

Petition from the Public

Submitted by: Steve Berven, Pull-Tab Licensee.

- **Increasing the threshold for recording identification information for punch board/pull-tab winners from over \$20 to over \$50.**

March 2014 – Final Action

February 2014 – Study Session

January 2014 – Up for Discussion and Possible Filing

ITEM: 8

- a) Amendatory Section WAC 230-14-110**
Recording winners.
- b) Amendatory Section WAC 230-14-265**
Retention requirements for punch boards and pull-tab series.



Proposed Amendment to
WAC 230-14-110 Recording winners.
WAC 230-14-265 Retention requirements for punch boards and pull-tab series.

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

ITEM 8 (a) on the March 2014 Commission Meeting Agenda. Statutory Authority 9.46.070, 9.46.110

Who proposed the rule change?

Steve Berven, owner and operator of four commercial businesses operating pull-tabs:
Parkade Bar & Grill, Kennewick (Class F); Uptown Bar & Grill, Richland (Class F);
Ty's Bar & Grill, West Richland (Class G); and Dax's Bar & Grill, Richland (Class D).

Proposed Change

The current rule requires operators to record winner information (the winner's name, date of birth, employee's initials and date) when punch board or pull-tab players win more than \$20 in cash or win a merchandise prize with a retail value over \$20. The petitioner is requesting to increase the threshold for recording winner identification information from more than \$20 to more than \$50 and to increase the threshold for retaining winning tickets from over \$20 to over \$50.

Attachments:

- WAC 230-14-110 Recording winners.
- WAC 230-14-265 Retention requirements for punch boards and pull-tab series.
- Petition for rule change date stamped November 26, 2013.
- E-mail dated December 18, 2013, from the petitioner amending his petition to increase the threshold for recording winner information from over \$150 to over \$50, adding WAC 230-14-265 for amendment, and stating his requested effective date of July 1, 2014.
- Notification letter dated December 23, 2013, e-mailed to pull-tab operators and pull-tab distributors.
- Four e-mails supporting the petition and a letter by Mr. Berven with 10 signatures of support.
- One e-mail opposing the petition.

History of Rule

WAC 230-14-110: The threshold for recording winner information was initially set at over \$5 in 1974. Between 1981 and 1984, the threshold was increased from over \$5 to over \$20.

WAC 230-14-265: This rule requires licensees to retain winning tickets over \$20 for three months.

Impact of the Proposed Change

Licensees would no longer have to record information for winners of prizes valued between \$20 and \$50. For consistency, WAC 230-14-265 also needs to be amended so that licensees must retain winning tickets over \$50 for the extended time requirement.

The petitioner states in his petition that the rule was adopted when all games were \$.25 tickets and the top tier winners were smaller and there was no casino gambling. The petitioner also states in his petition "it would save operators a lot of time and increase customer service and satisfaction."

A Small Business Economic Impact Statement was not prepared because the rule change would not impose additional costs on any licensees. Changing this requirement would reduce the expense of regulatory requirements on licensees.

Regulatory Concerns
Staff uses pull-tab winner information in criminal theft or fraud investigations. For example, winner information is being utilized in a current pull-tab theft case. Because we require player information for winners of prizes valued at more than \$20, the agent was able to identify \$2,265 of fraudulently obtained pull-tab cash prizes. Increasing the threshold from more than \$20 to more than \$50 would decrease evidence available for use in such investigations. However, the regulatory risk is low enough that staff believes the benefits to licensees may outweigh the regulatory risk.
Resource Impacts
If this rule change is made, it may decrease the amount of time staff spends in determining regulatory compliance. However, it may decrease the amount of evidence available to staff to forward to prosecutors on criminal cases.
Policy Consideration
None.
Statements Supporting the Proposed Rule Change
<ul style="list-style-type: none"> • E-mail dated December 23, 2013, from John McSweeney, former gambling manager at Ballard Elks. • E-mail dated December 23, 2013, from Steve Manning, The Rock Bar and Lounge. • E-mail dated December 24, 2013, from Don Ryan, Ryan Resources & Distribution, Inc. • E-mail dated December 30, 2013, from Mike Van Voorst, Oak Harbor Elks Lodge #2362. • Letter by Mr. Berven with 10 signatures in support of the petition. • Two pull-tab operators verbally stated to staff that the dollar amount of the threshold has not kept up with inflation. According to the operators, the value of a \$20 prize in 1984 is about equal to the value of a \$40 prize today.
Statements Opposing the Proposed Rule Change
E-mail dated December 27, 2013, from Jerry Morris, F.O.E. Snohomish 195.
Licensees Directly Impacted By the Change
Commercial and charitable/nonprofit punch board and pull-tab licensees and possibly distributors of pull-tab games.
Staff Recommendation
Final Action.
Proposed Effective Date for Rule Change
July 1, 2014.

Amendatory Sections:

WAC 230-14-110 Recording winners.

When punch board or pull-tab players win more than ~~((twenty))~~ fifty dollars or merchandise prizes with a retail value over ~~((twenty))~~ fifty dollars, operators must make a record by:

- (1) Having winners print their name and date of birth, in ink, on the side of the winning punch or tab opposite the winning symbol(s) and verifying the winner's identity and recording the current date and initialing the winning punch or tab; or
- (2) Recording the required information on a sheet of paper at least three inches by five inches and stapling the winning tab or punch to the paper if the pull-tab or punch is constructed or printed so that recording the information required in a legible manner is not possible.

WAC 230-14-265 Retention requirements for punch boards and pull-tab series.

(1) Punch board and pull-tab operators must keep all punch boards or pull-tab series removed from play, including, at least:

- (a) All prize flares; and
 - (b) All unplayed tabs; and
 - (c) All winning punches or tabs.
- (2) Operators must make the items in subsection (1) of this section available on the licensed premises for us, local law enforcement, or local tax agencies to inspect.
- (3) If stored off premises, operators must produce the game for inspection on demand.
- (4) Operators must retain punch board or pull-tab series removed from play for:
- (a) **Charitable or nonprofit operators** - Four months following the last day of the month in which the board or series was removed from play; and
 - (b) **Commercial operators** -
 - (i) Two months following the last day of the month in which they removed the board or series from play; and
 - (ii) Three months following the day they removed the board or series from play for winning punches or pull-tabs over ~~((twenty))~~ fifty dollars. Operators must also retain the flare for these games; and
 - (c) **Carry-over jackpot series** - For four months after the last day of the month in which the carry-over jackpot was won; and
 - (d) **Progressive pull-tab series** - For one year. After the retention period, operators must destroy unsold progressive pull-tab series tabs in such a way that no one may find and use unopened winning tabs later; and
 - (e) **Cumulative prize pool pull-tab games** - for four months, following the last day of the month, in which the last seal is opened on the cumulative prize pull-tab game board.



