governments.)



Rule Up For Final Action

Proposed Amendments to

WAC 230-12-340

Sale of gambling equipment- credit prohibited.

ITEM 11(b) at the September 9, 2005, Commission Meeting.

Statutory Authority RCW 9.46.070

Who proposed the rule change?

Staff.

Why is this rule change proposed?

The Commission approved a reduced budget for the 2005-07 biennium. This rules package supports those budget reductions by removing credit and pricing restrictions between manufacturers and distributors.

This rule requires gambling equipment to be purchased on a cash basis only. One exception is allowed for punchboard and pull-tab manufacturers, where trade account terms for 60 days are allowed from a manufacturer to a distributor.

This rule was originally put into place when distributors incurred substantial debt with manufacturers. With the amount of debt incurred, there were concerns of the influence each held over the other. The intent of this rule is to prevent influence between manufacturers, distributors and operators.

Currently, manufacturers report distributors that are past due on their accounts to the Commission. If a distributor is past due on a trade account, the manufacturers must notify all other manufacturers of the past due account and that distributor can only buy merchandise on a cash basis from all manufacturers. After the account is brought current, manufacturers notify staff and other manufacturers and the distributor can again make purchases using 60 days terms. Staff files the notice and monitors the situation.

The proposed rule change allows credit between manufacturers and distributors, but continues the prohibition of credit to operators. The agency would no longer be involved in the collection of debt for manufacturers.

A second amendment allows operators to use credit cards to purchase, rent, or lease gambling equipment. It would also allow operators, who have license agreements, to use a manufacturer's patented, copyrighted, or trademarked games on credit.

All of the entities are required to be licensed and undergo thorough background checks to receive a license.

Statements against the proposed rule change.

Numerous manufacturers and distributors have made statements against the proposed changes. They are concerned the changes may cause distributors to go into debt with the manufacturers thus causing influence by a licensee over multiple marketing levels.

Which licensees will be directly impacted?

Manufacturers, distributors and operators.

What are the potential impacts to the agency?

Staff spends at least .5 FTE enforcing regulations related to this rules package. Because staffing has been reduced, reinstating .5 FTE would be needed if we continue this program.

Staff recommendation.

Adoption.

Proposed effective date.

October 10, 2005, assuming the rules are adopted at the September 9, 2005, Commission meeting to become effective 31 days from adoption.

AMENDATORY SECTION: June, August and September 2005, Commission Meeting

WAC 230-12-340 Sale of gambling equipment, devices, supplies, paraphernalia, and related services – Authorized Transactions (~~Credit prohibited—Exceptions~~)). The use of Manufacturers and distributors must not offer credit to operators in the sale of gambling equipment, devices, related supplies or paraphernalia, and services (~~is prohibited. Except as authorized by this section,)~~ Manufacturers and distributors must conduct all sales of such to operators (~~shall be transacted~~) on a cash basis. **“Cash basis”** means full payment is received by the seller on or before actual delivery of the product or service to the purchaser. (~~The following definitions, restrictions, and procedures apply to this section.~~)

Capital Leases.

(1) All (~~licensed~~) manufacturers and distributors may sell gambling equipment such as dispensers, bingo blowers, roulette wheels, etc., and gambling-related support equipment through capital lease agreements or other financing arrangements to operators subject to the following conditions and requirements:

- (a) The cost of a single item, or group of similar and related items included in the sale, exceeds one thousand dollars;
- (b) The term of the contract does not exceed forty-eight months;
- (c) All terms of the contract are in writing and copies of such agreements are provided to the commission within thirty days of execution;
- (d) The manufacturer or distributor retains only a security interest in the item sold and cannot obtain any ownership interest in the licensee, or exercise any control over the use of the item in the licensed activity;
- (e) The amount of payments is not based on the size or level of gambling activity and is determined by use of a standard amortization schedule for the term and stated interest rate;
- (f) The interest rate charged by the contract is set at the time of sale and does not vary during the term of the contract; and
- (g) The contract does not require the purchaser to directly or indirectly purchase any other products or services from the seller.

(Definitions) Rental or License Agreements.

(2) (~~The following definitions only apply to subsections (3) through (9) of this section:~~) Except for punch boards, pull-tabs, bingo paper, bingo supplies, playing cards, and other consumable gambling-related equipment or devices, manufacturers and distributors may lease or rent gambling equipment to operators. Manufacturers may also enter into license agreements with operators for use of the manufacturer’s patented, copyrighted, or trademarked games.

- ~~((a) “Manufacturers and distributors” refers only to the manufacturers and distributors of pull-tabs, punch boards, and bingo supplies.~~
- (b) A **“cash basis”** means full payment is received by the seller on or before actual delivery of the product or service to the purchaser;
- (c) A **“trade account”** is a payment system that allows distributors to place orders for inventory

or services from manufacturers or distributors and to make payment for such within a specific period of time after shipment of the product or completion of the service;

(d) "**Prescribed time period**" is the maximum period of time a distributor has to pay for purchases of goods or services made under trade account terms prior to being restricted to cash basis terms. The time period begins when a product is shipped or service completed and ends on the date payment is actually delivered to the manufacturer or distributor, or if delivered by the U.S. mail, the U.S. postmark date of the envelope containing the payment. For purposes of this section, prescribed time period means no later than sixty days after shipment of the products or completion of the services.

Authorized transactions.))

(3) Manufacturers and distributors may only base fee structures for electronic bingo equipment on the number of times a device is used or the number of bingo sessions in which devices are used. Fees must not be determined by a percentage of sales, the number of bingo cards sold through the device, or the average amount a player spends on a device.

Check or credit card purchases.

~~((3)) (4) For purposes of this WAC title, the following transactions are authorized and shall not be deemed as credit or loans of money when applicable requirements are met:~~

~~(a) Operators may purchases of goods and services from manufacturers or distributors when paid for by checks, or credit card issued by a state and/or federally regulated financial institution that meet the requirements of WAC 230-12-350.~~

~~((b) Purchases of goods or services by distributors from manufacturers or other distributors when utilizing trade account terms and the requirements of subsection (4) of this section are followed;~~

~~(e) Promissory notes between manufacturers and distributors for payment of debts incurred prior to the effective date of this section;~~

~~(d) Purchases made under capital lease agreements when the requirements of this section are followed;))~~

Exceptions.

(e) (5) All transactions between manufacturers or distributors and tribal governments or companies certified to manage class III gambling activities operated under a tribal/state compact are exempt from all provisions of this section;

(f) (6) Charitable or nonprofit organizations licensed to conduct bingo may purchase bingo cards and bingo supplies from distributors and/or manufacturers and receive such without making immediate payment if payment is made, by check or cash, no later than thirty days after delivery of the product. ((If the distributor or manufacturer does not receive payment within thirty days, they must immediately restrict the licensee to sales on a cash on delivery basis until payment is received. Licensees paying for bingo supplies on terms other than a cash basis must document on the purchase invoice the date paid and the check number; and

basis must document on the purchase invoice the date paid and the check number; and

(g) The sales of nongambling equipment, fixtures, supplies, or commodities to licensees are exempt from all provisions of this section when the requirements of WAC 230-12-330 are met.

Trade account conditions.

(4) Manufacturers and distributors may allow distributors to establish "trade accounts" to purchase gambling-related inventory or services without making immediate payment under the following conditions:

(a) Trade account terms, if offered to any distributor, shall be made available to all distributors without discrimination: Provided, That trade accounts may be restricted to distributors that:

(i) Meet objective credit criterion established by a manufacturer or distributor. Such criterion must be in writing, available to the commission for review, and provided to any distributor upon request. A manufacturer or distributor may include a distributor's payment history as a part of the trade account approval criterion;

(ii) Meet minimum purchase requirements established by the manufacturer: Provided, That the minimum purchase requirement shall not be greater than five hundred dollars per transaction;

(b) Trade account terms shall not allow a manufacturer or distributor to gain any ownership or financial interest in a licensee. This section is not intended to prohibit or restrict a manufacturer or distributor from gaining a security interest in inventory sold for credit, as authorized by the Uniform Commercial Code: Provided, That this section shall not allow a manufacturer to obtain an interest in inventory sold by any other manufacturer under trade account terms;

(c) A distributor shall make full payment for all goods or services purchased under trade account terms within the prescribed time period. Failure to pay within the prescribed time period may be deemed solicitation of credit by the distributor.

Procedures for past due accounts—notification and sales restrictions.

(5) When a distributor fails to pay for goods or services purchased under trade account terms within the prescribed time period, the creditor manufacturer or distributor shall comply with the procedures set forth below. Failure to comply with these procedures may result in the manufacturer or distributor being deemed to have extended credit to the distributor. The following procedures must be followed when a distributor fails to make required payments:

(a) Notify the delinquent distributor of failure to pay by telephone no later than the end of the next business day;

(b) Restrict sales of all goods and services to the delinquent distributor no later than the end of the third business day after the default: Provided, That sales may be made to a delinquent distributor on a cash basis only;

(c) Notify the commission and all licensed manufacturers and distributors in writing by letter, facsimile or e-mail no later than the end of the fifth business day after default. Written notification shall include at least the following:

(i) The distributor's name;

(ii) The invoice or shipping order numbers involved in the transaction;

(iii) The date the item was shipped or service was provided; and

(iv) Any other information requested by the commission.

~~Cash only sales to delinquent distributors.~~

~~(6) Upon receipt of notification from the manufacturer that a distributor has a delinquent account, manufacturers and distributors shall immediately cease sales, shipments of products, and providing services to the delinquent distributor on other than a cash basis.~~

~~Notification of payment on past due accounts.~~

~~(7) The manufacturer shall notify the commission and all manufacturers and distributors in writing by letter, facsimile or e-mail, no later than the next business day after receiving payment from the delinquent distributor for the outstanding account. Trade account sales may then resume with all manufacturers.~~

~~(8) The distributor that was placed on a credit hold shall notify the commission in writing by letter, facsimile or e-mail, no later than the next business day after payment has been made to the manufacturer in which they were delinquent.~~

~~Failure to pay promissory notes.~~

~~(9) A creditor manufacturer or distributor shall immediately notify the commission if a distributor fails to abide by the terms of the promissory note and the process being pursued to correct the situation.)~~



Rule Up For Final Action

Proposed Repealer to

WAC 230-12-345

Leases, rentals and license agreements.

ITEM 11(c) at the September 9, 2005, Commission Meeting. **Statutory Authority RCW 9.46.070**

Who proposed the rule change?

Staff.

Why is this rule change proposed?

The Commission approved a reduced budget for the 2005-07 biennium. This rules package supports those budget reductions by removing credit and pricing restrictions between manufacturers and distributors.

This rule requires gambling equipment to be leased or rented on cash basis. A cash basis means the lease or rental payment is due before the equipment is used. When house-banked card rooms were authorized in 1997, new types of manufacturers entered the gambling market and there were no restrictions in place to restrict credit between for leases, rentals or license agreements. This rule was adopted to mirror WAC 230-12-340 which prohibits credit between manufacturers, distributors, and operators.

This rule requires manufacturers and distributors to report delinquent accounts to the Commission. When staff receives notice of delinquent accounts they investigate to determine if the operator solicited credit and take appropriate action. Staff ensures the payments have been made or make sure the operator stops using the game and the manufacturer removes the game from the operator's premises in a timely manner as required by the current rule.

The proposed amendment removes restrictions on leases, rental and license agreements. The agency would no longer be involved in the collection of debt for distributors or manufacturers.

Staff would no longer investigate operators that are delinquent on payments, or monitor the equipment.

If this rule passes, it is possible that debt could increase between all levels of operation. All of the entities are required to be licensed and undergo thorough background checks to receive a license.

Statements against the proposed rule change.

We have received numerous statements against this rule package, but not necessarily against this particular rule.

Which licensees will be directly impacted?

Manufacturers, distributors and operators.

What are the potential impacts to the agency?

Staff spends at least .5 FTE enforcing regulations related to this rules package. Because staffing has been reduced, reinstating .5 FTE would be needed if we continue this program.

Staff recommendation.

Adoption.

Proposed effective date.

October 10, 2005, assuming the rules are adopted at the September 9, 2005, Commission meeting to become effective 31 days from adoption.

~~((WAC 230-12-345 Leases, rentals, and license agreements — Requirements — Restrictions. Manufacturers and distributors may lease or rent gambling equipment, other than punch boards, pull-tabs, bingo paper, bingo supplies, playing cards, and other consumable gambling-related equipment or devices to operators. In addition, manufacturers may enter into license agreements with operators permitting them to use their patented, copyrighted, or trademarked card games. All operating leases, rentals, or license agreements must be transacted on a cash basis only, except as provided in subsection (2) of this section. The following requirements and procedures shall apply:~~

~~(1) For purposes of this section, lease, rental, or license fees must be received by the manufacturer or distributor in advance of the period in which the equipment, device, or card game is to be used. Agreements shall be constructed so that regularly scheduled payments comply with this condition: Provided, That fees from electronic bingo equipment may be based on the amount of usage a device receives, as outlined in subsection (2) of this section.~~

~~(2) Fee structures for electronic bingo equipment may be based on usage, under the following circumstances:~~

~~(a) Fees may be determined by the number of times a device is used or the number of bingo sessions in which devices are utilized;~~

~~(b) Fees may not be determined by a percentage of sales, the number of bingo cards sold through the device, or the average amount a player spends on a device;~~

~~(c) Fees must be billed at least every thirty days and invoices must be dated within fifteen days from the end of each thirty day period; and~~

~~(d) Fees must be received by the manufacturer or distributor within thirty days of the invoice date.~~

~~(3) When an operator fails to pay regularly scheduled payments in accordance with subsection (1) or (2) of this section, the following procedures shall apply:~~

~~(a) If payment is not received within ten days of the payment due date, the manufacturer or distributor shall notify the delinquent operator and the commission by the end of the next business day. The following information shall be reported:~~

~~(i) Operator's name;~~

~~(ii) Delinquent amount and due date; and~~

~~(iii) Any relevant information about the account if it is delinquent.~~

~~(b) If payment is not received within twenty days, the manufacturer shall notify the operator that it must cease using or operating the equipment, device, or card game immediately.~~

~~(c) If payment is still not received within thirty days, the manufacturer or distributor shall remove any equipment, device, or card game materials provided under the agreement from the licensed premises within five days. The commission shall be notified of the date and time removal is to occur.~~

~~(d) When a manufacturer or distributor receives an operator's delinquent payment, it shall notify the commission by the end of the next business day.~~

~~(4) Any freight, delivery, installation, or other set up fees must be paid within thirty days of the delivery date.~~

~~(5) Operators that fail to pay for lease, rental, or license fees by the date due may be deemed to have solicited credit.~~

~~(6) Manufacturers or distributors that fail to comply with the procedures noted above may be deemed to have extended credit.~~

~~(7) All capital leases for the sale of gambling equipment shall comply with WAC 230-12-340.))~~



Rule Up For Final Action

Proposed Amendments to
WAC 230-12-350

Use of checks and credit cards to purchase gambling equipment,
products, and services – Restrictions.

ITEM 11(d) at the September 9, 2005, Commission Meeting.

Statutory Authority RCW 9.46.070

Who proposed the rule change?

Staff.

Why is this rule change proposed?

The Commission approved a reduced budget for the 2005-07 biennium. This rules package supports those budget reductions by removing credit and pricing restrictions between manufacturers and distributors.

This rule sets out the guidelines for operators and distributors that use checks to purchased gambling equipment, supplies, and services.

Distributors and manufacturers must follow specific procedures if they receive a dishonored check for gambling equipment, including reporting it to the Commission. When staff receive notice of a dishonored check, they investigate the check writer for solicitation of credit.

The rule change removes restrictions on how distributors and manufacturers handle dishonored checks and removes the Commission from the process. The amendment also allows operators and distributors to use credit cards to make purchases.

The agency would no longer be involved in the collection of non-sufficient fund checks between distributors or manufacturers. All of the entities are required to be licensed and undergo thorough background checks to receive a license.

Statements against the proposed rule change.

We have received numerous statements against this rule package, but not necessarily against this particular rule.

Which licensees will be directly impacted?

Manufacturers, distributors and operators.

What are the potential impacts to the agency?

Staff spends at least .5 FTE enforcing regulations related to this rules package. Because staffing has been reduced, reinstating .5 FTE would be needed if we continue this program.

Staff recommendation.

Adoption.

Proposed effective date.

October 10, 2005, assuming the rules are adopted at the September 9, 2005, Commission meeting to become effective 31 days from adoption.

Amendatory Section: June, August and September 2005, Commission Meeting

WAC 230-12-350 Use of checks and credit cards to purchase gambling equipment, products, and services -- Restrictions. Checks and credit cards may be used by licensed operators and distributors to purchase gambling equipment, devices, related supplies or paraphernalia, and services in lieu of cash under the following conditions:

((What are the restrictions on checks utilized for payment of gambling products or services?))

(1) Checks and credit cards must be drawn on the licensee's business account: Provided, That personal checks and credit cards drawn on the account of an owner, partner, or officer or substantial interest holder of a corporate licensee may be accepted.

(2) Checks received by distributors from operators must be negotiable and dated on or before the delivery date of the product or service. Checks shall not be postdated.

((When must a check be deposited?))

(3) Checks shall not be held and must be presented for payment at the manufacturer's or distributor's bank within the prescribed time frames. Failure to present checks within the prescribed time period shall be prima facie evidence of extension of credit to the drawer licensee by the manufacturer or distributor. Prescribed time frames are as follows:

(a) Checks received from operators shall be deposited within ten calendar days after the date the product or service was delivered; and

(b) Checks received from distributors shall be deposited within ten days of the date received or, if delivered by mail, thirteen days from the postmark of the envelope containing the payment.

((What are the procedures for handling a dishonored check presented to a distributor by an operator?))

(4) Checks from licensed operators that are initially returned by a bank for lack of sufficient funds may be deposited again if within five banking days after return by the bank. If dishonored by the bank a second time, the distributor shall:

(a) Deliver dishonored checks to an owner, manager, or officer of the licensee within seven banking days after return from the bank and demand payment in cash. If unable to deliver such checks to an owner, manager, or officer of the licensee within seven days, the distributor shall notify the commission; and

(b) Upon being presented with a check returned by the bank, licensees shall immediately replace such check with cash or a cash equivalent such as a money order, certified check, or other guaranteed negotiable instrument; or

~~(e) Failure of an operator to replace a check returned by a distributor with cash or a cash equivalent shall be prima facie evidence of solicitation of credit and must be reported to the commission by the distributor within seven days.~~

What are the procedures for handling a dishonored check presented to a manufacturer or distributor by a distributor?

~~(5) Checks from distributors that are initially returned by a bank for lack of sufficient funds shall be processed by manufacturers or distributors using the following procedures:~~

~~(a) Checks received for payment for a prepaid or COD transaction may be deposited again if within five banking days after return by the bank. If dishonored by the bank a second time, the manufacturer or distributor shall:~~

~~(i) Contact an owner, manager, or officer of the distributor within seven banking days by telephone or facsimile and demand payment by a certified check, postal money order, or other cash equivalent. If unable to contact an owner, manager, or officer within seven days, the manufacturer shall notify the commission;~~

~~(ii) Upon receipt of a cash equivalent to replace the dishonored check, the manufacturer or distributor shall return the check to the distributor by mail;~~

~~(iii) If a distributor that is presented a dishonored check does not immediately replace such check, the manufacturer or distributor shall cease all sales to the distributor and notify the commission within seven days. Failure to replace a dishonored check with cash or cash equivalent shall be prima facie evidence of solicitation of credit by the distributor.~~

~~(b) If payment is for a transaction completed with trade account terms, the manufacturer:~~

~~(i) May deposit the check again if the prescribed time period for payment has not passed; or~~

~~(ii) May contact an owner, manager, or officer of the distributor by telephone or facsimile and demand payment by a cash equivalent such as a certified check or postal money order;~~

~~(iii) If the bank clears the check or payment is otherwise received prior to the prescribed time period for payment, no further action is required; and~~

~~(iv) If the prescribed time period for payment has passed and the dishonored check is not replaced prior to such, the manufacturer shall comply with the procedures set forth in~~

~~WAC 230-12-340 for failure to make timely payment under trade account terms.))~~



Rule Up For Final Action

Proposed Repealer to
WAC 230-12-320

Manufacture and distribution of gambling equipment and services.

ITEM 11(e) at the September 9, 2005, Commission Meeting.

Statutory Authority RCW 9.46.070

Who proposed the rule change?

Staff.

Why is this rule change proposed?

The Commission approved a reduced budget for the 2005-07 biennium. This rules package supports those budget reductions by removing credit and pricing restrictions between manufacturers and distributors.

This rule limits the amount of gifts manufacturers, distributors and operators can offer as incentives to purchase products. The intent was to prevent influence over one another at the different marketing levels, and limit the amount of gifts the different levels can offer to each other. This may have reduced influence and corruption at the different marketing levels. These rules control marketplace activities and competition.

The proposed amendment removes restrictions related to gifts and promotional items between manufacturers, distributors and operators.

The Commission would no longer be involved with how companies reward buyers of their merchandise. All of the entities are required to be licensed and undergo thorough background checks to receive a license.

Statements against the proposed rule change.

We have received numerous statements against this rule package, but not necessarily against this particular rule.

Which licensees will be directly impacted?

Manufacturers, distributors and operators.

What are the potential impacts to the agency?

Staff spends at least .5 FTE enforcing regulations related to this rules package. Because staffing has been reduced, reinstating .5 FTE would be needed if we continue this program.

Staff recommendation.

Adoption.

Proposed effective date.

October 10, 2005, assuming the rules are adopted at the September 9, 2005, Commission meeting to become effective 31 days from adoption.

Repealed Section:

June, August and September 2005, Commission Meeting

~~(WAC 230-12-320 Manufacture and distribution of gambling equipment and services— Prohibited practices— Gifts, promotional activities, and loans— Exceptions. Manufacturers and distributors shall not seek to control the distribution of gambling equipment, devices, related supplies or paraphernalia, or services by any means other than those authorized by this title. The following restrictions and procedures apply to the distribution of gambling equipment, devices, related supplies or paraphernalia, and services:~~

Can licensees offer gifts or similar items to other licensees?

~~(1) Other than promotional activities as authorized by this section, or trade account terms authorized by WAC 230-12-340, no licensee or employee thereof selling or offering to sell gambling products or services shall directly or indirectly provide or offer any gift, free merchandise or service, credit or loan of money, premium, or rebate to any person or employee thereof who is licensed to purchase or operate such.~~

Can licensees solicit gifts or similar items from other licensees?

~~(2) No licensed operator or distributor, or employee thereof, shall directly or indirectly solicit any gift, free merchandise or service, credit or loan of money, premium, or rebate from any licensed manufacturer or distributor, or employee thereof.~~

What types of activities are allowed for manufacturers to promote their goods or services with operators?

~~(3) Manufacturers may provide promotional merchandise of nominal value, such as tee shirts, caps, cups, pens, calendars, etc., to licensed operators, and operators shall be allowed to accept such, under the following guidelines:~~

~~(a) The cost of such promotions shall not exceed fifteen dollars in value per item. Each manufacturer is responsible for establishing the value of each type of promotional merchandise and shall maintain records supporting such;~~

~~(b) Each item shall promote the manufacturer or a specific product or line of products made by the manufacturer;~~

~~(c) Such promotions shall not be based on past sales or a level of business; and~~

~~(d) Such promotions may not be contingent on the purchase of more than one case of a specific product.~~

What types of activities are allowed for manufacturers to promote their goods or services with distributors?

~~(4) Manufacturers may provide promotional merchandise, entertainment, or travel to distributors, and distributors shall be allowed to accept such, under the following guidelines:~~

~~(a) Promotional merchandise and services, such as tee shirts, caps, pens, calendars, etc., may be provided to distributors if:~~

~~(i) The value is limited to twenty five dollars for each individual item; and~~

~~(ii) The total amount of promotional merchandise and services offered to a distributor and employees thereof shall not exceed a collective value of one thousand dollars during any calendar year;~~

~~(b) Entertainment such as meals, recreational or sporting events, etc., may be provided to distributors, or employees thereof, if:~~

- (i) The distributor is accompanied by a licensed manufacturer's representative, owner, partner, officer, or substantial interest holder of a corporate licensee;
- (ii) The total amount of entertainment to a distributor and employees thereof shall not exceed a collective value of one thousand dollars during any calendar year;
- (iii) The entertainment is provided within the state of Washington; and
- (iv) Written documentation of the business purpose of the entertainment is maintained;
- (e) Trips to the factory location of a manufacturer, including transportation, meals, and lodging may be provided to distributors and/or their licensed representatives once each calendar year.

What additional requirements apply to authorized "promotional activities"?

(5) The following restrictions and procedures apply to promotional activities between manufacturers and distributors:

- (a) All "promotional activities" shall be directly related to promotion of the manufacturer's products and in no way related to past sales;
- (b) Promotional activities shall not include the direct or indirect transfer of cash, negotiable instruments, or cancellation or remittance of debts to a licensee or employee thereof. All costs related to "promotional activities" shall be initially paid for by the manufacturer rather than providing reimbursement to the distributor;
- (c) Manufacturers shall be responsible for maintaining detailed records for all "promotional activities" and making such records available to the commission upon request. These records shall include at least the following:
 - (i) The product or service being promoted;
 - (ii) The name of the licensed distributor and the name of any person directly or indirectly benefiting from a "promotional activity";
 - (iii) The value of any gift or service provided. The value shall be based on the cost to the manufacturer to provide such;
 - (iv) The date a "promotional activity" was provided;
 - (v) The place the "promotional activity" occurred, if applicable; and
 - (vi) The name of the owner, partner, officer, or other representative of the manufacturer who authorized the "promotional activity."

Can a manufacturer or distributor loan equipment to a distributor or operator?

(6) A manufacturer or distributor may loan gambling equipment to licensed distributors or operators subject to the following restrictions:

- (a) Equipment loans may be made for the following reasons:
 - (i) To a distributor for displaying the manufacturer's products, limited to one such loan, per product, per calendar year;
 - (ii) To a licensed distributor or operator for training of employees, limited to one such loan, per calendar year; or
 - (iii) For use as a replacement by a licensed operator while awaiting delivery of a product that has been purchased, leased, or removed for repair;
- (b) Equipment loans shall be limited to ninety days per loan.

(7) This section shall not apply to transactions conducted with tribal governments operating class III casinos under tribal/state compacts or with management companies operating such casinos on the behalf of tribal governments.))

#2: 2006

The 2 credit rules that were amended in 2005 were repealed.

Allowing Credit between Manufacturers/Distributors

Up for Final Action July 14, 2006.

ITEM 11:

- a) **Repealed Section WAC 230-12-340**
Sale of gambling equipment, devices, supplies, paraphernalia, and related supplies – Authorized transactions.
- b) **Repealed Section WAC 230-12-350**
Use of checks and credit cards to purchase gambling equipment, products, and services – Restrictions.



Rule Up For Final Action

Proposed Repealer of
WAC 230-12-340

Sale of gambling equipment, devices, supplies, paraphernalia, and related services—Authorized transactions.

ITEM 11 (a) on the July 14, 2006, Commission Meeting Agenda. Statutory Authority 9.46.070

Who proposed the rule change?

Staff, on behalf of the Recreational Gaming Association.

Proposed Change

The proposed rule change would remove restrictions on manufacturers and distributors which currently prohibit them from selling gambling equipment and services to operators on credit.

It will apply the same rules relating to the purchase of equipment on credit now in place between manufacturers and distributors to operators.

History of Rule

Currently, manufacturers and distributors must not offer credit to operators in the sale of gambling equipment, devices, related supplies or paraphernalia, and services. Manufacturers must conduct all sales to operators on a cash basis. Cash basis means full payment is received by the seller on or before actual delivery of the product or service to the operator.

WAC 230-12-340 was amended effective October 10, 2005, to allow credit at the manufacturer and distributor level. Prior to then, the use of credit was prohibited in the sale of gambling equipment, devices, related supplies or paraphernalia, and services. As such, the agency is no longer involved in monitoring debt for manufacturers.

At the September 2005, meeting, the Commission asked staff to look into removing credit restrictions between operators and distributors/manufacturers.

Impact of the Proposed Change

This change will consistently apply the rules relating to the purchase of equipment on credit and allow credit for commercial operators.

Operators would be able to purchase equipment, services and supplies on credit.

Currently, rental and leasing fees must be paid up front. Repealing this rule will allow fees to be based on a percentage of actual gambling revenue. Currently, we only allow this for card room management contracts and amusement games.

Fees based on a percentage of actual gambling revenue will still be prohibited for nonprofit operators under RCW 9.46.120(2) and WAC 230-20-244.

Regulatory Concerns

Gambling regulatory agencies in New Mexico, Idaho, Oregon and Alaska were contacted to determine if they allowed credit to operators.

- New Mexico and Oregon gambling regulations don't address credit. They consider it a business decision.
- Pull-tab operators in Idaho and Oregon buy directly from the State and are billed on a three week

cycle by Electronic Funds Transfer.

- Operators in Alaska are allowed up to thirty days credit to pay for pull-tabs.

Staff have no regulatory concerns allowing credit between operators and distributors/manufacturers.

Resource Impacts

None.

Policy Consideration

Currently, pull-tab operators must pay cash for pull-tab products. This rule change would allow pull-tab games to be purchased on credit.

Stakeholder Statements Supporting the Proposed Rule Change

At the April 2006, Commission meeting, Dolores Chiechi, representing the Recreational Gaming Association, testified in support of this rule change.

Stakeholder Statements Opposing the Proposed Rule Change

None.

Licensees Directly Impacted By the Change

Manufacturers, distributors and operators.

Letters were sent to all manufacturers and distributors notifying them of the proposed rule change. The letters are dated April 3, 2006, and April 10, 2006.

Staff Recommendation

Adoption.

Proposed Effective Date for Rule Change

January 1, 2007.