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

Print Form

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

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

CONTACT INFORMATION (please type or print)

Petitioner's Name STEVEN BERVEN
 Name of Organization BERVEN INC DBA Uptown Bar & Grill
 Mailing Address 3880 W VAN GIESEN
 City West Richland State WA Zip Code 99353
 Telephone 509-366-4657 Email STEVENBERVEN@GMAIL.COM

COMPLETING AND SENDING PETITION FORM

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

Received
 NOV 26 2013
 Gambling Commission
 Comm. & Legal Division

RECEIVED
 NOV 25 2013
 GAMBLING/LICENSING

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: Washington State Gambling Comm

1. NEW RULE - I am requesting the agency to adopt a new rule.
- The subject (or purpose) of this rule is: _____
- The rule is needed because: _____
- The new rule would affect the following people or groups: _____

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: _____

I am requesting the following change: change Requirement to Fill out Winner Registers
For winners over 800 to over 150

This change is needed because: The OVER 800 Rule was adopted when all game were
125 tickets and top 250 winners were smaller and no casino gambling

The effect of this rule change will be: It would save operators a lot of time and
Increase customer service and satisfaction

The rule is not clearly or simply stated: _____

3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.

List rule number (WAC), if known: _____

(Check one or more boxes)

It does not do what it was intended to do.

It is no longer needed because: _____

It imposes unreasonable costs: _____

The agency has no authority to make this rule: _____

It is applied differently to public and private parties: _____

It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: _____

It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: _____

Other (please explain): _____

RECEIVED

NOV 25 2013

GAMBLING/LICENSING

From: Steven Berven [mailto:stevenberven@gmail.com]

Sent: Thursday, December 19, 2013 8:35 PM

To: Richart, Mark (GMB)

Subject: Re: Rule change

As per our conversation I would like to amend my rule change proposal to filling out a winner register for over \$50 instead of over \$150

I would like to amend my rule change proposal to include changing rule 230-14-265 to "over \$50" and request an effective date of July 2014.

Thank you

Steven Berven



STATE OF WASHINGTON
GAMBLING COMMISSION

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

December 18, 2013

To: Commercial and non-profit pull-tab operators and distributors

Subject: **NOTICE OF PROPOSED RULE CHANGE**
Recording Pull-Tab Winner Information and Records Retention

Currently, when punch board or pull-tab players win more than \$20 cash or merchandise prize, operators must record the winner's name, date of birth, current date and the employees initials (WAC 230-14-110). Operators must also retain winning punches or pull-tabs over \$20 for three months (WAC 230-14-265(4)(b)(ii)).

We have received a petition for a rule change from a licensed pull-tab operator requesting to increase the threshold for:

- **Recording winner information from more than \$20 to more than \$50; and**
- **For storing winning punches or pull-tabs from over \$20 to over \$50 dollars.**

The proposed rule change will be Up for Discussion and Possible Filing at the January 16, 2014, Commission meeting. The Commission meeting will be held at the Comfort Inn, 1620 74th Avenue SW, Tumwater, WA 985012 (360) 352-0691.

Commission meetings are open to the public and you are invited to attend. Please visit our website about one week before the meeting to confirm the date and time.

If you are unable to attend the meeting please send your written comments by **January 14, 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

Newer, Susan (GMB)

From: John W. McSweeney [mcsweeneyjw@yahoo.com]
Sent: Monday, December 23, 2013 4:56 PM
To: Newer, Susan (GMB)
Subject: Fwd: Notice of Rule-Making - Recording Pull-Tab Winner Information

Yes, please pass this proposal or even increase the threshold to \$100. To me it's about the drag on employee efficiency.

Sent from John McSweeney's iPhone

Newer, Susan (GMB)

From: Steve Manning [sdmann1@gmail.com]
Sent: Monday, December 23, 2013 6:28 PM
To: Newer, Susan (GMB)
Subject: pull tab proposed rule change

Concerning the proposed rule change for pull tabs to move from over \$20 to over \$50 for marking off. I agree with the proposed change and support moving it to over \$50.

Steve Manning
The Rock Bar and Lounge
Spokane Valley, WA

Newer, Susan (GMB)

From: Don Ryan [donmryan@gmail.com]
Sent: Tuesday, December 24, 2013 7:26 AM
To: Newer, Susan (GMB)
Subject: Pull tab increase?

I read through the threshold increase of the min 20 to 50 on winners and storage. Although I do not think it will have much impact on us I still would support this change.

--

Don M. Ryan

Ryan Resources & Distribution, Inc.

Office (360) 876-6354

Cell (360) 340-1073

Fax (360) 876-9301

Newer, Susan (GMB)

From: Oak Harbor Elks Lodge #2362 [ohelks@gmail.com]
Sent: Monday, December 30, 2013 11:40 AM
To: Newer, Susan (GMB)
Subject: Pull tabs

We will not be attending however it sounds good to us
Mike Van Voorst
Lodge Secretary

Steve Berven
3880 W Van Giesen Ave
West Richland, WA 99353
509-366-4651

Washington State Gambling Commission

I support the proposed rule change that would raise the requirement to fill out a winner register from over \$20 to over \$150.

The over \$20 limit was put into effect when pull tab gambling was limited to .25 cent tickets and top tier winners were \$25 and \$50. Stopping to have the customer fill out the winner register is time consuming and costs small business owners money. As you all know, while an employee is filling out extra paper work, they are not selling pull tabs or serving food and drinks.

With the addition of casino gambling, our customers can go elsewhere and wager and win up to \$300 per hand, and in Spanish 21 can play up to 3 hands totally \$900, with no requirement to fill out paper work.

I think this would be a reasonable rule change.

Sincerely

Steve Berven, owner & operator
Uptown Bar & Grill
Dax's Bar & Grill
Ty's Bar & Grill
Parkade Bar & Grill



Newer, Susan (GMB)

From: Newer, Susan (GMB)
Sent: Friday, December 27, 2013 3:52 PM
To: 'jbmorris9@comcast.net'
Subject: RE: Recording Pull Tab Winner Information

Hi Jerry,

Thank you for your thoughtful comments, which I will forward to the Commissioners for their consideration.

I will contact the petitioner so see if he has heard of tab wizard. Another licensee mentioned that program to me today, also.

The change to retention requirements is not to lengthen the time period to keep winning tabs. Currently, winning tabs over \$20 must be retained for 3 months. The change is to require only winning tabs over \$50 to be kept for 3 months.

Yes, you could opt to continue to print receipts for winners over \$20 and keep only those over \$50, rather than reprogram tab wizard.

Sincerely,

Susan Newer
Rules Coordinator & Public Information Officer
Washington State Gambling Commission
(360) 486-3466
Susan.Newer@wsgc.wa.gov
Website: wsgc.wa.gov
Subscribe to our [Newsletters](#)
Twitter: [WAGambling](#)

From: jbmorris9@comcast.net [mailto:jbmorris9@comcast.net]
Sent: Friday, December 27, 2013 3:11 PM
To: Newer, Susan (GMB)
Cc: jbmorris9@comcast.net
Subject: Recording Pull Tab Winner Information

I'm Jerry Morris (61-03995) with the Snohomish Eagles (00-00054) with my comments on the proposed rule change for pull tab winners. It appeared to me that the proposer may not have a machine such as a tab wizard. With a tab wizard the receipts are printed automatically and without you have to do the receipts by hand. I understand doing them by hand can be time consuming (time is money) and takes away from time for additional sales.