REPEALED SECTION:

~~((WAC 230-12-340 Sale of gambling equipment, devices, supplies, paraphernalia, and related services—Authorized transactions.~~

~~Manufacturers and distributors must not offer credit to operators in the sale of gambling equipment, devices, related supplies or paraphernalia, and services. Manufacturers and distributors must conduct all sales of such to operators on a cash basis. "Cash basis" means full payment is received by the seller on or before actual delivery of the product or service to the purchaser.~~

~~Capital leases.~~

- ~~—(1) All licensed manufacturers and distributors may sell gambling equipment such as dispensers, bingo blowers, roulette wheels, etc., and gambling-related support equipment through capital lease agreements or other financing arrangements to operators subject to the following conditions and requirements:~~
- ~~—(a) The cost of a single item, or group of similar and related items included in the sale, exceeds one thousand dollars;~~
- ~~—(b) The term of the contract does not exceed forty-eight months;~~
- ~~—(c) All terms of the contract are in writing and copies of such agreements are provided to the commission within thirty days of execution;~~
- ~~—(d) The manufacturer or distributor retains only a security interest in the item sold and cannot obtain any ownership interest in the licensee, or exercise any control over the use of the item in the licensed activity;~~
- ~~—(e) The amount of payments is not based on the size or level of gambling activity and is determined by use of a standard amortization schedule for the term and stated interest rate;~~
- ~~—(f) The interest rate charged by the contract is set at the time of sale and does not vary during the term of the contract; and~~
- ~~—(g) The contract does not require the purchaser to directly or indirectly purchase any other products or services from the seller.~~

~~Rental or license agreements.~~

- ~~—(2) Except for punch boards, pull tabs, bingo paper, bingo supplies, playing cards, and other consumable gambling-related equipment or devices, manufacturers and distributors may lease or rent gambling equipment to operators. Manufacturers may also enter into license agreements with operators for use of the manufacturer's patented, copyrighted, or trademarked games.~~
- ~~—(3) Manufacturers and distributors may only base fee structures for electronic bingo equipment on the number of times a device is used or the number of bingo sessions in which devices are used. Fees must not be determined by a percentage of sales, the number of bingo cards sold through the device, or the average amount a player spends on a device.~~

~~Check or credit card purchases.~~

- ~~—(4) Operators may purchase goods and services from manufacturers or distributors when paid for by checks, or credit card issued by a state and/or federally regulated financial institution that meet the requirements of WAC 230-12-350.~~

~~Exceptions.~~

- ~~—(5) All transactions between manufacturers or distributors and tribal governments or companies certified to manage class III gambling activities operated under a tribal/state compact are exempt from all provisions of this section;~~
- ~~—(6) Charitable or nonprofit organizations licensed to conduct bingo may purchase bingo cards and bingo supplies from distributors and/or manufacturers and receive such without making immediate payment if payment is made, by check or cash, no later than thirty days after delivery of the product.))~~



Rule Up For Final Action

Proposed Repealer of
WAC 230-12-350

Use of checks and credit cards to purchase gambling equipment, products,
and services—Restrictions.

ITEM 11 (a) on the July 14, 2006, Commission Meeting Agenda.	Statutory Authority 9.46.070
Who proposed the rule change?	
Staff, on behalf of the Recreational Gaming Association.	
Proposed Change	
This proposed repealer will remove restrictions on operators' use of checks and credit cards to purchase gambling equipment, products, and services.	
It will apply the same rules relating to the purchase of equipment using checks and credit cards now in place between manufacturers and distributors to operators.	
History of Rule	
The current rule puts restrictions, such as limiting the type of account a check or credit card from an operator may be drawn on, and requiring all checks to be deposited within ten days of service or receipt of product.	
This repealer will remove all restrictions on checks and credit cards for operators when purchasing gambling equipment, products, and services.	
Impact of the Proposed Change	
Operators will now be able to purchase equipment, services and supplies on credit, by using a credit card or writing a check.	
This change will consistently apply the rules relating to the purchase of equipment on credit and allow it for commercial operators. It will be the distributors' responsibility to determine whether to allow a licensed operator to write a check to them or use a credit card.	
Regulatory Concerns	
None.	
Resource Impacts	
None.	
Policy Consideration	
None.	
Stakeholder Statements Supporting the Proposed Rule Change	
None.	
Stakeholder Statements Opposing the Proposed Rule Change	
None.	
Licensees Directly Impacted By the Change	
Manufacturers, distributors and operators.	
Staff Recommendation	
Adoption.	
Proposed Effective Date for Rule Change	
January 1, 2007.	

REPEALED SECTION:

~~((WAC 230-12-350 Use of checks and credit cards to purchase gambling equipment, products, and services — Restrictions.—~~

~~Checks and credit cards may be used by licensed operators and distributors to purchase gambling equipment, devices, related supplies or paraphernalia, and services in lieu of cash under the following conditions:~~

- ~~—(1) Checks and credit cards must be drawn on the licensee's business account; Provided, That personal checks and credit cards drawn on the account of an owner, partner, or officer or substantial interest holder of a corporate licensee may be accepted.~~
- ~~—(2) Checks received by distributors from operators must be negotiable and dated on or before the delivery date of the product or service. Checks shall not be postdated.~~
- ~~—(3) Checks shall not be held and must be presented for payment at the manufacturer's or distributor's bank within the prescribed time frames. Failure to present checks within the prescribed time period shall be prima facie evidence of extension of credit to the drawer licensee by the manufacturer or distributor. Prescribed time frames are as follows:~~
 - ~~—(a) Checks received from operators shall be deposited within ten calendar days after the date the product or service was delivered; and~~
 - ~~—(b) Checks received from distributors shall be deposited within ten days of the date received or, if delivered by mail, thirteen days from the postmark of the envelope containing the payment.))~~

**Petition for Rule Change
Magic Distributing
Discriminatory Pricing Restrictions**

Up for Discussion and Possible Filing March 10, 2006.

ITEM 11:

- a) **New Section WAC 230-12-330**
Availability of gambling equipment and related products and
services – Prices – Contracts – Discounts – Restrictions – Exceptions.



Rule Up For Discussion and Possible Filing

Proposed New Rule

WAC 230-12-330

Availability of gambling equipment and related products and services –
Prices – Contracts – Discounts – Restrictions – Exceptions.

ITEM 11 (a) on the March 10, 2006, Commission Meeting Agenda.	Statutory Authority 9.46.070
Who proposed the rule change?	
Magic Distributing, a licensed distributor.	
Proposed Change	
Magic Distributing Inc. has requested that discriminatory pricing restrictions (WAC 230-12-330), which were repealed effective 10/10/2005, be reinstated. The petitioner states that gambling equipment and related products should be available to all licensees without discrimination.	
History of Rule	
<p>Prior to October 10, 2005, this rule required manufacturers and distributors to offer their products and services to all licensees without discrimination. Volume discounts were allowed only if they were offered to all licensees and based on a single sales transaction. The intent of this rule was to prevent market control and predatory pricing. Staff conducted periodic pricing checks of distributors to ensure compliance with the discriminatory pricing rules.</p> <p>Discriminatory pricing restrictions were repealed effective October 10, 2005, which opened up the market and allowed manufacturers and distributors to sell their products for different prices to different customers. The agency is no longer involved with how companies price their products. Staff no longer conducts discriminatory pricing compliance checks. However, the restoration of this rule would reinstate the agency's roll in monitoring the pricing schedules of manufacturers and distributors.</p>	
Impact of the Proposed Change	
<p>The Petitioner's proposal would restore pricing restrictions between manufacturers and distributors. The petitioner states, in part, that:</p> <ol style="list-style-type: none">1) Gambling equipment and related products should be available to all licensees without discrimination;2) Reinstating this rule would prevent a monopoly, and unfair and deceptive practices; and3) Not having the rule will likely harm consumers by increasing prices, and reducing availability of goods or services.	
Regulatory Concerns	
The restoration of this rule would reinstate the agency's role in monitoring the pricing schedules of manufacturers and distributors.	

Resource Impacts

Before pricing and credit restrictions were repealed October 10, 2005, staff spent at least the equivalent of .5 FTE enforcing these regulations. Approximately the equivalent of .5 FTE would be required if we began monitoring pricing restrictions again.

Policy Consideration

The Commission repealed discriminatory pricing restrictions because these restrictions did not have a direct impact on gambling and should no longer be part of our regulatory program (See page 18 of the September 2005, Commission meeting minutes, which are attached).

Stakeholder Statements Supporting the Proposed Rule Change

None.

Stakeholder Statements Opposing the Proposed Rule Change

None.

Licensees Directly Impacted By the Change

Manufacturers, distributors and operators.

Staff Recommendation

Staff recommends denying the Petition for the reasons set forth in the September 2005, Commission meeting minutes.

New Section:

**WAC 230-12-330 Availability of gambling equipment and related products and services--
Prices--Contracts--Discounts--Restrictions -- Exceptions.**

Manufacturers and distributors shall make their products and services available to all licensees without discrimination. Except as authorized by this section, gambling equipment, devices, related paraphernalia or supplies, and services shall be offered to any licensee wishing to purchase such, for the same price and terms. The following restrictions, procedures, and exceptions apply to prices and terms related to sales of gambling-related products or services:

Pricing shall be consistent - exceptions.

(1) **Discriminatory prices are prohibited.** Prices are considered discriminatory when identical or similar items or services are offered to different persons for a different price or under different terms or conditions: Provided, That prices set under the following criteria shall not be considered discriminatory:

(a) **Prices that are established in advance** and available for review by the commission and customers prior to accepting a sales order utilizing such. For purposes of this section, prices are deemed to be established and available when they have been mailed or transmitted by facsimile to the commission at least forty-eight hours prior to completing sales transactions or accepting orders for products or services;

(b) **Separate and different price schedules** established by manufacturers or distributors for transactions conducted with licensees at different marketing levels when such prices are progressively lower at each marketing level above the operator level;

(c) **Prices that are based upon the delivery location** of an item or service. If the price of an item or service is based upon "free on board" (FOB) terms at a specific location, such price may be varied based upon delivery at a different location, if such is justified by objective evidence. The burden of proof regarding such price differentiation is borne by the seller. Such prices are subject to all other requirements of this section; and

(d) **Short-term price reductions or "sales"** by manufacturers or distributors are authorized when every licensee is afforded an opportunity to participate. For purposes of this section licensees will be deemed to have been afforded an opportunity to participate when:

(i) All prices and terms are clearly posted at all sales outlets for the benefit of operators and provided to all customers serviced by mobile sales representatives;

(ii) Manufacturers provide full details of the sale to all licensed distributors, including prices and terms, at least forty-eight hours prior to accepting orders for products or services being offered at a sale price. Such notice shall be by mail or telephone facsimile; and

(iii) Any limitations or conditions of the sale are clearly stated in advertisements or notices for such sale.

Contracts restricting sales not allowed.

(2) Except as set forth in WAC 230-12-230, licensees shall not enter into contracts that directly or indirectly restrict the distribution or use of gambling equipment, devices, paraphernalia, supplies, or services: Provided, That holders of proprietary rights to products or services that have been gained through patents, copyrights, trademarks, or other similar rights bestowed by state or federal law or by courts shall be allowed to enter into license agreements with manufacturers that restrict the ability to manufacture or distribute products or services if all other requirements of this section are met. The following transactions are prohibited:

- (a) An operator or distributor shall not agree to deal in, purchase, sell, lease, or operate any particular brand or brands of gambling device or equipment to the exclusion of any other brand of gambling device or equipment;
- (b) A manufacturer or distributor, or licensed representative or employee thereof, shall not sell or offer to sell, lease, or loan any gambling-related product, service, or merchandise if such is contingent upon the purchase or order of another product, service, or merchandise; and
- (c) Except as set forth in this subsection, no person shall enter into any agreement, express or implied, that prohibits a person from selling or providing any gambling-related product or service within a particular geographic area: Provided, That -
 - (i) Licensed manufacturers, distributors, and service suppliers may enter into such agreements with its licensed representative; and
 - (ii) An operator may enter into an agreement with a licensed service supplier that is supplying only management or consulting services when such agreement only restricts the service supplier from supplying the same or similar services to other operators within a specified geographic area.

Discounts.

(3) Manufacturers and distributors may offer discounts of base prices that are authorized by this section when such discounts are nondiscriminatory. For purposes of this title, discounts will be deemed to be nondiscriminatory when:

- (a) Offered to all licensees on the same terms;
- (b) The scheme upon which the discount is based is in writing and submitted to the commission at least forty-eight hours prior to being offered;
- (c) The discount applies to:
 - (i) A single sales transaction; or

(ii) Multiple sales transactions, which are made over a period of time not to exceed one week. For purposes of this section, one week shall be defined as seven consecutive days; and

(d) The level of a discount is based only upon any of the following criteria:

(i) The amount of product sold or the dollar value of the sale;

(ii) Whether the purchaser makes full payment in cash at time of sale;

(iii) Whether the purchaser makes final payment for a transaction within a predetermined time period for sales made under "trade account" terms; and

(iv) Any other structure or terms, subject to preapproval by the director. The manufacturer shall pay for the approval process and any additional requirements necessary to assure compliance with this section.

Limiting sales to specific market levels.

(4) A licensed manufacturer or distributor may elect to limit sales of products and services to licensees at any marketing level. For purposes of this section, marketing levels are defined as manufacturer, distributor, and operator. If a manufacturer or distributor elects to make sales to any licensee at a marketing level, sales must be made to all licensees at the same level: Provided, That if the distributor is in violation of WAC 230-12-340, the manufacturer shall not be required to make sales to that distributor: Provided further, That transactions between a manufacturer and distributor, when both are owned and operated by the same persons, are considered internal to that business. For purposes of this section, internal transactions are not considered sales at a different marketing level. All other restrictions of this section apply to such sales. For example:

(a) A licensed manufacturer may elect to sell or provide products and services only to distributors; or

(b) A licensed distributor may elect to sell or provide products and services only to operators.

Minimum purchasing requirements not allowed - exceptions.

(5) Manufacturers or distributors shall not set minimum purchase requirements for any product or service, except as authorized below:

(a) Minimum purchase requirements are not allowed for purchases made under prepaid or cash on delivery (COD) terms: Provided, That manufacturers may establish and charge a reasonable fee for services to handle an order for products or services below a specified level, if such policy is in writing and provided to distributors prior to accepting orders;

(b) Minimum purchase restrictions may be set for transactions between manufacturers and distributors that are conducted using trade account terms, as authorized by WAC 230-12-340;

(c) Discounts may be set based upon a minimum purchase amount as authorized by subsection (3) of this section; and

(d) Minimum purchase restrictions may be placed on products being offered for a bargain or "sale" price if a bargain or "sale" price is established for any and all levels of purchases under such terms.

Sales of nongambling products and services.

(6) A manufacturer or distributor shall not grant licensees, nor shall such licensees accept, more favorable prices, credit terms, or other arrangements than those extended to nonlicensed persons purchasing identical or similar nongambling goods or services. The price of nongambling goods or services sold to licensees shall be in conformity with the open market price in the locality where sold. The terms of such sales shall not exceed those normally granted in accordance with the customary business practice of the particular trade in the locality where such sales are made.

Transactions with tribal casinos.

(7) This section shall not apply to transactions conducted with tribal governments operating class III casinos under tribal/state compacts or with management companies operating such casinos on the behalf of tribal governments.



STATE OF WASHINGTON
GAMBLING COMMISSION

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

March 20, 2006

Eleanor Coffey
Magic Distributing, Inc.
26018 – 25th Avenue North East
Arlington, Washington 98223

SUBJECT: PETITION FOR RULE CHANGE – Discriminatory Pricing Restrictions

Dear Ms. Coffey:

As you know, at their March 10, 2006, meeting, the Commission voted to deny your petition with a 4 to 1 vote; Commissioner Ludwig voted against the motion.