For those of us who have the machines, this may require a program change by a manufacture tech that could cost several hundred dollars. Our calls are port port with minimum cost. Travel mileage of 100 miles plus service call.

Or we could opt to continue printing receipt for \$21.00 and over and keep only the one needed.

I'm not quite sure about the second part of the proposal. Are they asking for a retention change. We currently retain all tabs plus games for 3 months regardless of winning amounts. If they are proposing longer storage time, this may overburden small operations who may have limited storage area available.

Then there is the cost to reprint the changes in the manuals and distribute those changes.

Bottomline, without more information to justify the need for the change, I don't support the need for the change.

Jerry Morris
F.O.E Snohomish 195

Newer, Susan (GMB)

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Bottomline, without more information to justify the need for the change, I don't support the need for the change.

Jerry Morris
F.O.E Snohomish 195

Staff Proposed Rule Change

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

March 2014 – Final Action

February 2014 – Final Action, held over until March.

January 2014 – Further Discussion

December 2013 – No Meeting

November 2013 – Up for Discussion and Possible Filing

ITEM: 9

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



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

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

ITEM 9 (a) on the March 2014 Commission Meeting.	Statutory Authority 9.46.070 & 9.46.110
Who proposed the rule change?	
Staff.	
Proposed Change	
<p>This rule proposal is in response to an October 2013 Thurston County Superior Court decision, where the court directed the Commission to allow a specific electronic video pull-tab dispenser, which permits the purchase of a pull-tab at the dispenser and allows pull-tab winnings of \$20 or less to be added onto a cash card at the dispenser.</p> <p>This amendment adds language to WAC 230-14-047 to allow pull-tab prizes of \$20 or less to be added to cash cards used in electronic video pull-tab dispensers. Most prizes are below \$20.</p> <p>Commission staff's review of this issue began in 2005 and has led to several court proceedings involving many different legal issues. The following is a brief summary of the Commission staff's, Commission's, Administrative Law Judge's (ALJ) and judicial decisions as they related specifically to cash cards used in electronic video pull-tab dispensers:</p> <ul style="list-style-type: none">• In April 2005, the manufacturer requested Commission staff approve an electronic video pull-tab dispenser ("VIP") that would allow winnings of \$20 or less to be put on a cash card. Staff denied the request.• In September 2005, the manufacturer submitted a request to Commission for a declaratory action authorizing the VIP.• In October 2005, the Commissioners referred the matter to an ALJ for an Initial Order.• In May 2006, the ALJ issued his Initial Order and concluded that the VIP was not a gambling device under RCW 9.46.0241, but that the pull-tab dispenser's cash card features violated the Commission's then-current regulations. Both the manufacturer and the Commission staff sought final review by the full Commission.• In August 2006, the Commission upheld the ALJ's determination that the VIP violated the Commission's then-current regulations. The Commission "vacated and specifically disavowed" the ALJ's decision regarding whether the VIP was an illegal gambling device. The Commission, however, did not issue a final decision on this issue having determined that the device violated the regulations.	

- In August 2007, the Thurston County Superior Court found that cash cards were equivalent to both cash and merchandise and, therefore, were lawful under the Commission’s regulations. The Commission appealed this decision to the Court of Appeals.
- In August 2009, the Court of Appeals held that “substantial evidence did not support the Gambling Commission’s determination that the prepaid cards failed to satisfy the regulatory definition of cash.” The Commission appealed this decision to the Washington Supreme Court.
- In January 2012, the Washington Supreme Court affirmed the lower court’s decision, finding that ZDI met its burden of showing that the Gambling Commission “erred in concluding that the VIP machine violated then-in force regulations.” The Court remanded the matter back to the Commission for proceedings consistent with its opinion.
- In March 2013, the Commission issued a Final Order on Remand adopting the Washington State Supreme Court’s findings with respect to cash cards and determining that the VIP was a gambling device under RCW 9.46.0241. ZDI sought judicial review of this decision.
- In August 2013, the Thurston County Superior Court reversed the Commission’s Final Order on Remand. Among the superior court’s findings, the court concluded that the VIP was not a gambling device under RCW 9.46.0241 and should be allowed. The superior court’s order was entered on October 18, 2013.

Attachments:

- Proposed amendment to WAC 230-14-047 Standards for electronic video pull-tab dispensers.
- Thurston County Superior Court Order dated October 18, 2013 (Order on ZDI’s Second Petition for Judicial Review).
- Supreme Court of Washington Order (page 7 addresses cash cards and cash equivalents).

History of Rule

In 2008, the Commission adopted WAC 230-14-047, which sets out standards for electronic video pull-tab dispensers. At that time, the Commission decided not to adopt language to allow electronic video pull-tab dispensers to add prizes of \$20 or less onto cash cards.

Impact of the Proposed Change

The rule change would allow other manufacturers to develop similar electronic video pull-tab dispensers. It is difficult to predict whether other manufacturers will do so.

Resource Impacts

- Because the feature of allowing pull-tab winnings of \$20 or less to be added onto a cash card is new, we may receive an increased number of questions from the public and may experience an increase in complaints related to the electronic video pull-tab dispensers.
- We will need to incorporate this new feature into our electronic video pull-tab dispenser regulatory program.

Policy Considerations

This rule proposal is consistent with the Thurston County Superior Court’s order, where the court directed the Commission to allow a specific electronic video pull-tab dispenser that allows pull-tab winnings of \$20 or less to be put onto a cash card at the dispenser.

Stakeholder Statements Supporting the Proposed Rule Change

None.

Stakeholder Statements Opposing the Proposed Rule Change

None.

Stakeholder Statements Regarding the Proposed Rule Change

- At the January 2014 Commission meeting, Amy Hunter, Administrator, relayed to the Commissioners that Mr. Jay Gerow was at the study session (but could not attend the Commission meeting) and let staff know that ZDI plans to offer alternative language. Chair Amos said Mr. Gerow had told him the same thing.
- **At the February 2014 Commission meeting, Mr. Gerow asked the Commissioners to hold this rule change over until the March Commission meeting.**

Licensees Directly Impacted By the Change

Licensed manufacturers, distributors, and pull-tab operators.

Staff Recommendation

Final Action.

Effective Date

31 days from filing the adopted rule change.

Amendatory Section:

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

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

- (1) Electronic video pull-tab dispensers must dispense a paper pull-tab as defined in WAC 230-14-010 and follow the rules for:
 - (a) Pull-tabs; and
 - (b) Flares; and
 - (c) Authorized pull-tab dispensers.
- (2) Electronic video pull-tab dispensers that use a reading and displaying function must:
 - (a) Use a video monitor for entertainment purposes only; and
 - (b) Open all, or a portion of, the pull-tab in order to read encoded data that indicates the win or loss of the pull-tab if the dispenser is equipped to automatically open pull-tabs; and
 - (c) Dispense the pull-tab to the player and not retain any portion of the pull-tab; and
 - (d) Read the correct cash award from the pull-tab either when it is dispensed or when the pull-tab is reinserted into the dispenser; and
 - (e) Display the cash award from the pull-tab, one pull-tab at a time; and
 - (f) Provide:
 - (i) An electronic accounting of the number of pull-tabs dispensed; and
 - (ii) A way to identify the software version and name; and
 - (iii) A way to access and verify approved components; and
 - (iv) Security on the dispenser to prevent unauthorized access to graphic and prize amount displays.
- (3) ~~((Gift certificates or gift))~~ Cash cards used in electronic video pull-tab dispensers must:
 - (a) Be purchased with cash, check, gift certificates, gift cards, or electronic point-of-sale bank transfer before use in the dispenser; and
 - (b) Be convertible to cash at any time during business hours; and
 - (c) Subtract the cash value for the purchase of the pull-tab one pull-tab at a time.
- (4) Electronic video pull-tab dispensers that accept cash cards may award any pull-tab cash prize of twenty dollars or less onto the cash card.

3

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2013 OCT 18 AM 8:49

BETTY J. GOULD, CLERK

- 1 EXPEDITE
- 2 No Hearing Set
- 3 Hearing is Set
- 4 The Honorable Gary Tabor

5

6

7

8 **STATE OF WASHINGTON**
THURSTON COUNTY SUPERIOR COURT

9 ZDI GAMING, INC.,

NO. 06-2-02283-9

10 Petitioner,

ORDER ON ZDI'S SECOND
PETITION FOR JUDICIAL REVIEW

11 v.

12 THE STATE OF WASHINGTON, by
13 and through the WASHINGTON
STATE GAMBLING COMMISSION,

14 Respondent.

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

24 The Court deeming itself fully advised enters the following order:

- 25 1.1 ZDI Gaming, Inc.'s second petition for judicial review is granted.
- 26

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

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

9 1.4 The Commission engaged in unlawful procedure or decision-making process under the
10 APA, RCW 34.05.570(3)(c), when it considered the issue of whether ZDI's VIP was a
11 gambling device in 2012.

12 1.5 The Commission's determination in its 2012 Final Order on Remand that ZDI's VIP is
13 a gambling device under RCW 9.46.0241 is vacated as outside the statutory authority of the
14 agency under the APA, RCW 34.05.570(3)(b), and as an erroneous interpretation or
15 application of the law under the APA, RCW 34.05.570(3)(d). The portion of the
16 Administrative Law Judge's Initial Declaratory Order determining that ZDI's VIP is not a
17 gambling device is reinstated as the correct application of the law. ZDI's VIP is not a
18 gambling device under RCW 9.46.0241. ZDI's VIP is not prohibited under the Gambling Act,
19 RCW 9.46, or the Commission's regulations.

20 1.6 The Commission is ordered to allow ZDI's VIP for manufacturing, distribution, and use
21 in the State.

22 ///

23 ///

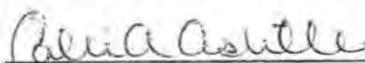
1 1.7 ZDI Gaming, Inc. shall be awarded its fees and costs incurred from the date of filing its
2 petition under the Equal Access to Justice Act in the amount of \$8,316.60.

3 Dated this 18 day of Oct, 2013.

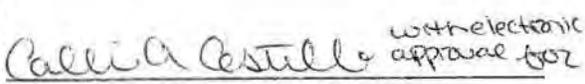
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6 _____
7 THE HONORABLE GARY TABOR

8 Presented by:

9 ROBERT W. FERGUSON
10 Attorney General

11 
12 _____
13 CALLIE A. CASTILLO, WSBA #38214
14 Assistant Attorney General
15 Attorneys for Respondent

16 Approved as to form:

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

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

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

Synopsis

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

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

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

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

Affirmed.

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

West Headnotes (11)

^[1] Gaming

←Licenses and taxes

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

^[2] Courts

←Washington

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

2 Cases that cite this headnote

^[3] Courts

←Grounds and essentials of jurisdiction

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

1 Cases that cite this headnote

^[4] Courts

←Jurisdiction of Cause of Action

"Subject matter jurisdiction" is a particular type

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

1 Cases that cite this headnote

[5]

Venue

← Nature and necessity of venue in action

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

[6]

Venue

← Nature and necessity of venue in action

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

[7]

Venue

← Nature and necessity of venue in action

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

[8]

Constitutional Law

← Presumptions and Construction as to Constitutionality

Court interprets statutes as constitutional if possible.

1 Cases that cite this headnote

[9]

Courts

← Washington

Venue

← Constitutional and statutory provisions

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

1 Cases that cite this headnote

[10]

Gaming

← Prizes or premiums

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

[11]

Administrative Law and Procedure

← Scope

Administrative Law and Procedure

← Limitation of scope of review in general

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

Attorneys and Law Firms

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

Opinion

****931** CHAMBERS, J.

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

FACTS

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

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

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

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

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

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

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

¶ 7 On September 11, 2006, ZDI Gaming filed a petition for judicial review in Pierce County Superior Court challenging the validity of the rules the ALJ and the Gambling Commission found it had violated. Ten days later, the State informed ZDI Gaming that, in its view, RCW 9.46.095 *615 granted exclusive jurisdiction of the matter to the Thurston County Superior Court and suggested that it may wish to withdraw its petition from Pierce County and file in Thurston County before the statute of limitations would run on October 4, 2006. The State told ZDI Gaming that it would otherwise move to dismiss the case for want of jurisdiction after October 4, 2006.² ZDI Gaming declined, and the State so moved. Noting that sometimes “when the Legislature uses the word ‘jurisdiction,’ it really mean[s] ‘venue.’ ” Judge Chushcoff denied the State’s motion to dismiss, but did transfer the case to the Thurston County Superior Court. VRP (Dec. 1, 2006) at 5; CP at 8, 17.³

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

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

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

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

ANALYSIS

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

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

to act. Our constitution defines the irreducible jurisdiction of the supreme and superior courts. It also defines and confines the power of the legislature to either create or limit jurisdiction. See WASH. CONST. art. IV, § 4 (defining the power of the supreme court), § 6 (defining the power of the superior courts), § 30(2) (explicitly giving the legislature the power to provide for jurisdiction of the court of appeals). Our constitution recognizes and vests jurisdiction over many types of cases in the various courts of this State. WASH. CONST. art. IV, §§ 1, 4, 6, 30. Superior courts have original jurisdiction in the categories of cases listed in the constitution, which the legislature cannot take away. *617 WASH. CONST. art. IV, § 6; *State v. Werner*, 129 Wash.2d 485, 496, 918 P.2d 916 (1996) (quoting *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 415, 63 P.2d 397 (1936)). As we ruled long ago, “Any legislation, therefore, the purpose or effect of which is to divest, in whole or in part, a constitutional court of its constitutional powers, is void as being an encroachment by the legislative department upon the judicial department.” *Blanchard*, 188 Wash. at 415, 63 P.2d 397. The legislature can, however, expand and shape jurisdiction, consistent with our constitution. WASH. CONST. art. IV, § 6; *Dougherty v. Dep’t of Labor & Indus.*, 150 Wash.2d 310, 316–17, 76 P.3d 1183 (2003). But *Dougherty*, *Shoop*, and *Young v. Clark*, 149 Wash.2d 130, 134, 65 P.3d 1192 (2003), all reject the principle that all procedural requirements of superior court review are jurisdictional. E.g., *Dougherty*, 150 Wash.2d at 316, 76 P.3d 1183. Simply put, the existence of subject matter jurisdiction is a matter of law and does not depend on procedural rules. 14 KARL B. TEGLAND, WASHINGTON PRACTICE: CIVIL PROCEDURE § 3.1, at 20 (2d ed.2009).