At the meeting, the Commission stated the following reasons for denying your petition. First, regulating business relationships between distributors and manufacturers is outside the Commission's mission. The Commission's mission is protect the public by ensuring gambling is legal and honest. Second, there are other legal remedies you could pursue other than to rely on Commission rules, such as anti-trust laws. Third, before repealing the credit rules that you asked they reinstate, the Commissioners took public comment for three months. They carefully considered all of the arguments made and had given them due consideration before repealing the rules. I am attaching a copy of the September 2005 minutes when the final vote was taken.

You have thirty days from when the Commission denied your petition, March 10, 2006, to:

- 1) Appeal the denial to the governor. The governor will process the appeal according to RCW 34.05.330(3) (copy enclosed); or
- 2) Petition for a review by the joint administrative rules review committee according to RCW 34.05.330(2), only if your petition alleges that the rule you wish to amend is not within the intent of the legislature or not adopted in accordance with all applicable provisions of the law.

If you have any questions, please call me at (360) 486-3466 or toll-free (800) 345-2529, extension 3466.

Sincerely,

Susan Arland, Rules Coordinator and Public Information Officer
Communications and Legal Division



**Petition for Rule Change
Requiring Manufacturers to Sell Product to Distributors**

Up for Discussion and Possible Filing January 12, 2007.

ITEM 17:

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



Rule Up For Discussion and Possible Filing

Proposed New rule
WAC 230-12-231

Access to product, services, and supplies for the public interest.

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

Who proposed the rule change?

John Lowmon, licensed distributor representative.

Proposed Change

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

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

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

Attachments:

Memo to the Commission outlining their options for handling the petition.

Letter notifying Mr. Lowmon that his petition will be up for filing at the January 12, 2007, meeting.
Petition for Rule Change dated November 13, 2006.

Proposed new rule WAC 230-12-231.

Case Report concerning a complaint from Mr. Lowmon.

Minutes from the June, August, and September Commission meetings (blue paper).

History of Rule

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

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

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

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

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

such as anti-trust laws; and

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

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

Distributors:

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

Manufacturers:

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

Impact of the Proposed Change

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

Regulatory Concerns

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

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

Resource Impacts

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

Policy Consideration

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

Statements Supporting the Proposed Rule Change

None.

Statements Opposing the Proposed Rule Change

None.

Licenses Directly Impacted By the Change

Manufacturers, distributors and operators.

Staff Recommendation

Deny the petition for the following reasons:

- 1) Regulating business relationships between distributors and manufacturers is generally outside the Commission's mission;
- 2) There are other legal remedies that the petitioner could pursue other than rely on Commission rules, such as anti-trust laws;
- 3) Before repealing the credit rules, for three months, the Commissioners carefully considered all arguments and had given them due consideration;
- 4) It would require manufacturers to sell product to distributors regardless of the distributor's business practice, credit problems, or bad debt; and
- 5) It would require the Commission to indefinitely revoke a manufacturer's license if they don't comply.

Proposed Effective Date for Rule Change

The petitioner requests the new rule become effective 31 days from filing.

New Section:

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

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



STATE OF WASHINGTON
GAMBLING COMMISSION

January 23, 2007 "Protecting the Public by Ensuring that Gambling is Legal and Honest"

John Lowmon
1502 E. Maplewood Avenue
Bellingham, Washington 98225

SUBJECT: PETITION FOR RULE CHANGE

Dear Mr. Lowmon:

At the January 12, 2007, meeting, no motion was made by the Commission on your petition, which effectively denied the petition. Although Commissioners were sympathetic to your situation, they stated the following reasons for denying your petition.

- 1) Regulating business practices between manufacturers and distributors is not the Commission's direct responsibility and is outside the Commission's mission. There are other agencies that have a direct responsibility and other legal remedies you could pursue rather than to rely on Commission rules, such as anti-trust laws.
- 2) Before repealing credit/pricing rules for manufacturers and distributors, the Commissioners took public comment for three months. They carefully considered all of the arguments made and had given them due consideration before repealing the rules.

After the Commission meeting Director Rick Day asked staff to follow-up with the Anti-Trust Division of the Attorney General's Office to determine how your complaint to their office was resolved and to request a meeting with their office. We will send you a courtesy copy of any correspondence we send to them.

You have thirty days from when the Commission denied your petition, February 11, 2007, to petition for a review by the joint administrative rules review committee according to RCW 34.05.330(2), only if your petition alleges that the rule you wish to amend is not within the intent of the legislature or not adopted in accordance with all applicable provisions of the law.

If you have any questions, please call me at (360) 486-3466 or toll-free (800) 345-2529, extension 3466.

Sincerely,

Susan Arland
Rules Coordinator and Public Information Officer
Communications and Legal Division

Enclosure.



#5: 2008

4 remaining credit and pricing WACs overlooked during previous rules packages were repealed during the Rules Simplification Project

2008: 4 remaining credit and pricing WACs overlooked during previous rules packages were repealed during the Rules Simplification Project.

Rule Up For Final Action

Repealers

- WAC 230-12-210 Prices charged by manufacturers, distributors and operators for goods and services not to be fixed by agreement.
 WAC 230-12-225 Repair or service not to be conditioned upon exclusive supply arrangement.
 WAC 230-12-230 Agreements restricting freedom to buy and sell — Prohibited.
 WAC 230-12-250 No division of territories allowed.



Item 9 on the September 14, 2007, Commission Meeting Agenda.	Statutory Authority 9.46.070
Who proposed the rule change?	
Staff.	
Proposed Change	
We propose repealing these rules because we have removed many of the other restraints on credit and sales relationships between manufacturers and distributors. We believe that we overlooked these rules during that previous rules package we repealed during the budget streamlining process.	
History of Rule	
Some of these rules were enacted early in the agency's history and have not been reviewed or changed since. We believe that they've outlived their effectiveness.	
Impact of the Proposed Change	
None.	
Regulatory Concerns	
None.	
Resource Impacts	
None.	
Policy Consideration	
None.	
Stakeholder Statements For the Proposed Rule Change	
None.	
Stakeholder Statements Against the Proposed Rule Change	
None.	
Licensees Directly Impacted	
Manufacturer, distributor, and gambling service supplier licensees.	
Staff Recommendation	
Final Action.	
Proposed Effective Date for Rule Change	
January 1, 2008.	

~~WAC 230-12-230 Agreements restricting freedom to buy and sell—Prohibited.~~

~~(1) Except as provided in subsections (3), (4), (5), and (6) of this section, no person shall enter into any agreement, expressly or implied, with any other person which requires any person to purchase exclusively from, or sell exclusively to, any other person, or which prohibits any person from purchasing from or selling to any other person, any devices, materials, products, equipment or services which are used or offered in any way in connection with a gambling activity.~~

~~(2) No person shall enter into any agreement, express or implied, wherein any person is prohibited from, or required to, make purchases or sales only within a particular geographic area. Provided, That such agreements may be entered into between a licensee and its licensed representative.~~

~~(3) For amusement games, a person may enter into an agreement with another person for a period up to three years requiring such person to purchase exclusively from or sell exclusively to such other person, amusement games. The agreement may provide that it shall be automatically renewed for another three year period, or successive three year periods, if neither party gives termination notice of the agreement at least thirty days prior to its termination date.~~

~~(4) As related exclusively to amusement games, a person may enter into an agreement with another person for a period up to three years requiring such person to purchase exclusively from or sell exclusively to such other person, devices, materials, products, equipment, or services which are used in connection with a particular amusement game. The agreement may provide that it shall be automatically renewed for another three year period, or successive three year periods, if neither party gives termination notice of the agreement at least thirty days prior to its termination date.~~

~~(5) A licensed linked bingo prize provider may require a licensee to utilize particular bingo cards for conduct of a game with a linked bingo prize if such requirement is agreed to in a contract between a licensed linked bingo provider and licensed bingo operator, which is approved by the director.~~

~~(6) A linked bingo prize provider may enter into an exclusive agreement with a manufacturer to provide the bingo paper used in the linked bingo game.~~

[Statutory Authority: RCW 9.46.070, 98-24-090 (Order 369), § 230-12-230, filed 12/1/98, effective 1/1/99. Statutory Authority: RCW 9.46.070 (1), (3), (8), (9), (11), (13), (14), (20) and 9.46.0331, 97-09-073, § 230-12-230, filed 4/22/97, effective 7/1/97; Order 15, § 230-12-230, filed 4/17/74.]

~~WAC 230-12-250 No division of territories allowed.—~~

~~No manufacturer or distributor shall make or have an agreement or understanding with any licensee that either of them shall be restricted in the operation and carrying on of business to a specific geographic area, or areas, and such a restriction shall not be a condition of any sales between a manufacturer or distributor and any other licensee. Provided, That this shall not prevent a distributor or manufacturer from assigning sales territories among its bona fide representatives.~~

[Order 21, § 230-12-250, filed 8/20/74; Order 5, § 230-12-250, filed 12/19/73.]

~~WAC 230-12-210 Prices charged by manufacturers, distributors and operators for goods and services not to be fixed by agreement.~~

~~No manufacturer, distributor or operator shall by agreement, either express or otherwise, with any other manufacturer, distributor or operator, fix the price at which any device, paraphernalia, machine, equipment, punch board or pull tab, prize or any other item used in connection with any of the activities authorized by chapter 9.46 RCW, as now or hereafter amended, shall be sold, or for which services in connection therewith shall be rendered. The price of these items in the competitive market place shall be established by each manufacturer, distributor or operator for the products and services offered by each and shall not be established, directly or indirectly, in concert with one another.~~

~~[Order 29, § 230-12-210, filed 1/23/75; Order 23, § 230-12-210, filed 9/23/74; Order 14, § 230-12-210, filed 3/27/74.]~~

~~230-12-225 Repair or service not to be conditioned upon exclusive supply arrangement.~~

~~No licensed manufacturer, distributor, or gambling services supplier shall condition repair or service of any device or product upon an agreement by any person to purchase or obtain products or services solely from such manufacturer, distributor, or gambling services supplier or solely from any other person or combination of persons: Provided, That routine maintenance agreements shall not be considered a violation of this section.~~

~~[Statutory Authority: RCW 9.46.070, 97-24-031, § 230-12-225, filed 11/25/97, effective 1/1/98; Order 80, § 230-12-225, filed 12/28/77.]~~

Petition from the Public
Robert Bearden
Reinstating Requirements that Manufacturers
Must Provide Product and Services to All Distributors

July 2011 - Up for Discussion and Possible Filing
June 2011 - No Meeting
May 2011 - Study Session

ITEM: 9

- a) **New Section; WAC 230-XX-XXX**
Manufacturers must provide products and services to all distributors
without discrimination.



Rule Up For Discussion and Possible Filing

New Section:

WAC 230-16-XXX

Manufacturers must provide products and services to all distributors without discrimination.

ITEM 9 (a) on the July 14, 2011, Commission Meeting Agenda. Statutory Authority RCW 9.46.070

Who proposed the rule change?

Robert Bearden, representing various licensed and unlicensed, charitable and nonprofit organizations, including Washington State American Veterans, Gateway Bingo, Seattle Jaycee Bingo, Lakewood Elks, Boots and Breeches, Washington State Veterans of Foreign Wars, Washington State American Legion, Washington State Military Order of the Purple Hearts, VFW Post 969, Tacoma Eagles #3, and Disabled American Veterans Chapter 18.

Proposed Change

The proposed change would reinstate the portion of former WAC 230-12-330 that would require manufacturers to make their products and services available to all distributors without discrimination.

The petitioners state that the Commission has only recognized 1 licensed manufacturer of bingo paper and equipment who sells to only 2 distributors in Washington State and this makes "shopping-around" for discounted business impossible. The petitioner states allowing additional qualified distributors would create new jobs and eliminate the perception of a monopoly by charitable bingo establishments.

Attachments:

- Petition for Rule Change and letter dated May 12, 2011.
- Proposed new rule.
- Former WAC 230-12-330.
- Memo to the Commission outlining their options for handling the petition.
- Letter notifying the petitioner the petition will be up for filing at the July 2011 meeting.
- Relevant portion of Commission meeting minutes from June, August, and September 2005 when restrictions between manufacturers and distributors were repealed by the Commission.
- Memo dated August 1, 2005, from Deputy Director Neal Nunamaker to the Commissioners about the Changes in the Regulatory Program for Manufacturers and Distributors.
- Relevant portion of Commission meeting minutes from March 2006 when the Magic Distributing petition to reinstate the rules was denied by the Commission.
- Relevant portion of Commission meeting minutes from January 2007 when the John Lowman (a distributor representative for Magic Distributing) petition to reinstate the rules was denied by the Commission.
- Memo dated August 26, 2009, from Assistant Director Mark Harris to the Commissioners summarizing complaints made after the repeal of credit and discriminatory pricing rules.
- Relevant portion of Commission meeting minutes from September 2009 when staff summarized the results of repealing these rules to the Commissioners.
- WAC 230-01-015 - Effective dates for rule-making orders.

History of Rule

The Commission has discussed rules about manufacturers being required to sell to all distributors numerous times since 2005. These discussions have come about through a staff proposal to repeal the rules (which was adopted in September 2005), two petitions by the public to reinstate the rules (both of which were denied in 2006 and 2007, respectively), and a staff report in September 2009, which included staff's follow up on complaints from licensees; the complaints were unfounded.

The Commission first adopted a rule (WAC 230-12-200) concerning credit, pricing, and sales between manufacturers and distributors in 1973 (see Neal Nunamaker's memo dated August 1, 2005). The rule was amended in 1977 to require that all services and gambling related equipment be available to all licensees without discrimination. After numerous discussions with manufacturers between 1992 and 1997, the rule was amended in 1998. Credit and pricing restriction rules were developed to help resolve a situation occurring in 1991, where a distributor closed its doors due to an inability to pay its debts, and manufacturers who were left in debt by the out-of-business distributor were compelled to sell product to a new distributor. The August 2005 memo describes that when "one of the non-owner principals of the bankrupt company immediately opened a new distributorship and the jilted manufacturers found themselves compelled by the WSGC rule (WAC 230-12-200) to sell to that new company, they were more than a bit outraged."

Commission's Repeal of Rules:

After three months of public comment, the Commission voted, 4 to 1, in September 2005, to repeal former WAC 230-12-330 and other related credit and discriminatory pricing rules.

Staff recommended repealing credit and discriminatory pricing rules because:

- 1) The Commission's role is to regulate gambling, and not to control market competition;
- 2) There are other legal remedies that the petitioner could pursue other than rely on Commission rules, such as anti-trust laws; and
- 3) Removing credit and pricing restrictions between manufacturers and distributors also supported budget reductions that were made at the time.

Numerous manufacturers and distributors opposed the repeal of the credit and discriminatory pricing rules. In general, those opposed to the repeal of the rules voiced concerns over market instability, lack of control in the market place, and adverse impacts on small manufacturers and distributors. Small businesses stated they would not be able to compete with the larger businesses and would be forced out of business.

While discussion and public testimony were ongoing in 2005, Commission staff completed and presented a comprehensive report to the Commission in August, on the changes in the regulatory program for manufacturers and distributors. The Commissioners and the Assistant Attorney General discussed policy concerns of the Gambling Commission's authority and role in controlling market competition.