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

[3] [4] ¶ 13 In *Dougherty*, 150 Wash.2d 310, 76 P.3d 1183, we discussed the important distinction between jurisdiction and venue. “Jurisdiction ‘is the power and authority of the court to act.’ ” *Id.* at 315, 76 P.3d 1183 (citing 77 AM. JUR.2d *Venue* § 1, at 608 (1997)). Subject

matter jurisdiction is a particular type of jurisdiction, and it critically turns on “the ‘type of controversy.’ ” *618 *Id.* at 316, 76 P.3d 1183 (quoting *Marley v. Dep’t of Labor & Indus.*, 125 Wash.2d 533, 539, 886 P.2d 189 (1994)). “ ‘If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction.’ ” * *Marley* 125 Wash.2d at 539, 886 P.2d 189 (quoting Robert J. Martineau, *Subject Matter Jurisdiction as a New Issue on Appeal: Reining in an Unruly Horse*, 1988 BYU L. REV. 1, 28 (1988)).

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

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

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

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

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

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

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

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

ARTICLE II, § 26

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

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

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

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

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

CASH CARDS AND CASH EQUIVALENTS

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

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

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

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

CONCLUSION

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

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

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

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

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

1. The History of Gambling in Washington

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

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

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

2. Subject Matter Jurisdiction over Claims against the Commission

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

¶ 31 The term “subject matter jurisdiction” refers to the power of a court to hear a case. *Morrison v. Nat’l Austl. Bank Ltd.*, — U.S. —, 130 S.Ct. 2869, 2877, 177 L.Ed.2d 535 (2010). The subject matter jurisdiction of the superior courts comes from either the Washington Constitution or *625 the State’s legislature. WASH. CONST. art. IV, § 6 (establishing jurisdiction of superior courts and authorizing jurisdiction “as may be prescribed by law”); *see also Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wash.2d 275, 295, 197 P.3d 1153 (2008) (stating that the legislature may confer limited appellate review of administrative decisions to the superior courts); *Dougherty*, 150 Wash.2d at 314, 76 P.3d 1183 (describing legislation that grants appellate jurisdiction to the superior courts); *Bellingham Bay Imp. Co. v. City of New Whatcom*, 20 Wash. 53, 63, 54 P. 774 (holding that an act conferring appellate review of administrative decisions to the superior courts did not violate the Washington Constitution), *aff’d*

on reh’g, 20 Wash. 231, 55 P. 630 (1898). The Washington Constitution distinguishes between two types of subject matter jurisdiction: “original jurisdiction” and “appellate jurisdiction.” *See* WASH. CONST. art. IV, § 6. An appeal from an administrative agency invokes a superior court’s appellate jurisdiction. *Skinner v. Civil Serv. Comm’n*, 168 Wash.2d 845, 850, 232 P.3d 558 (2010). “Because an appeal from an administrative body invokes the superior court’s appellate jurisdiction, ‘all statutory requirements must be met before jurisdiction is properly invoked.’” *Id.* at 850, 232 P.3d 558 (internal quotation omitted) (quoting *Fay v. Nw. Airlines, Inc.*, 115 Wash.2d 194, 197, 796 P.2d 412 (1990)).

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

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

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

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

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

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

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

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

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

¶ 35 The Court of Appeals misapplied the case law. In *Dougherty*, we held that the filing requirements of a different statute, RCW 51.52.110, referred to venue and not to subject matter jurisdiction. *Dougherty*, 150 Wash.2d

at 320, 76 P.3d 1183. Dougherty was an injured worker who filed an industrial insurance claim for worker's compensation. *Id.* at 313, 76 P.3d 1183. The Department of Labor and Industries (Department) denied the claim. *Id.* The statute² at issue in *Dougherty* directed the claimant to file his appeal in his county of residence, the *628 county where the injury occurred, or Thurston County. *Id.* at 315, 76 P.3d 1183. Dougherty appealed the Department's decision to Skagit County Superior Court, but he did not live in Skagit County, and the injury did not occur in Skagit County. *Id.* at 313, 76 P.3d 1183. The superior court granted the Department's motion to dismiss and the Court of Appeals affirmed, holding that Skagit County Superior Court lacked subject matter jurisdiction. *Id.* at 313-14, 76 P.3d 1183. We reversed the Court of Appeals, holding that RCW 51.52.110 referred to venue and that Skagit County Superior Court did not lack subject matter jurisdiction over **939 Dougherty's appeal. *Id.* at 320, 76 P.3d 1183.

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

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

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

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

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

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

³ The text of the statute at issue in *Shoop* reads as follows:

“(1) All actions against any county may be commenced in the superior court of such county, or in the superior court of either of the two nearest counties....

“(2) The determination of the nearest counties is measured by the travel time between county seats using major surface routes, as determined by the office of the administrator for the courts.”

Shoop, 149 Wash.2d at 35, 65 P.3d 1194 (alteration in original) (quoting former RCW 36.01.050 (1997)).

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

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

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

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

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

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

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

CONCLUSION

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

Parallel Citations

268 P.3d 929

Staff Proposed Rule Change

- **Card Game Rules: Changing Processes and Procedures**

March 2014 - Up for Discussion and Possible Filing

February 2014 - Study Session

January 2014 - Study Session

ITEM 10 (I):

- a) **Amendatory Section WAC 230-15-025**
Hours of play.
- b) **Amendatory Section WAC 230-15-111**
Destruction and disposal of gambling chips.
- c) **Amendatory Section WAC 230-15-335**
Internal controls.
- d) **Amendatory Section WAC 230-15-430**
Internal control requirements.
- e) **Amendatory Section WAC 230-15-465**
Dealing all house-banked card games from a dealing shoe.
- f) **Amendatory Section WAC 230-15-505**
Selling gambling chips to players.
- g) **Amendatory Section WAC 230-15-565**
Access and entrance to cashier's cage.
- h) **Amendatory Section WAC 230-15-575**
Separate imprest bank allowed for nonhouse-banked card games.
- i) **Amendatory Section WAC 230-15-580**
Accepting checks at the cashier's cage.
- j) **Repealed Section WAC 230-15-570**
Cashier's cage bank requirements.