Excerpt of comments made by Jerry Ackerman, Senior Assistant Attorney General at the September 2005 Commission meeting:

- Mr. Ackerman commented that the Commission was about to consider a number of policy arguments from the industry and from staff. He affirmed the Commission is well informed with regard to the policy on the issues the presenters have raised; however, he felt obliged to remind the Commission that to the extent the Commission makes policy decisions, the Commission must do so within their legal authority. The Commission exists to effectively regulate gambling—that is the authority for the

Commission's ability to promulgate rules. Mr. Ackerman advised he was not involved in 1993 or 1997 when the rules came into effect. However, he has considered them to be within the Commission's rulemaking authority because when the rules were enacted, they were deemed to be necessary to the regulation of gambling. Mr. Ackerman commented that the Commission is not the Federal Trade Commission, it is not the Utilities and Transportation Commission, and it doesn't exist to control monopolies or to do anti-trust work. The Commission exists by statute to make sure that gambling is honest and legal. It does not exist to level playing fields or to control commercial competition. Mr. Ackerman suggested that if the Commission can no longer identify a regulatory purpose for these rules, then these rules no longer fit within the Commission's statutory authority. On the other hand, if they are deemed to be necessary and right for the effective regulation of gambling, then he continued to believe that they were within the Commission's authority.

Excerpts of comments made by Commissioner Ellis at the September 2005 Commission meeting:

- Commissioner Ellis didn't think the enforcing of the credit or the pricing rules was crucial to the Commission's performance. He advised that he has not been able to identify any way in which they directly or indirectly further the Commission's important business of keeping organized crime out of gambling and protecting the public from fraudulent gambling practices. Commissioner Ellis expressed concern after listening to Mr. McCoy and other speakers about the potential impact on small business; however, he felt that would lead to the question of why small businesses in this industry need price and credit regulation by a government agency in order to avoid being forced out of business. He explained this country relies on free enterprise and free economic systems, and normally small businesses come before the Legislature or an agency to complain about the impact of regulatory rules that are being imposed on them by government—rather than asking government to retain the rule.
- Commissioner Ellis affirmed it was unusual that the roles were reversed in this case. While concerns have been expressed that perhaps consumers could be impacted by the repeal of these rules in the form of higher prices from a concentration in the industry; he suggested that economically speaking, the quick answer to that scenario is that if concentration develops and if prices are raised to non-competitive levels, then absent any entry barriers, new firms will enter the market and take advantage of the unreasonably high prices—and that shouldn't be a long term problem. He affirmed that he understood the legal issues raised by Mr. Ackerman; but, preferred to not proceed on that basis and not to spend a lot of time examining whether the Commission has the authority to maintain these rules. Commissioner Ellis believed the underlying policy considerations were paramount; that it is difficult to justify the different types of restrictions on a firm's ability to set their own prices and make their own decisions as to credit. He didn't believe that a real showing had been made to continue that kind of restrictive business environment. Therefore, based on the policy question and not the question of the agency's authority, he advised he would vote in favor of the proposals as made by staff.

In 2009, then Commission Chair Rojecki asked for a report summarizing complaints made after the repeal of credit and discriminatory pricing rules in 2005. Assistant Director Mark Harris reported that agents followed up on 5 complaints made between 2005 and 2008, and each time found legitimate business reasons for manufacturers not selling to distributors (see Assistant Director, Harris' memo dated August 26, 2009). Assistant Director Harris' report summarized the following:

- In November and December 2005, after the repeal of the credit and discriminatory pricing rules, 2 distributors, Magic Distributing and H & H Pull-Tabs, complained to the Commission that a manufacturer had refused to sell pull-tabs to them. An agent contacted the manufacturer who stated they had decided to reduce the number of distributors they did business with. The 2 distributors felt discriminated against; however, the investigation revealed the manufacturer made a legitimate business decision to stop selling products to the 2 distributors.
- In 2006, Magic Distributing, Inc. submitted a rule petition requesting that discriminatory pricing restrictions be reinstated. The Commissioners voted 4 to 1 to deny the petition.
- In 2006, a distributor representative for Magic Distributing complained that 3 manufacturers stopped selling pull-tabs to them. An agent contacted each manufacturer and found the manufacturers had legitimate business reasons for not selling products to Magic Distributing.
- In 2007, a distributor representative for Magic Distributing submitted a rule petition that would require all manufacturers to sell their products to any licensed distributor without prejudice, to accept any cash purchase, and that would authorize the Commission to indefinitely revoke the license of any licensee who interfered with the rule. The Commission denied the petition. The petitioner testified that he requested the rule change after the Attorney General's Office found no basis for his anti-trust complaint. Another distributor testified the Commission was allowing larger companies to break anti-trust laws, the Rico Act, and that the Commission should know there was discrimination, civil rights violation, and racketeering going on as a result of the repeal of credit and discriminatory pricing restrictions.
- In 2007, H & H Pull Tabs complained to the Commission that a manufacturer refused to sell pull-tabs to them, and had refused to sell to them for the past 9 years. An agent found that a prior Gambling Commission investigation in 2002 resulted in a decision that the manufacturer was not required to sell to H & H Pull Tabs because they had not paid for product.
- In 2007, Commission staff met with 3 Assistant Attorneys General (AAG) to discuss complaints resulting from repeal of the credit and discriminatory pricing restrictions. The AAGs said as long as there is a reasonable reason why a person is not doing business with someone, it is not a violation, and they did not plan to pursue a formal investigation.
- In 2008, Magic Distributing complained again that manufacturers refused to sell to Magic and other small distributors. A Commission Agent concluded that the manufacturers had legitimate business reasons for not selling to Magic.
- In 2009, at a Commission meeting, H & H Pull Tabs complained that manufacturers refused to sell pull-tabs to them. Then Chair Rojecki, asked staff for further information on the issue. A manufacturer publicly commented at the meeting that they had begun selling product to Magic Distributing after the manufacturer resolved its production problems.

Commission's Denial of Two Petitions to Reinstate Rules:

In 2006, and again, in 2007, the Commission denied petitions to reinstate the credit and discriminatory pricing rules, in part, for the following reasons:

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

With the repeal of the credit and discriminatory pricing rules, manufacturers and distributors are now allowed to sell their products for different prices to different customers. Commission staff stopped conducting discriminatory pricing compliance checks, and no longer regulates how companies price their products.

Staff Surveys of Manufacturers and Distributors:

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

Six Distributors:

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

Two Manufacturers:

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

In June 2011, Special Agents contacted four distributors and three manufacturers to discuss what impact eliminating discriminatory pricing rules had on the industry and if they would like to see the rule reinstated. Following are the results:

Four Distributors:

- Two would like to keep current rules. They felt it has helped improved their businesses. Both stated it has allowed them to recapture travel costs.
- Two would like to see the old rules reinstated. They felt is has hurt their businesses.
 - One stated some manufacturers will not sell pull-tabs to them, as they are trying to drive them out of business, specifically Arrow and Douglas Press. They also stated Arrow owns Mr. Ed's, outside of Washington, and they have a relationship that penalizes his business.
 - The other stated they haven't noticed a difference since the rule was repealed, but thinks large and small businesses would compete on more equal terms if the rule was brought back.

Three Manufacturers:

- One said they don't do a whole lot of sales in Washington, so they didn't feel it would affect their sales much at all.
- One said it will hurt their business. He said they don't have a problem with the "sell to all" part of it, but they feel that volume discounting, rebates, credit terms, etc. should be left up to the relationship between the individual manufacturer and each distributor they sell to. They feel the state shouldn't be involved in that part of the process at all.
- One said they would like the rules left they way they are. They don't believe the state should be messing with the free market system. They don't believe they should have to sell to everyone on the same terms.

Impact of the Proposed Change

The proposal would require manufacturers to offer gambling equipment, devices, related paraphernalia or supplies, and services to any distributor wishing to purchase such for the same prices and terms. "Discriminatory practices are prohibited."

The petitioners did not define "discriminatory practices" in the proposed rule.

- Staff contacted the petitioners for clarification of what this means. What if the distributor has poor business practices, credit problems, or bad debt? In the past, credit restriction rules, which have been repealed, would have prevented the sale of more product to businesses with past due accounts.
 - Mr. Bearden verbally stated to staff that this means "what you do for one, you do for all." If you won't sell to someone because they are behind in their payment, then you can't sell to others that are behind in their payment. If you don't sell to someone with bad credit, then you don't sell to anyone with bad credit.
- Staff asked the petitioners if they would like language added to the WAC to not require manufacturers to sell to distributors if they are past due or have bad credit.
 - Mr. Bearden verbally stated to staff that they believe "discriminatory practices" is sufficient and people will know what that means.

Impact on Licensees:

The impact on licensees is unknown. Staff doesn't know if the proposal would cause an increase or decrease in the number of manufacturers and distributors or an increase or decrease in costs to licensees.

Impact on the Commission:

The petitioners submitted a two sentence rule. Based on this language, we would need to examine whether we would reinstate processes (and possibly repealed rules) to allow us to determine whether product and services are being sold for the same prices and terms. In the past, manufacturers submitted pricing lists to us and agents would compare that list to purchase and sales invoices to verify that the price products were sold for the same as the price list we had on file. If the prices were not consistent, administrative action would be taken.

We may see an increase in the number of complaints.

A **Small Business Economic Impact Statement** was not prepared because the proposed rule change does not impose more than minor costs on businesses, as defined in RCW 19.85.

Regulatory Concerns

- Regulating lawful business practices between licensees is generally outside the scope of the Commission's mission to keep gambling legal and honest.
- The restoration of this rule would reinstate the agency's role in regulating sales, services, pricing schedules, and credit terms between licensees.

Resource Impacts

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

New Section:

WAC 230-xx-xxx Manufacturers must provide products and services to all distributors without discrimination.

Manufacturers must provide gambling equipment, devices, related paraphernalia or supplies, and services to any distributor wishing to purchase such for the same pricing and terms. Discriminatory practices are prohibited.



STATE OF WASHINGTON
GAMBLING COMMISSION

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

July 21, 2011

Robert Bearden
5311 South Pine Street
Tacoma, WA 98409

SUBJECT: PETITION FOR RULE CHANGE

Dear Mr. Bearden:

At the July 14, 2011, Commission meeting, your petition for rule change requesting that manufacturers be required to make their products and services available to all distributors without discrimination was not filed due to a lack of motion.

At the meeting, the Commissioners stated they did not make a motion to file the petition based on the reasons outlined in staff's recommendations to deny the petition, some of those reasons were:

- 1) Regulating lawful business relationships between distributors and manufacturers is generally outside the Commission's mission;
- 2) There are other legal remedies that the petitioner could pursue other than rely on Commission rules, such as anti-trust laws;
- 3) Before repealing the credit rules in 2005, the Commissioners carefully considered all arguments for three months, and had given them due consideration; and
- 4) The Commission denied two previous petitions (2006 and 2007) to reinstate discriminatory practices.

If you have any questions, please call me at (360) 486-3466 or toll-free (800) 345-2529, extension 3466.

Sincerely,

Susan Arland
Rules Coordinator and Public Information Officer
Communications and Legal Division



Excerpts from Commission meeting minutes when this topic was previously discussed:

- **June, August and September 2005**
- **March, April, June and July 2006**
- **January 2007**
- **September 2009**
- **July 2011**

Excerpt from June 2005 Commission Meeting Minutes

13. Credit and Pricing Restrictions:

WAC 230-12-330, WAC 230-12-340, WAC 230-12-345, WAC 230-12-350, and WAC 230-12-320:

Ms. Cass explained that as a matter of background, Items 13-A through 13-E are part of the Commission's budget reduction plan.

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

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

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

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

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

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

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

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

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

Item 13-E is a repeal proposal to WAC 230-12-320. This rule limits the amounts of gifts that manufacturers, distributors, and operators may offer as incentives to purchase their goods. The original intent was to prevent the influence over one another in the different marketing levels and to limit the amount of gifts the different levels may offer to each other. The rules were intended to control the marketplace activities and the competition. The proposed amendment removes the restrictions related to gifts and promotional items between the manufacturers, distributors, and operators, and the Commission would no longer be involved in how companies reward buyers with their merchandise. Staff recommends filing the rule for further discussion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Excerpt from August 2005 Commission Meeting Minutes

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

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

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

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

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

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

Chair Ludwig called for public comment.

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

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

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

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

Commissioner Ellis asked why the Commissioners should be concerned about competition in this industry. Competition is the lifeblood of the American economy and free market competition is normally how markets regulate themselves. The Commission has important functions to play in keeping out organized crime, but when discussing the pricing and credit practices that are the issue in these rules, why should the Commission be concerned about more competition. **Mr. Franke** referred back to a statement made by Deputy Director Nunamaker at a previous commission meeting regarding not controlling widget operators. Mr. Franke said that if widgets were being manufactured, fingerprints and background checks on the administration would not be done.. Mr. Franke stressed that gambling is a different kind of activity that requires oversight. Commissioner Ellis responded that the Commission should be concerned if organized crime is operating your company from the back room, but why should your prices be a concern of the Commission.

Mr. Franke replied that it is the natural drive of a business person to do everything possible, within the limits, to compete and succeed. If there are no limits, who knows what happens. Mr. Franke said he did not like what happened before there were limits, and pointed out that if the rule was removed, someone would come forward in a few years and petition for another rule on pricing. When that happens, NAFTA will be there to support that rule.

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

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

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

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

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

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

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

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

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

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

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

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

15. Credit and Pricing Restrictions:

WAC 230-12-330, WAC 230-12-340, WAC 230-12-345, WAC 230-12-350, and WAC 230-12-320

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

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

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

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

Excerpt from September 2005 Commission Meeting Minutes

11. Credit and Pricing Restrictions:

WAC 230-12-330, WAC 230-12-340, WAC 230-12-345, WAC 230-12-350, and WAC 230-12-320:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Excerpt from March 2006 Commission Meeting Minutes

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

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

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

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

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

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

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

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

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

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

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

Excerpt from April 2006 Commission Meeting Minutes

5. Allowing Credit between Operators and Manufacturers/Distributors

WAC 230-12-340 and WAC 230-12-350

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

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

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

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

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

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

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

(A)

Excerpt from June 2006 Commission Meeting Minutes

13. Allowing Credit Between Manufacturers/Distributors:

WAC 230-12-340 and WAC 230-12-350:

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

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

Excerpt from July 2006 Commission Meeting Minutes

11. Allowing Credit between Operators and Manufacturers/Distributors: WAC 230-12-340 and WAC 230-12-350:

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

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

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



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

Excerpt from January 2007 Commission Meeting Minutes

17. Petition for Rule Change-Manufacturers Selling Product to Distributors:

WAC 230-12-231

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Representative Alexander arrived at 1:50 p.m.

"60 Minutes" Video Clip

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

Summary of Repeal of Manufacturer/Distributor Credit and Pricing Rules

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

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

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

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

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

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

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

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

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

Correspondence

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

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

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

Excerpts from the July 2011 Commission Meeting Minutes

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

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

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

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

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

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

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

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

Staff recommends denying the petition based on the policy considerations.

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

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

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

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

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

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

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

Chair Ellis called for public comment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Legislative Update

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

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

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

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

Staff Proposed Rule Change

- **Licensing and I.D. Stamp Fee Increase**

July 2014 - Up for Discussion and Possible Filing

ITEM: 11

Alternatives #1 and #2:

- a) Amendatory Section WAC 230-05-020**
Charitable or nonprofit organization fees.
- b) Amendatory Section WAC 230-05-025**
Commercial stimulant fees.
- c) Amendatory Section WAC 230-05-030**
Fees for other businesses.
- d) Amendatory Section WAC 230-05-035**
Individual license fees.



Proposed Amendments to:
 WAC 230-05-020 Charitable or nonprofit organization fees.
 WAC 230-05-025 Commercial stimulant fees.
 WAC 230-05-030 Fees for other businesses.
 WAC 230-05-035 Individual license fees.

Up Discussion and Possible Filing – July 2014

ITEM 11 (a)-(d) on the July 2014 Commission Meeting Agenda.	Statutory Authority 9.46.070
Who proposed the rule change?	
Staff.	
Proposed Change	
At their June 2014 meeting, the Commissioners asked staff to bring forward two alternative fee increases for filing at the July 2014 Commission meeting.	
<p>Alternative #1: 6% fee increase effective November 1, 2014. Approximate revenue:</p> <ul style="list-style-type: none"> • \$248,000 for the eight months of fiscal year 2015. • \$378,000 for the full year of fiscal year 2016. 	
<p>Alternative #2: 4% fee increase effective November 1, 2014, and a 2% increase effective November 1, 2015. Approximate revenue:</p> <ul style="list-style-type: none"> • \$165,000 for the eight months of fiscal year 2015. • \$316,000 for the full year of fiscal year 2016. 	
History of Rule	
The Commission is a non-appropriated agency. RCW 9.46.070(5) requires the Commission to set fees to generate funds necessary to cover all costs of licensing and enforcement.	
Fees for all licensees were last increased effective January 1, 2008.	
Impact of the Proposed Change	
<ul style="list-style-type: none"> • If Alternative #1 is adopted, applicants and licensees will pay approximately 6% more in license fees beginning November 1, 2014. • If Alternative #2 is adopted, applicants and licensees will pay approximately 4% more in license fees beginning November 1, 2014, and 2% more beginning November 1, 2015. 	
A Small Business Economic Impact Statement was not required under RCW 34.05.310(4)(f).	
Regulatory Concerns	
None.	
Resource Impacts	
<p>With each fee change:</p> <ul style="list-style-type: none"> • Paper forms, fillable online forms and online applications would need to be updated and/or reprogrammed. • The agency database will need to be updated to reflect the new license fees. <p>Under Alternative #2, the database and forms would need to be updated twice in a one year period. We anticipate more questions from licensees.</p>	

Policy Consideration
None.
Statements Supporting the Proposed Rule Change
None.
Statements Opposing the Proposed Rule Change
None.
Licensees Directly Impacted By the Change
All applicants and licensees.
Staff Recommendation
File for further discussion.
Proposed Effective Date for Rule Change
November 1, 2014.

Alternative #1: 6% Fee Increase Effective November 1, 2014.

AMENDATORY SECTION

WAC 230-05-020 Charitable or nonprofit organization fees. Bona fide charitable and nonprofit organizations must pay the following fees to us when applying for gambling licenses, permits, miscellaneous changes, or inspection services:

1. Amusement games

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	\$((58)) <u>61</u>
Class B	Up to \$10,000	\$((58)) <u>61</u>
Class C	Up to \$25,000	\$((319)) <u>338</u>
Class D	Up to \$50,000	\$((513)) <u>544</u>
Class E	Over \$50,000	\$((894)) <u>948</u>

2. Bingo

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$25,000	\$((58)) <u>61</u>	\$1,000
Class B	Up to \$75,000	\$((185)) <u>196</u>	\$1,000
Class C	Up to \$150,000	\$((380)) <u>403</u>	\$2,000
Class D	Up to \$350,000	\$((1,026)) <u>1,088</u>	\$4,000
Class E	Up to \$650,000	\$((1,732)) <u>1,836</u>	\$8,000
Class F	Up to \$1,500,000	\$((3,486)) <u>3,695</u>	\$15,000
Class G	Up to \$2,000,000	\$((5,028)) <u>5,330</u>	\$23,000
Class H	Up to \$3,000,000	\$((6,722)) <u>7,125</u>	\$30,000
Class I	Up to \$4,000,000	\$((8,400)) <u>8,904</u>	\$38,000
Class J	Up to \$5,000,000	\$((10,078)) <u>10,683</u>	\$45,000
Class K	Up to \$6,000,000	\$((11,306)) <u>11,984</u>	\$53,000

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class L	Up to \$7,000,000	\$((12,922)) <u>13,697</u>	\$60,000
Class M	Up to \$8,000,000	\$((14,542)) <u>15,415</u>	\$65,000
Class N	Up to \$9,000,000	\$((15,818)) <u>16,767</u>	\$70,000
Class O	Up to \$10,000,000	\$((17,454)) <u>18,501</u>	\$75,000
Class P	Up to \$11,000,000	\$((19,090)) <u>20,235</u>	\$80,000
Class Q	Up to \$12,000,000	\$((22,908)) <u>24,282</u>	\$85,000
Class R	Up to \$13,000,000	\$((26,180)) <u>27,751</u>	\$90,000
Class S	Up to \$14,000,000	\$((29,454)) <u>31,221</u>	\$95,000

*See chapter 230-06 WAC, Exceeding license class.

3. Card games

License	Description	Fee
Class A	Nonhouse-banked - fee to play	\$((641)) <u>679</u>
Class B	Limited card games - hearts, rummy, pitch, pinochle, and cribbage - fee to play	\$((185)) <u>196</u>
Class C	Tournament only - no more than thirty consecutive days per tournament	\$((58)) <u>61</u>
Class D	Nonhouse-banked - no fee to play	\$((58)) <u>61</u>

4. Fund-raising event

License	Description	Fee
Class A	One event - not more than 24 consecutive hours	
	First time applicant	\$((380)) <u>403</u>
	Previously licensed applicant	\$((223)) <u>236</u>
Class B	One event - not more than 72 consecutive hours	
	First time applicant	\$((641)) <u>679</u>
	Previously licensed applicant	\$((393)) <u>417</u>
Class C	Additional participant in joint event - not lead organization	\$((185)) <u>196</u>

License	Description	Fee
Class D	Limited fund-raising event - one event - not more than six consecutive hours	
	First time applicant	\$((167)) <u>177</u>
	Previously licensed applicant	\$((111)) <u>118</u>
Class E	Fund-raising event equipment distributor - rents or leases equipment no more than ten times per year	\$((253)) <u>268</u>
Class F	Fund-raising event equipment distributor - rents or leases equipment more than ten times per year	\$((641)) <u>679</u>

5. Punch boards/pull-tabs

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	\$((611)) <u>648</u>	\$5,000
Class B	Up to \$100,000	\$((1,090)) <u>1,155</u>	\$5,000
Class C	Up to \$200,000	\$((2,062)) <u>2,186</u>	\$10,000
Class D	Up to \$300,000	\$((2,998)) <u>3,178</u>	\$10,000
Class E	Up to \$400,000	\$((3,874)) <u>4,106</u>	\$10,000
Class F	Up to \$500,000	\$((4,676)) <u>4,957</u>	\$10,000
Class G	Up to \$600,000	\$((5,420)) <u>5,745</u>	\$10,000
Class H	Up to \$700,000	\$((6,100)) <u>6,466</u>	\$10,000
Class I	Up to \$800,000	\$((6,722)) <u>7,125</u>	\$10,000
Class J	Up to \$1,000,000	\$((7,620)) <u>8,077</u>	\$20,000
Class K	Up to \$1,250,000	\$((8,460)) <u>8,968</u>	\$25,000
Class L	Up to \$1,500,000	\$((9,240)) <u>9,794</u>	\$25,000
Class M	Up to \$1,750,000	\$((9,880)) <u>10,473</u>	\$25,000
Class N	Up to \$2,000,000	\$((10,466)) <u>11,094</u>	\$25,000
Class O	Up to \$2,500,000	\$((11,500)) <u>12,190</u>	\$30,000
Class P	Up to \$3,000,000	\$((12,218)) <u>12,951</u>	\$35,000
Class Q	Up to \$4,000,000	\$((14,400)) <u>15,264</u>	\$40,000

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class R	Up to \$5,000,000	\$((16,362) <u>17,344</u>)	\$50,000
Class S	Up to \$6,000,000	\$((18,544) <u>19,657</u>)	\$60,000
Class T	Up to \$7,000,000	\$((20,728) <u>21,972</u>)	\$70,000
Class U	Up to \$8,000,000	\$((22,908) <u>24,282</u>)	\$80,000
Class V	Over \$8,000,000	\$((25,090) <u>26,595</u>)	\$80,000

*See chapter 230-06 WAC, Exceeding license class.

6. Raffles

License	Annual Gross Gambling Receipts	Fee
Class A	Up to \$5,000	\$((58) <u>61</u>)
Class B	Up to \$10,000	\$((185) <u>196</u>)
Class C	Up to \$25,000	\$((380) <u>403</u>)
Class D	Up to \$50,000	\$((641) <u>679</u>)
Class E	Up to \$75,000	\$((1,026) <u>1,088</u>)
Class F	Over \$75,000	\$((1,540) <u>1,632</u>)

7. Enhanced raffles

License	Fee
Annual	\$((6,000) <u>6,360</u>)
Additional fee per enhanced raffle	\$((7,800) <u>8,268</u>)

8. Combination license

License	Description	Fee
Class A	Allows gross gambling receipts of up to \$25,000 from bingo, \$7,500 from raffles, and \$7,500 from amusement games, not to exceed \$30,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$((115) <u>122</u>)

License	Description	Fee
Class B	Allows gross gambling receipts of up to \$60,000 from bingo, \$15,000 from raffles, and \$15,000 from amusement games, not to exceed \$75,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$((300)) <u>318</u>
Class C	Allows gross gambling receipts of up to \$125,000 from bingo, \$30,000 from raffles, and \$30,000 from amusement games, not to exceed \$150,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$((696)) <u>738</u>

9. Special property bingo

Once annually	\$((27)) <u>29</u>
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10. Permits

Recreational gaming activity	\$((58)) <u>61</u>
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11. Changes

Type	Fee
Name	\$((27)) <u>29</u>
Location	\$((27)) <u>29</u>
Fund-raising event date or time	\$((27)) <u>29</u>
License class	\$((27)) <u>29</u>
Duplicate license	\$((27)) <u>29</u>

12. Other fees

Type	Fee
Replacement identification stamps	\$((27)) <u>29</u>

Type	Fee
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$((26) <u>28</u>)
Review, inspection and/or evaluation of equipment, paraphernalia, services, or schemes	Deposit and fees as required

13. Two-part payment plan participation

Annual participation	\$((27) <u>29</u>)
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AMENDATORY SECTION

WAC 230-05-025 Commercial stimulant fees. All commercial stimulant license applicants must pay the following fees to us when applying for gambling licenses:

1. Card games - Nonhouse-banked

License	Description	Fee
Class B	Up to five tables of limited card games - hearts, rummy, pitch, pinochle, and/or cribbage - fee to play	\$((189)) <u>200</u>
Class C	Tournament only, no more than thirty consecutive days per tournament	
C-5	Up to five tables	\$((189)) <u>200</u>
C-10	Up to ten tables	\$((346)) <u>367</u>
C-15	Up to fifteen tables	\$((576)) <u>611</u>
Class D	Up to five tables - no fee to play	\$((59)) <u>63</u>
Class E	Fee to play	
E-1	One table only	\$((460)) <u>488</u>
E-2	Up to two tables	\$((792)) <u>840</u>
E-3	Up to three tables	\$((1,318)) <u>1,397</u>
E-4	Up to four tables	\$((2,644)) <u>2,803</u>
E-5	Up to five tables	\$((3,980)) <u>4,219</u>
Additional tables	Per table - up to a maximum of fifteen	\$((1,152)) <u>1,221</u>
Class F	Endorsement/upgrade of Class E includes permission to use alternative fee collections and use of player-supported jackpots	\$((1,732)) <u>1,836</u>

2. Card games - House-banked

All tables within a card room operating any house-banked card game must be licensed under this license class.

License	Fee
Annual	\$((6,944)) <u>7,361</u>
Additional fee per table - up to fifteen tables	\$((1,732)) <u>1,836</u>

3. Punch boards and pull-tabs

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	\$((628)) <u>666</u>	\$5,000
Class B	Up to \$100,000	\$((1,122)) <u>1,189</u>	\$5,000
Class C	Up to \$200,000	\$((2,116)) <u>2,243</u>	\$10,000
Class D	Up to \$300,000	\$((3,080)) <u>3,265</u>	\$10,000
Class E	Up to \$400,000	\$((3,980)) <u>4,219</u>	\$10,000
Class F	Up to \$500,000	\$((4,806)) <u>5,094</u>	\$10,000
Class G	Up to \$600,000	\$((5,570)) <u>5,904</u>	\$10,000
Class H	Up to \$700,000	\$((6,270)) <u>6,646</u>	\$10,000
Class I	Up to \$800,000	\$((6,906)) <u>7,320</u>	\$10,000
Class J	Up to \$1,000,000	\$((7,832)) <u>8,302</u>	\$20,000
Class K	Up to \$1,250,000	\$((8,692)) <u>9,214</u>	\$25,000
Class L	Up to \$1,500,000	\$((9,494)) <u>10,064</u>	\$25,000
Class M	Up to \$1,750,000	\$((10,156)) <u>10,765</u>	\$25,000
Class N	Up to \$2,000,000	\$((10,756)) <u>11,401</u>	\$25,000
Class O	Up to \$2,500,000	\$((11,820)) <u>12,529</u>	\$30,000
Class P	Up to \$3,000,000	\$((12,218)) <u>12,951</u>	\$35,000
Class Q	Up to \$4,000,000	\$((14,400)) <u>15,264</u>	\$40,000
Class R	Up to \$5,000,000	\$((16,362)) <u>17,344</u>	\$50,000
Class S	Up to \$6,000,000	\$((18,544)) <u>19,657</u>	\$60,000
Class T	Up to \$7,000,000	\$((20,728)) <u>21,972</u>	\$70,000
Class U	Up to \$8,000,000	\$((22,908)) <u>24,282</u>	\$80,000
Class V	Over \$8,000,000	\$((25,090)) <u>26,595</u>	\$80,000

*See chapter 230-06 WAC, Exceeding license class.

AMENDATORY SECTION

WAC 230-05-030 Fees for other businesses. All other business license applicants must pay the following fees to us when applying for gambling licenses, miscellaneous changes, or inspection services:

1. Commercial amusement games

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	*\$((327 / \$150)) <u>347/\$159</u>
Class B	Up to \$50,000	\$((460)) <u>488</u>
Class C	Up to \$100,000	\$((1,184)) <u>1,255</u>
Class D	Up to \$250,000	\$((2,644)) <u>2,803</u>
Class E	Up to \$500,000	\$((4,640)) <u>4,918</u>
Class F	Up to \$1,000,000	\$((7,968)) <u>8,446</u>
Class G	Over \$1,000,000	\$((9,970)) <u>10,568</u>

*We reduce the license fee by \$177 when you apply for additional licenses at the same business premises, apply for multiple licenses at the same business premises, or a licensee is renewing an annual license.