Proposed Amendments to:

- WAC 230-15-025 Hours of play.
- WAC 230-15-111 Destruction and disposal of gambling chips.
- WAC 230-15-335 Internal controls.
- WAC 230-15-430 Internal control requirements.
- WAC 230-15-465 Dealing all house-banked card games from a dealing shoe.
- WAC 230-15-505 Selling gambling chips to players.
- WAC 230-15-565 Access and entrance to cashier's cage.
- WAC 230-15-575 Separate imprest bank allowed for nonhouse-banked card games.
- WAC 230-15-580 Accepting checks at the cashier's cage.

Proposed Repeal of:

- WAC 230-15-570 Cashier's cage bank requirements.

March 2014 - Up For Discussion and Possible Filing
February 2014 – Study Session
January 2014 – Study Session

ITEM 10 (I)(a-j) on the March 2014 Commission Meeting Agenda.	Statutory Authority 9.46.070 9.46.0282
Who proposed the rule changes?	
Staff.	
Proposed Changes	
<p>Commission staff regularly evaluates our regulatory processes to ensure it adds value and that we do not place unnecessary burdens on individuals or organizations by eliminating duplication already required in the Washington Administrative Code (WAC), ensuring consistency between licensees, and allowing for maximum flexibility by each business. This is in line with one of our agency goals of “anticipating and responding to the evolving gambling industry.”</p> <p>As part of our regulatory reform process, staff made changes to the Class F and Class House-banked Internal Control Templates, made changes to the Class F and Class House-banked Card Room Daily Control Records Packets, and reviewed our card room rules for areas that created extra burdens on staff and licensees without contributing significantly to our mission of protecting the public. We identified the areas listed below.</p> <p>WAC 230-15-025 Card room licensees would only be required to obtain an initial approval from staff to operate during the hours of 2am – 6am. After the initial approval, licensees could change their hours without sending in an additional request. Licensees will still inform staff of changes in operating hours by including it in their internal controls. There were 50 requests to change card room operating hours between 2 a.m. and 6 a.m. for 2011 – 2013. Commission staff consulted with the local police department and Liquor Control Board for each request. All requests were approved.</p> <p>Language regarding having a licensed card room employee on duty and in the card game area at all times during the hours of operation of a Class E, Class F, or house-banked card games was removed from this rule because it's already required under WAC 230-15-005.</p> <p>WAC 230-15-111 Removes requirements for specific procedures for destroying chips (that are damaged or worn). Licensees are required to use commission recordkeeping forms to account for chips that are destroyed. Submitting procedures is unnecessary.</p>	

WAC 230-15-335 Removes requirement for class F card room to include items in their internal controls that are already addressed by other rules and included as part of commission required recordkeeping. (Fee collection and card and chip inventory).

WAC 230-15-430 Removes items that are very general in nature, addressed in other rules, or may be areas where licensees would have procedures but are not regulatory concerns.

WAC 230-15-465 Provides an exception to the requirement that house-banked card games must be dealt from a dealing shoe or shuffling device. Allows single and double deck card games to be dealt by hand.

WAC 230-15-505 Removes specific chip selling procedures from rule. Licensees are required to develop their own procedures and include in their internal controls.

WAC 230-15-565 Removes requirement to keep in the accounting department names of person with access to cage.

WAC 230-15-575 Added definition of "imprest" to rule. It was removed from rules with the repeal of WAC 230-15-570 (See below).

WAC 230-15-580 Allows checks to be accepted at poker podium. Removes requirement for checks to be stamped "for deposit only" and takes out specific procedures for accepting traveler's checks.

Repeal WAC 230-15-570 House-banked card room operators would be allowed to operate their cashier's cage on a float basis without getting approval from commission staff.

History of Rule

During the Card Room Enhancement Program (CREP) each card room had to have these requirements in their internal controls. At the conclusion of the CREP, most of these internal control requirements were put into WAC rules to standardize the controls and to help reduce the size of the internal control documents. It also helped to reduce the burden of constantly making sure the internal controls were up to date for staff and licensees. The rules were adopted at the conclusion of the CREP in 2000 and were later changed as part of the rule simplification project in 2008.

Impact of the Proposed Change

Removes some of the specific procedures out of the rule and allows licensees to develop their own. Also removes the requirement for commission approval in some areas such as operating the cashier's cage on a float and changes in hours of operation after the initial approval.

A Small Business Economic Impact Statement was not prepared because the rule changes would not impose additional costs on any licensees.

Regulatory Concerns

None.

Resource Impacts

Reduces staff time spent approving changes in hours of operation.

Policy Consideration

None.

Statements Supporting the Proposed Rule Change

Representatives of the card room industry, including licensees and the Recreational Gaming Association, were provided an opportunity to review and comment on these changes. The feedback and responses we received were supportive of the changes.

Statements Opposing the Proposed Rule Change
None.
Licenses Directly Impacted By the Change
Card room licensees.
Staff Recommendation
File for further discussion.
Proposed Effective Date for Rule Change
July 1, 2014.

Amendatory Sections:

WAC 230-15-025 Hours of play.

(1) Licensees ~~((must not))~~ may only allow the use of their premises for card playing between the hours of 2:00 a.m. and 6:00 a.m. with written approval from us. ~~((unless we approve different hours.))~~

(2) ~~((Licensees may request, in writing, different hours of operation. Once the request is received,))~~ After we have received a written request, we will consult with the local law enforcement agency ~~((having))~~ with jurisdiction over the licensee's business and with other state agencies involved in regulation of the business. ~~((We may allow licensees to adjust closing hours, but licensees must.))~~

(3) After you have received written approval to operate between the hours 2:00 a.m. and 6 a.m., you may change your hours of operation without further approval from us. Class F and house-banked card room must include their hours of operation in their internal controls.

(4) You must also meet the following requirements:

(a) Open the food and/or drink business being stimulated to the public for business any time licensees are conducting card games; and

(b) ~~((Have a licensed card room employee on duty and in the licensed card game area at all times during the hours of operation of a Class E, Class F, or house-banked card games; and~~

~~((e)))~~ Observe a four-hour period of closure at the end of at least two business days a week before beginning the next period of operation; and

~~((d))~~ (c) Comply with any other terms and conditions we require.

~~((3))~~ (5) We may deny the request for extended hours or revoke hours already approved if:

(a) The local law enforcement agency or a state agency objects; or

(b) We determine that the licensee has violated any provisions of chapter 9.46 RCW, any other commission rule, or any of the terms of our approval ~~((set forth in subsection (1) of this section)).~~

~~((4))~~ (6) Licensees must submit all objections to revocations of operating hours in writing.

~~((5))~~ (7) If requested, we allow the licensee an opportunity for a brief adjudicative proceeding (BAP) before denying or revoking the licensee's authorization for extended card game hours. An administrative law judge hears the BAP, under the provisions of Title 230 WAC and chapter 34.05 RCW.

Amendatory Section:

WAC 230-15-111 Destruction and disposal of gambling chips.