2. Distributor

License	Annual Gross Sales	Fee
Class A	Non-punch board/pull-tab only	\$((659)) <u>699</u>
Class B	Up to \$250,000	\$((1,318)) <u>1,397</u>
Class C	Up to \$500,000	\$((1,980)) <u>2,099</u>
Class D	Up to \$1,000,000	\$((2,644)) <u>2,803</u>
Class E	Up to \$2,500,000	\$((3,446)) <u>3,653</u>
Class F	Over \$2,500,000	\$((4,242)) <u>4,497</u>

3. Fund-raising event equipment distributor

License	Description	Fee
Class A	Rents or leases equipment for fund-raising event or recreational gaming activity up to 10 times per year.	\$((260)) <u>276</u>
Class B	Rents or leases equipment for fund-raising event or recreational gaming activity more than 10 times per year.	\$((659)) <u>699</u>

4. Gambling service supplier

License	Fee
Annual	\$((687)) <u>728</u>
Financing, consulting, and management contract review	\$((143)) <u>152</u>

5. Linked bingo prize provider

License	Fee
Annual	\$((4,414)) <u>4,679</u>

6. Call centers for enhanced raffles

License	Fee
Annual	\$((4,500)) <u>4,770</u>

7. Manufacturer

License	Annual Gross Sales	Fee
Class A	Pull-tab dispensing devices only	\$((659)) <u>699</u>
Class B	Up to \$250,000	\$((1,318)) <u>1,397</u>
Class C	Up to \$500,000	\$((1,980)) <u>2,099</u>
Class D	Up to \$1,000,000	\$((2,644)) <u>2,803</u>
Class E	Up to \$2,500,000	\$((3,446)) <u>3,653</u>
Class F	Over \$2,500,000	\$((4,242)) <u>4,497</u>

8. Permits

Type	Description	Fee
Agricultural fair	One location and event only	\$((27)) <u>29</u>
Agricultural fair annual permit	Annual permit for specified different events and locations	\$((189)) <u>200</u>
Recreational gaming activity		\$((59)) <u>63</u>
Manufacturer's special sales permit		\$((211)) <u>224</u>

Type	Description	Fee
Punch board and pull-tab service business permit	Initial application fee	\$((236)) <u>250</u>
Punch board and pull-tab service business permit	Renewal	\$((56)) <u>59</u>

9. Changes

Application	Description	Fee
Name		\$((27)) <u>29</u>
Location		\$((27)) <u>29</u>
Business classification	Same owners	\$((59)) <u>63</u>
Exceeding license class	New class fee, less previous fee paid, plus	\$((27)) <u>29</u>
Duplicate license		\$((27)) <u>29</u>
Corporate stock/limited liability company shares/units		\$((59)) <u>63</u>
License transfers		\$((59)) <u>63</u>

10. Other fees

Type	Fee
Defective punch board/pull-tab cost recovery fees	Up to \$100
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$((27)) <u>29</u>
Review of gambling equipment, supplies, services, or games	Cost reimbursement

11. Identification stamps

Type		Fee
(a) Punch boards and pull-tabs		
(i) Standard	Wagers fifty cents and below	\$((.28)) <u>.30</u>
	Wagers over fifty cents	\$((1.11)) <u>1.18</u>
(ii) Progressive jackpot pull-tab series	Per series	\$((11.19)) <u>11.86</u>
(iii) Pull-tab series with carry-over jackpots and cumulative prize pool pull-tab series	Per series	\$((1.11)) <u>1.18</u>
(b) Pull-tab dispensing devices		
(i) Mechanical and electro-mechanical		\$((.28)) <u>.30</u>
(ii) Electronic	Dispensing devices that require initial and ongoing evaluation of electronic components or functions, such as reading encoded data on pull-tabs, accounting for income or prizes	\$((112.04)) <u>118.76</u> annually
Replacement of identification stamps		\$((26)) <u>28</u>
(c) Disposable bingo cards		
(i) Single game sets of individual cards or sheets of cards		\$((.28)) <u>.30</u>
(ii) Multigame card packets		\$((1.22)) <u>1.29</u>
(iii) Cards used to play for linked bingo prizes	Fee per 250 cards	\$((.44)) <u>.47</u>
(iv) Cards used to play for linked bingo prizes	Fee per 5,000 cards	\$((8.96)) <u>9.50</u>
(d) Coin or token-activated amusement games		
Annually - operated at any Class A amusement game license location		\$((28.00)) <u>29.68</u>
(e) Electronic bingo card daubers		
Annual		\$((11.19)) <u>11.86</u>
(f) Electronic card facsimile table		
Annual		\$((381.50)) <u>404.39</u>

12. Two-part payment plan participation

Annual participation	\$((27)) <u>29</u>
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AMENDATORY SECTION

WAC 230-05-035 Individuals license fees. Individuals must pay the following fees to us when they apply for gambling licenses, permits, miscellaneous changes:

1. Charitable or nonprofit gambling manager

License	Fee
Original	\$((185)) <u>196</u>
Renewal	\$((88)) <u>93</u>
Change of employer	\$((88)) <u>93</u>

2. Linked bingo prize provider representative

License	Fee
Original	\$((260)) <u>276</u>
Renewal	\$((158)) <u>167</u>

3. Commercial gambling manager

License	Fee
Original	\$((189)) <u>200</u>
Renewal	\$((90)) <u>95</u>
Change of employer	\$((90)) <u>95</u>

4. Distributor's or gambling services supplier's representative

License	Fee
Original	\$((260)) <u>276</u>
Renewal	\$((158)) <u>167</u>

5. Representatives for manufacturers or call centers for enhanced raffles

License	Fee
Original	\$((260)) <u>276</u>
Renewal	\$((158)) <u>167</u>

6. Public card room employee

License	Fee
Class A - Performs card room employee duties in a Class E card room	
Original	\$((189)) <u>200</u>
Renewal	\$((90)) <u>95</u>
Class B - Performs card room employee duties in enhanced and house-banked card rooms	
Original, in-state	\$((258)) <u>273</u>
Original, out-of-state	\$((320)) <u>339</u>
Renewal	\$((158)) <u>167</u>
Transfer/additional employee/conversion/emergency waiver request	\$((64)) <u>65</u>

7. Other fees

Change of name	\$((27)) <u>29</u>
Duplicate license	\$((27)) <u>29</u>

8. Military personnel returning from service

If a license expires while an individual is on active military service, the individual may apply to have their license reissued at the renewal fee. The application must be received within six months after completing their active military service. The applicant must provide evidence of the completion date of active military service.

Alternative #2:

**4% Fee Increase Effective November 1, 2014, followed by
a 2% Fee Increase Effective November 1, 2015.**

AMENDATORY SECTION

WAC 230-05-020 Charitable or nonprofit organization fees. Bona fide charitable and nonprofit organizations must pay the following fees to us when applying for gambling licenses, permits, miscellaneous changes, or inspection services:

1. Amusement games

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014.	Fee effective November 1, 2015.
Class A	Premises only	\$((58)) <u>60</u>	<u>\$61</u>
Class B	Up to \$10,000	\$((58)) <u>60</u>	<u>\$61</u>
Class C	Up to \$25,000	\$((349)) <u>332</u>	<u>\$339</u>
Class D	Up to \$50,000	\$((543)) <u>534</u>	<u>\$545</u>
Class E	Over \$50,000	\$((894)) <u>930</u>	<u>\$949</u>

2. Bingo

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014.	Fee effective November 1, 2015.	One Time Variance*
Class A	Up to \$25,000	\$((58)) <u>60</u>	<u>\$61</u>	\$1,000
Class B	Up to \$75,000	\$((485)) <u>192</u>	<u>\$196</u>	\$1,000
Class C	Up to \$150,000	\$((380)) <u>395</u>	<u>\$403</u>	\$2,000
Class D	Up to \$350,000	\$((1,026)) <u>1,067</u>	<u>\$1,088</u>	\$4,000
Class E	Up to \$650,000	\$((1,732)) <u>1,801</u>	<u>\$1,837</u>	\$8,000
Class F	Up to \$1,500,000	\$((3,486)) <u>3,625</u>	<u>\$3,698</u>	\$15,000
Class G	Up to \$2,000,000	\$((5,028)) <u>5,229</u>	<u>\$5,334</u>	\$23,000
Class H	Up to \$3,000,000	\$((6,722)) <u>6,991</u>	<u>\$7,131</u>	\$30,000
Class I	Up to \$4,000,000	\$((8,400)) <u>8,736</u>	<u>\$8,911</u>	\$38,000
Class J	Up to \$5,000,000	\$((10,078)) <u>10,481</u>	<u>\$10,691</u>	\$45,000

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014.	Fee effective November 1, 2015.	One Time Variance*
Class K	Up to \$6,000,000	\$((11,306)) <u>11,758</u>	<u>\$11,993</u>	\$53,000
Class L	Up to \$7,000,000	\$((12,922)) <u>13,439</u>	<u>\$13,708</u>	\$60,000
Class M	Up to \$8,000,000	\$((14,542)) <u>15,124</u>	<u>\$15,426</u>	\$65,000
Class N	Up to \$9,000,000	\$((15,818)) <u>16,451</u>	<u>\$16,780</u>	\$70,000
Class O	Up to \$10,000,000	\$((17,454)) <u>18,152</u>	<u>\$18,515</u>	\$75,000
Class P	Up to \$11,000,000	\$((19,090)) <u>19,854</u>	<u>\$20,251</u>	\$80,000
Class Q	Up to \$12,000,000	\$((22,908)) <u>23,824</u>	<u>\$24,300</u>	\$85,000
Class R	Up to \$13,000,000	\$((26,180)) <u>27,227</u>	<u>\$27,772</u>	\$90,000
Class S	Up to \$14,000,000	\$((29,454)) <u>30,632</u>	<u>\$31,245</u>	\$95,000

*See chapter 230-06 WAC, Exceeding license class.

3. Card games

License	Description	Fee effective November 1, 2014.	Fee effective November 1, 2015.
Class A	Nonhouse-banked - fee to play	\$((641)) <u>667</u>	<u>\$680</u>
Class B	Limited card games - hearts, rummy, pitch, pinochle, and cribbage - fee to play	\$((185)) <u>192</u>	<u>\$196</u>
Class C	Tournament only - no more than thirty consecutive days per tournament	\$((58)) <u>60</u>	<u>\$61</u>
Class D	Nonhouse-banked - no fee to play	\$((58)) <u>60</u>	<u>\$61</u>

4. Fund-raising event

License	Description	Fee effective November 1, 2014.	Fee effective November 1, 2015.

License	Description	Fee effective November 1, 2014.	Fee effective November 1, 2015.
Class A	One event - not more than 24 consecutive hours		
	First time applicant	\$((380)) <u>395</u>	\$403
	Previously licensed applicant	\$((223)) <u>232</u>	\$237
Class B	One event - not more than 72 consecutive hours		
	First time applicant	\$((641)) <u>667</u>	\$680
	Previously licensed applicant	\$((393)) <u>409</u>	\$417
Class C	Additional participant in joint event - not lead organization	\$((185)) <u>192</u>	\$196
Class D	Limited fund-raising event - one event - not more than six consecutive hours		
	First time applicant	\$((167)) <u>174</u>	\$177
	Previously licensed applicant	\$((111)) <u>115</u>	\$117
Class E	Fund-raising event equipment distributor - rents or leases equipment no more than ten times per year	\$((253)) <u>263</u>	\$268
Class F	Fund-raising event equipment distributor - rents or leases equipment more than ten times per year	\$((641)) <u>667</u>	\$680

5. Punch boards/pull-tabs

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014.	Fee effective November 1, 2015.	One Time Variance*
Class A	Up to \$50,000	\$((611)) <u>635</u>	\$648	\$5,000
Class B	Up to \$100,000	\$((1,090)) <u>1,134</u>	\$1,157	\$5,000
Class C	Up to \$200,000	\$((2,062)) <u>2,144</u>	\$2,187	\$10,000
Class D	Up to \$300,000	\$((2,998)) <u>3,118</u>	\$3,180	\$10,000
Class E	Up to \$400,000	\$((3,874)) <u>4,029</u>	\$4,110	\$10,000
Class F	Up to \$500,000	\$((4,676)) <u>4,863</u>	\$4,960	\$10,000
Class G	Up to \$600,000	\$((5,420)) <u>5,637</u>	\$5,750	\$10,000
Class H	Up to \$700,000	\$((6,100)) <u>6,344</u>	\$6,471	\$10,000

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014.	Fee effective November 1, 2015.	One Time Variance*
Class I	Up to \$800,000	\$((6,722)) <u>6,991</u>	<u>\$7,131</u>	\$10,000
Class J	Up to \$1,000,000	\$((7,620)) <u>7,925</u>	<u>\$8,084</u>	\$20,000
Class K	Up to \$1,250,000	\$((8,460)) <u>8,798</u>	<u>\$8,974</u>	\$25,000
Class L	Up to \$1,500,000	\$((9,240)) <u>9,610</u>	<u>\$9,802</u>	\$25,000
Class M	Up to \$1,750,000	\$((9,880)) <u>10,275</u>	<u>\$10,481</u>	\$25,000
Class N	Up to \$2,000,000	\$((10,466)) <u>10,885</u>	<u>\$11,103</u>	\$25,000
Class O	Up to \$2,500,000	\$((11,500)) <u>11,960</u>	<u>\$12,199</u>	\$30,000
Class P	Up to \$3,000,000	\$((12,218)) <u>12,707</u>	<u>\$12,961</u>	\$35,000
Class Q	Up to \$4,000,000	\$((14,400)) <u>14,976</u>	<u>\$15,276</u>	\$40,000
Class R	Up to \$5,000,000	\$((16,362)) <u>17,016</u>	<u>\$17,356</u>	\$50,000
Class S	Up to \$6,000,000	\$((18,544)) <u>19,286</u>	<u>\$19,672</u>	\$60,000
Class T	Up to \$7,000,000	\$((20,728)) <u>21,557</u>	<u>\$21,988</u>	\$70,000
Class U	Up to \$8,000,000	\$((22,908)) <u>23,824</u>	<u>\$24,300</u>	\$80,000
Class V	Over \$8,000,000	\$((25,090)) <u>26,094</u>	<u>\$26,616</u>	\$80,000

*See chapter 230-06 WAC, Exceeding license class.

6. Raffles

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014.	Fee effective November 1, 2015.
Class A	Up to \$5,000	\$((58)) <u>60</u>	<u>\$61</u>
Class B	Up to \$10,000	\$((185)) <u>192</u>	<u>\$196</u>
Class C	Up to \$25,000	\$((380)) <u>395</u>	<u>\$403</u>
Class D	Up to \$50,000	\$((641)) <u>667</u>	<u>\$680</u>
Class E	Up to \$75,000	\$((1,026)) <u>1,067</u>	<u>\$1,088</u>
Class F	Over \$75,000	\$((1,540)) <u>1,601</u>	<u>\$1,633</u>

7. Enhanced raffles

License	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Annual	\$ ((6,000)) <u>6,240</u>	\$6,365
Additional fee per enhanced raffle	\$ ((7,800)) <u>8,112</u>	\$8,274

8. Combination license

License	Description	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Class A	Allows gross gambling receipts of up to \$25,000 from bingo, \$7,500 from raffles, and \$7,500 from amusement games, not to exceed \$30,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$ ((115)) <u>120</u>	\$122
Class B	Allows gross gambling receipts of up to \$60,000 from bingo, \$15,000 from raffles, and \$15,000 from amusement games, not to exceed \$75,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$ ((300)) <u>312</u>	\$318
Class C	Allows gross gambling receipts of up to \$125,000 from bingo, \$30,000 from raffles, and \$30,000 from amusement games, not to exceed \$150,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$ ((696)) <u>724</u>	\$738

9. Special property bingo

	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Once annually	\$ ((27)) <u>28</u>	\$29

10. Permits

	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Recreational gaming activity	\$ ((58)) <u>60</u>	\$61

11. Changes

Type	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Name	\$((27)) 28	\$29
Location	\$((27)) 28	\$29
Fund-raising event date or time	\$((27)) 28	\$29
License class	\$((27)) 28	\$29
Duplicate license	\$((27)) 28	\$29

12. Other fees

Type	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Replacement identification stamps	\$((27)) 28	\$29
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$((26)) 27	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$28
Review, inspection and/or evaluation of equipment, paraphernalia, services, or schemes	Deposit and fees as required	Deposit and fees as required

13. Two-part payment plan participation

	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Annual participation	\$((27)) 28	\$29

AMENDATORY SECTION

WAC 230-05-025 Commercial stimulant fees. All commercial stimulant license applicants must pay the following fees to us when applying for gambling licenses:

1. Card games - Nonhouse-banked

License	Description	Fee effective November 1, 2014.	Fee effective November 1, 2015.
Class B	Up to five tables of limited card games - hearts, rummy, pitch, pinochle, and/or cribbage - fee to play	\$((489)) <u>197</u>	<u>\$201</u>
Class C	Tournament only, no more than thirty consecutive days per tournament		
C-5	Up to five tables	\$((489)) <u>197</u>	<u>\$201</u>
C-10	Up to ten tables	\$((346)) <u>360</u>	<u>\$367</u>
C-15	Up to fifteen tables	\$((576)) <u>599</u>	<u>\$611</u>
Class D	Up to five tables - no fee to play	\$((59)) <u>61</u>	<u>\$62</u>
Class E	Fee to play		
E-1	One table only	\$((460)) <u>478</u>	<u>\$488</u>
E-2	Up to two tables	\$((792)) <u>824</u>	<u>\$840</u>
E-3	Up to three tables	\$((1,318)) <u>1,371</u>	<u>\$1,398</u>
E-4	Up to four tables	\$((2,644)) <u>2,750</u>	<u>\$2,805</u>
E-5	Up to five tables	\$((3,980)) <u>4,139</u>	<u>\$4,222</u>
Additional tables	Per table - up to a maximum of fifteen	\$((1,152)) <u>1,198</u>	<u>\$1,222</u>
Class F	Endorsement/upgrade of Class E includes permission to use alternative fee collections and use of player-supported jackpots	\$((1,732)) <u>1,801</u>	<u>\$1,837</u>

2. Card games - House-banked

All tables within a card room operating any house-banked card game must be licensed under this license class.

License	Fee effective November 1, 2014.	Fee effective November 1, 2015.

License	Fee effective November 1, 2014.	Fee effective November 1, 2015.
Annual	\$((6,944)) <u>7,222</u>	\$7,366
Additional fee per table - up to fifteen tables	\$((1,732)) <u>1,801</u>	\$1,837

3. Punch boards and pull-tabs

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014.	Fee effective November 1, 2015.	One Time Variance *
Class A	Up to \$50,000	\$((628)) <u>653</u>	\$666	\$5,000
Class B	Up to \$100,000	\$((1,122)) <u>1,167</u>	\$1,190	\$5,000
Class C	Up to \$200,000	\$((2,116)) <u>2,201</u>	\$2,245	\$10,000
Class D	Up to \$300,000	\$((3,080)) <u>3,203</u>	\$3,267	\$10,000
Class E	Up to \$400,000	\$((3,980)) <u>4,139</u>	\$4,222	\$10,000
Class F	Up to \$500,000	\$((4,806)) <u>4,998</u>	\$5,098	\$10,000
Class G	Up to \$600,000	\$((5,570)) <u>5,792</u>	\$5,908	\$10,000
Class H	Up to \$700,000	\$((6,270)) <u>6,521</u>	\$6,651	\$10,000
Class I	Up to \$800,000	\$((6,906)) <u>7,182</u>	\$7,325	\$10,000
Class J	Up to \$1,000,000	\$((7,832)) <u>8,145</u>	\$8,308	\$20,000
Class K	Up to \$1,250,000	\$((8,692)) <u>9,040</u>	\$9,221	\$25,000
Class L	Up to \$1,500,000	\$((9,494)) <u>9,874</u>	\$10,071	\$25,000
Class M	Up to \$1,750,000	\$((10,156)) <u>10,562</u>	\$10,773	\$25,000
Class N	Up to \$2,000,000	\$((10,756)) <u>11,186</u>	\$11,410	\$25,000
Class O	Up to \$2,500,000	\$((11,820)) <u>12,293</u>	\$12,539	\$30,000
Class P	Up to \$3,000,000	\$((12,218)) <u>12,707</u>	\$12,961	\$35,000
Class Q	Up to \$4,000,000	\$((14,400)) <u>14,976</u>	\$15,276	\$40,000

License	Annual Gross Gambling Receipts	Fee <u>effective</u> <u>November 1,</u> <u>2014.</u>	Fee <u>effective</u> <u>November 1,</u> <u>2015.</u>	One Time Variance *
Class R	Up to \$5,000,000	\$((16,362) <u>17,016</u>)	<u>\$17,356</u>	\$50,000
Class S	Up to \$6,000,000	\$((18,544) <u>19,286</u>)	<u>\$19,672</u>	\$60,000
Class T	Up to \$7,000,000	\$((20,728) <u>21,557</u>)	<u>\$21,988</u>	\$70,000
Class U	Up to \$8,000,000	\$((22,908) <u>23,824</u>)	<u>\$24,300</u>	\$80,000
Class V	Over \$8,000,000	\$((25,090) <u>26,094</u>)	<u>\$26,216</u>	\$80,000

*See chapter 230-06 WAC, Exceeding license class.

AMENDATORY SECTION

WAC 230-05-030 Fees for other businesses. All other business license applicants must pay the following fees to us when applying for gambling licenses, miscellaneous changes, or inspection services:

1. Commercial amusement games

Licence	Annual Gross Gambling Receipts	Fee effective November 1, 2014.	Fee effective November 1, 2015.
Class A	Premises only	*\$((327 /\$150)) <u>340/\$156</u>	<u>\$347/\$159</u>
Class B	Up to \$50,000	\$((460)) <u>478</u>	<u>\$488</u>
Class C	Up to \$100,000	\$((1,184)) <u>1,231</u>	<u>\$1,256</u>
Class D	Up to \$250,000	\$((2,644)) <u>2,750</u>	<u>\$2,805</u>
Class E	Up to \$500,000	\$((4,640)) <u>4,826</u>	<u>\$4,923</u>
Class F	Up to \$1,000,000	\$((7,968)) <u>8,287</u>	<u>\$8,453</u>
Class G	Over \$1,000,000	\$((9,970)) <u>10,369</u>	<u>\$10,576</u>

* We reduce the license fee by \$177 when you apply for additional licenses at the same business premises, apply for multiple licenses at the same business premises, or a licensee is renewing an annual license.

2. Distributor

License	Annual Gross Sales	Fee effective November 1, 2014.	Fee effective November 1, 2015.
Class A	Nonpunch board/pull-tab only	\$((659)) <u>685</u>	<u>\$699</u>
Class B	Up to \$250,000	\$((1,318)) <u>1,371</u>	<u>\$1,398</u>
Class C	Up to \$500,000	\$((1,980)) <u>2,059</u>	<u>\$2,100</u>
Class D	Up to \$1,000,000	\$((2,644)) <u>2,750</u>	<u>\$2,805</u>
Class E	Up to \$2,500,000	\$((3,446)) <u>3,584</u>	<u>\$3,656</u>
Class F	Over \$2,500,000	\$((4,242)) <u>4,412</u>	<u>\$4,500</u>

3. Fund-raising event equipment distributor

License	Description	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Class A	Rents or leases equipment for fund-raising event or recreational gaming activity up to 10 times per year.	\$((260)) <u>270</u>	<u>\$275</u>
Class B	Rents or leases equipment for fund-raising event or recreational gaming activity more than 10 times per year.	\$((659)) <u>685</u>	<u>\$699</u>

4. Gambling service supplier

License	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Annual	\$((687)) <u>714</u>	<u>\$728</u>
Financing, consulting, and management contract review	\$((143)) <u>149</u>	<u>\$152</u>

5. Linked bingo prize provider

License	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Annual	\$((4,414)) <u>4,591</u>	<u>\$4,683</u>

6. Call centers for enhanced raffles

License	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Annual	\$((4,500)) <u>4,680</u>	<u>\$4,774</u>

7. Manufacturer

License	Annual Gross Sales	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Class A	Pull-tab dispensing devices only	\$((659)) <u>685</u>	<u>\$699</u>
Class B	Up to \$250,000	\$((1,318)) <u>1,371</u>	<u>\$1,398</u>
Class C	Up to \$500,000	\$((1,980)) <u>2,059</u>	<u>\$2,100</u>

License	Annual Gross Sales	Fee effective November 1, 2014.	Fee effective November 1, 2015.
Class D	Up to \$1,000,000	\$((2,644)) <u>2,750</u>	<u>\$2,805</u>
Class E	Up to \$2,500,000	\$((3,446)) <u>3,584</u>	<u>\$3,656</u>
Class F	Over \$2,500,000	\$((4,242)) <u>4,412</u>	<u>\$4,450</u>

8. Permits

Type	Description	Fee effective November 1, 2014.	Fee effective November 1, 2015.
Agricultural fair	One location and event only	\$((27)) <u>28</u>	<u>\$29</u>
Agricultural fair annual permit	Annual permit for specified different events and locations	\$((189)) <u>197</u>	<u>\$201</u>
Recreational gaming activity		\$((59)) <u>61</u>	<u>\$62</u>
Manufacturer's special sales permit		\$((211)) <u>219</u>	<u>\$223</u>
Punch board and pull-tab service business permit	Initial application fee	\$((236)) <u>245</u>	<u>\$250</u>
Punch board and pull-tab service business permit	Renewal	\$((56)) <u>58</u>	<u>\$59</u>

9. Changes

Application	Description	Fee effective November 1, 2014.	Fee effective November 1, 2015.
Name		\$((27)) <u>28</u>	<u>\$29</u>
Location		\$((27)) <u>28</u>	<u>\$29</u>
Business classification	Same owners	\$((59)) <u>61</u>	<u>\$62</u>
Exceeding license class	New class fee, less previous fee paid, plus	\$((27)) <u>28</u>	<u>\$29</u>
Duplicate license		\$((27)) <u>28</u>	<u>\$29</u>
Corporate stock/limited liability company shares/units		\$((59)) <u>61</u>	<u>\$62</u>

Application	Description	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
License transfers		\$((59)) <u>61</u>	<u>\$62</u>

10. Other fees

Type	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Defective punch board/pull-tab cost recovery fees	Up to \$100	<u>Up to \$100</u>
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$((27)) <u>28</u>	<u>Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$29</u>
Review of gambling equipment, supplies, services, or games	Cost reimbursement	<u>Cost reimbursement</u>

11. Identification stamps

Type		<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
(a) Punch boards and pull-tabs			
(i) Standard	Wagers fifty cents and below	\$((28)) <u>.29</u>	<u>\$.30</u>
	Wagers over fifty cents	\$((4.11)) <u>1.15</u>	<u>\$1.17</u>
(ii) Progressive jackpot pull-tab series	Per series	\$((41.19)) <u>11.64</u>	<u>\$11.87</u>
(iii) Pull-tab series with carry-over jackpots and cumulative prize pool pull-tab series	Per series	\$((4.11)) <u>1.15</u>	<u>\$1.17</u>
(b) Pull-tab dispensing devices			
(i) Mechanical and electro-mechanical		\$((28)) <u>.29</u>	<u>\$.30</u>

Type		<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
(ii) Electronic	Dispensing devices that require initial and ongoing evaluation of electronic components or functions, such as reading encoded data on pull-tabs, accounting for income or prizes	\$((112.04) <u>116.52</u> annually	<u>\$118.85</u> annually
Replacement of identification stamps		\$((26) <u>27</u>	<u>\$28</u>
(c) Disposable bingo cards			
(i) Single game sets of individual cards or sheets of cards		\$((.28) <u>.29</u>	<u>\$.30</u>
(ii) Multigame card packets		\$((1.22) <u>1.27</u>	<u>\$1.30</u>
(iii) Cards used to play for linked bingo prizes	Fee per 250 cards	\$((.44) <u>.46</u>	<u>\$.47</u>
(iv) Cards used to play for linked bingo prizes	Fee per 5,000 cards	\$((8.96) <u>9.32</u>	<u>\$9.51</u>
(d) Coin or token-activated amusement games			
Annually - operated at any Class A amusement game license location		\$((28.00) <u>29.12</u>	<u>\$29.70</u>
(e) Electronic bingo card daubers			
Annual		\$((11.19) <u>11.64</u>	<u>\$11.87</u>
(f) Electronic card facsimile table			
Annual		\$((381.50) <u>396.76</u>	<u>\$404.70</u>

12. Two-part payment plan participation

	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Annual participation	\$((27) <u>28</u>	<u>\$29</u>

AMENDATORY SECTION

WAC 230-05-035 Individuals license fees. Individuals must pay the following fees to us when they apply for gambling licenses, permits, miscellaneous changes:

1. Charitable or nonprofit gambling manager

License	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Original	\$((185)) <u>192</u>	\$196
Renewal	\$((88)) <u>92</u>	\$94
Change of employer	\$((88)) <u>92</u>	\$94

2. Linked bingo prize provider representative

License	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Original	\$((260)) <u>270</u>	\$275
Renewal	\$((158)) <u>164</u>	\$167

3. Commercial gambling manager

License	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Original	\$((189)) <u>197</u>	\$201
Renewal	\$((90)) <u>94</u>	\$96
Change of employer	\$((90)) <u>94</u>	\$96

4. Distributor's or gambling services supplier's representative

License	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Original	\$((260)) <u>270</u>	\$275
Renewal	\$((158)) <u>164</u>	\$167

5. Representatives for manufacturers or call centers for enhanced raffles

License	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Original	\$((260)) <u>270</u>	\$275
Renewal	\$((158)) <u>164</u>	\$167

6. Public card room employee

License	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Class A - Performs card room employee duties in a Class E card room		
Original	\$(189) <u>197</u>	<u>\$201</u>
Renewal	\$(90) <u>94</u>	<u>\$96</u>
Class B - Performs card room employee duties in enhanced and house-banked card rooms		
Original, in-state	\$(258) <u>268</u>	<u>\$273</u>
Original, out-of-state	\$(320) <u>333</u>	<u>\$340</u>
Renewal	\$(158) <u>164</u>	<u>\$167</u>
Transfer/additional employee/conversion/emergency waiver request	\$(61) <u>63</u>	<u>\$64</u>

7. Other fees

	<u>Fee effective November 1, 2014.</u>	<u>Fee effective November 1, 2015.</u>
Change of name	\$(27) <u>28</u>	<u>\$29</u>
Duplicate license	\$(27) <u>28</u>	<u>\$29</u>

8. Military personnel returning from service

If a license expires while an individual is on active military service, the individual may apply to have their license reissued at the renewal fee. The application must be received within six months after completing their active military service. The applicant must provide evidence of the completion date of active military service.