~~((Licensees must submit internal controls to us outlining the procedures for destroying or disposing of gambling logo chips.~~

~~((1))~~ Licensees' internal controls must set out the method for destroying logo chips that are damaged or worn. The internal controls must include, at least:

(a) That chips must be destroyed or mutilated in such a way that they are unusable for play; and

(b) The two departments, one of which must be the accounting department, that will be responsible for overseeing chip destruction; and

~~((e))~~ Only licensed employees may perform chip destruction.))

~~((2))~~ (1) Licensees must record all gambling chips they destroyed on a chip destruction log in the format we require.

~~((3))~~ (2) If a card room closes, the licensee or former licensee must:

(a) Sell or otherwise transfer gambling equipment to a licensed manufacturer or distributor;

or

(b) Destroy the chips according to ~~((the))~~ their established ~~((internal controls))~~ procedures and provide the chip destruction log to us.

WAC 230-15-335 Internal controls.

Class F licensees must establish internal controls that ensure gambling activities are closely controlled and operated fairly.

(1) The internal controls must require, at a minimum:

(a) Trained personnel; and

(b) Segregation of duties for all employees involved in the operation; and

~~((c) Fee collection and funds safeguarding procedures; and~~

~~(d) Playing card and chip inventory.))~~

(2) Licensees must inform their card room employees of the internal controls related to the employees' respective areas of responsibility.

(3) Licensees and all card room employees must follow the internal controls at all times.

WAC 230-15-430 Internal control requirements.

General accountability requirements.

(1) House-banked card game licensees must have a system of internal controls including, at least:

(a) **Accounting controls** - Include the licensee's plan, procedures, and records concerned with the safeguarding of assets and the reliability of financial records. Licensees must design these controls to provide reasonable assurance that((:

~~(i) Transactions are executed with management's general and specific authorization; and~~

~~(ii) Transactions are recorded so that financial statements are prepared in conformity with generally accepted accounting principles (GAAP), and so that accountability for assets is maintained; and~~

~~((iii) Access to assets is permitted only with management's authorization; and~~

~~(iv) Records are compared with existing assets at least annually and appropriate action is taken within five working days to correct any differences; and))~~

(b) **Administrative controls** - Include, at least, the ~~((licensee's plan, procedures, and records outlining decision-making processes that lead to authorization of transactions. These must provide for:~~

~~(i) Competent personnel with an understanding of internal control procedures; and~~

~~(ii) S)) segregation of incompatible functions so that no employee is in a position to commit and conceal errors or wrongdoings in the normal course of his or her duties.~~

Designating a general manager.

(2) The owner, partners, or board of directors for the licensee must designate an individual with overall responsibility for the business, called the "general manager." The general manager may also perform the duties of a gambling operations department manager; and

Establish separate departments or functions.

(3) Licensees must establish separate departments or functions which must be independent from each other. At a minimum, these must include:

(a) Surveillance;

(b) Security;

(c) Gambling; and

(d) Accounting.

Surveillance department requirements.

(4) The surveillance department manager must ensure that surveillance employees follow all requirements of the surveillance WACs, including, at least:

(a) Closely and clandestinely observing the operation of the card games, the cashier's cage, and count room; and

~~((b) Recording video and audio of the activities in the count room; and))~~

(~~b~~) Monitoring for cheating, theft, embezzlement, and other illegal activities on the licensed premises; and

~~(c)~~ Recording video of unusual or suspected illegal activities; and

(~~d~~) Notifying appropriate supervisors and us, within three working days, when they detect cheating, theft, embezzlement, or other illegal activities related to gambling; and

(~~e~~) Giving our agents or law enforcement personnel immediate access to the surveillance room; and

~~((g) Ensuring that each dealer is evaluated to determine if he or she follows all required dealer procedures set out in the house-banked card game licensee's approved internal controls; and~~

~~(h) Documenting procedures about how winning wagers, jackpots, or bonus pay-outs will be verified; and~~

~~(i) Ensuring that all surveillance employees have demonstrated a knowledge of:~~

~~(i) Operating surveillance systems; and~~

~~(ii) Rules of play and procedures for the games being played; and~~

~~(iii) Overall procedures relating to the duties of all employees of the house-banked card room, including dealers, shift managers, floor supervisors, cage cashiers and count team members.))~~

Security department requirements.

(5) The security department manager must ensure that security employees control:

(a) Transfer of cash and chips to and from the gambling tables, cage, and count room; and

~~((b) Dealing shoes and new and used cards, when not in use or when held in evidence; and~~

~~(c) Disposing of or destroying used cards and dealing shoes, and observing accounting department employees when they destroy damaged chips when removed from service.))~~

Gambling operations department requirements.

(6) The gambling operations department manager, or general manager, is responsible for house-banked card games and must ensure that:

(a) Dealers operate card games at assigned gambling tables; and

~~((b) Cards and dealing shoes are properly accounted for when in use on the gambling floor; and~~

~~(c) There is adequate supervision on the business premises.))~~

Accounting department requirements.

(7) The accounting department must be supervised by a person who reports directly to the general manager. The accounting department must, at least:

(a) Implement and monitor accounting controls; and

(b) Control processes in the count room and cashier's cage; and

(c) Supervise the count room personnel and cashier's cage personnel; and

(d) Control the inventory of unused forms; and

(e) Reconcile the used and unused forms; and

(f) Prepare, control, and store records and data we require~~((; and~~

~~(g) Oversee, with the help of the security department, the destruction of damaged chips removed from service)).~~

WAC 230-15-465 Dealing all house-banked card games from a dealing shoe.

House-banked card game licensees must deal all house-banked card games from a dealing shoe or a shuffling device we have approved with the exception of single and double deck card games which may be dealt by hand.

WAC 230-15-505 Selling gambling chips to players.

House-banked card game licensees must accurately account for all chips and cash when they sell chips to players. Licensees must sell chips only at the gambling table. ~~((The dealer must:~~

~~(1) Spread the cash on the top of the gambling table so that the player, floor supervisor, and surveillance have a full view of the sale;~~

~~(2) Announce the amount loudly enough to be heard by the player and the floor supervisor assigned to the table;~~

~~(3) Have the floor supervisor verify all cash sales of one hundred dollars or more;~~

~~(4) Prove the denomination and the number of chips to the player, floor supervisor, and surveillance before giving the chips to the player. Licensees must include their method for proving chips in their internal controls; and~~

~~(5) After giving the chips to the player, immediately remove the cash from the table top and put it in the drop box attached to the table.))~~

WAC 230-15-565 Access and entrance to cashier's cage.

(1) House-banked card game licensees must limit entry to the cashier's cage to authorized personnel. ~~((Licensees must place on file with the accounting department the names of all persons:~~

~~(a) Authorized to enter the cage; and~~

~~(b) Who have the combination, keys, or the mechanism to open the locks to the entrance of the cage; and~~

~~(c) Who have the ability to operate the alarm systems.))~~

(2) Licensees must keep a sign-in log in the format we require of all persons accessing the cashier's cage.

WAC 230-15-575 Separate imprest bank allowed for nonhouse-banked card games.

House-banked card game licensees operating both house-banked and nonhouse-banked games may sell chips for poker games through an imprest bank other than the cashier's cage. "Imprest basis" means the bank must replenish funds on a regular basis to maintain exactly the amount of outgoing cash, chips, or coin (expenditures) minus the amount of funds added. The bank must be located within the cashier's cage or another location approved in the internal controls.

WAC 230-15-580 Accepting checks at the cashier's cage.

(1) House-banked card game licensees may accept checks from players as explained in WAC 230-06-005 and must meet the following additional requirements:

(a) Licensees may only accept checks from players at the cashier's cage or poker podium; and

(b) Before cashing the check, the cage cashier must examine the player's identification to confirm the player's identity; and

(c) The cage cashier must:

(i) ~~((Endorse the check "for deposit only" to the licensee's bank account; and~~

- (ii) Initial the check; and
 - (iii) Date and time stamp the check; and
 - (iiiiv) Verify that the player is not listed on the daily returned check report. If licensees use a check guarantee and collection service, the licensee may disregard this subsection; and
 - (iv) Exchange the check for currency and coin in the amount for which the check is drawn, minus any applicable fees; and
 - (vi) Forward all player checks to the main bank cashier.
- ~~((2) Before accepting a traveler's check from a player, the cage cashier must:~~
- ~~(a) Require the player to countersign the traveler's check in the cashier's presence; and~~
 - ~~(b) Compare the countersignature with the original signature on the traveler's check; and~~
 - ~~(c) Examine the traveler's check for any signs of tampering, forgery, or alteration; and~~
 - ~~(d) Perform any other procedures that the issuer of the traveler's check requires in order to indemnify the acceptor against loss.))~~

(3) Licensees must deposit all checks received into their bank account, within two banking days after receipt. Checks deposited to an armored car service within two banking days meet this requirement.

Repealed Section:

~~((WAC 230-15-570 Cashier's cage bank requirements.~~

- ~~(1) House-banked card game licensees must keep the cashier's cage on an imprest basis. "Imprest basis" means the cage must replenish funds on a regular basis to maintain exactly the amount of outgoing cash, chips, or coin (expenditures) minus the amount of funds added.~~
- ~~(2) The accounting department must review expenditures and replenishments.~~
- ~~(3) Licensees who have demonstrated the ability to operate cage activities properly may request our approval to operate on a float basis. "Float basis" means the cage may adjust cash inventory as necessary.))~~

Staff Proposed Rule Change

- **Card Game Rules: Changing Funding and Commission Amounts**

March 2014 - Up for Discussion and Possible Filing

February 2014 - Study Session

January 2014 - Study Session

ITEM 10 (II):

- a) **Amendatory Section WAC 230-15-380**
Seeding a player-supported jackpot.
- b) **Amendatory Section WAC 230-15-385**
Collecting funds for a player-supported jackpot.
- c) **Amendatory Section WAC 230-15-480**
Commission on winning hands.



Proposed Amendments to:

WAC 230-15-380 Seeding a player-support-jackpot.

WAC 230-15-385 Collecting funds for a player-supported jackpot.

WAC 230-15-480 Commission on winning hands.

March 2014 - Up For Discussion and Possible Filing

February 2014 – Study Session

January 2014 – Study Session

ITEM 10 (II)(a-c) on the March 2014 Commission Meeting Agenda.	Statutory Authority 9.46.070 9.46.0282
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Who proposed the rule change?

Staff.

Proposed Change

Commission staff regularly evaluates our regulatory processes to ensure it adds value and that we do not place unnecessary burdens on individuals or organizations by eliminating duplication already required in the Washington Administrative Code (WAC), ensuring consistency between licensees, and allowing for maximum flexibility by each business. This is in line with one of our agency goals of “Anticipating and responding to the evolving gambling industry.”

Staff recommends removing unneeded limits in the following areas:

- Removes the \$5,000 limit on the amount licensees can start (seed) a player-supported jackpot (PSJ) with or replenish a PSJ that was been won.
- Removes the \$2 limit on the amount licensees can collect from the pot to fund a PSJ.
- Removes the five percent commission limit that may be taken by licensees on winning hands.

History of Rule

Player-supported jackpots were authorized by the legislature in 1996. PSJ’s are a separate contest of chance directly related to the outcome of a nonhouse-banked card game (poker). Licensees collect funds from the player’s wagers (the pot) for a separate prize. If a player gets a specified hand they win the prize. These funds are deemed to be player funds and must be returned to the players in the form of prizes.

WAC 230-15-380 Seeding a player-supported jackpot.

There has been a \$5,000 limit on the amount licensees can start a PSJ with since 1996. The rule was later revised to clarify licensees could also replenish the PSJ with up to \$5,000 a time as funds are depleted. Staff has determined there is no regulatory need for the limit. Licensees are using their own funds for the PSJ and are later able to recoup their contribution as PSJ funds are collected from the pots. Licensees are required to use detailed records that show how much money was seeded, collected from pots, and recouped by licensees.

WAC 230-15-385 Collecting funds for a player-support jackpot.

There was originally a \$1 limit on the amount that could be collected from a pot to fund a PSJ. The rule changed in January 2006 to raise the limit to \$2. Staff does not believe a limit is necessary. The amount collected is typically based on the size of the pot - \$1 for the first \$10 and \$2 if the pot reaches \$20. The market place will determine what it should be. If a card room attempts to take too large of an amount from the pot to fund the PSJ, players will not continue to play.

WAC 230-15-480 Commission on winning hands.

A limited number of approved house-banked card games allow the house to collect a commission on winning hands (Mini-Baccarat, Pai Gow, and Super Pan 9 including variations of these). Most card rooms

are not currently taking a commission on Pai Gow. Staff does not believe a limit is necessary. The market place will determine what it should be. If a card room attempts to take too large of a commission, players will not play.

Impact of the Proposed Change

Commission rules will not have limits on the amount that licensees can:

- Collect from a pot to fund a PSJ.
- Seed a PSJ.
- Collect as commission on winning hands.

A Small Business Economic Impact Statement was not prepared because the rule change would not impose additional costs on any licensees.

Regulatory Concerns

None.

Resource Impacts

Reduces the time staff spends on verifying that licensees are complying with the PSJ seeding limit.

Policy Consideration

None.

Statements Supporting the Proposed Rule Change

Representatives of the card room industry, including licensees and the Recreational Gaming Association, were provided an opportunity to review and comment on these changes. The feedback and responses we received were supportive of the changes.

Statements Opposing the Proposed Rule Change

None.

Licensees Directly Impacted By the Change

Card room licensees.

Staff Recommendation

File for discussion.

Proposed Effective Date for Rule Change

July 1, 2014.

Amendatory Sections:

WAC 230-15-380 Seeding a player-supported jackpot.

Class F or house-banked licensees may:

(1) Seed a PSJ and replenish the PSJ when depleted by issuing (~~Provide up to five thousand dollars seed money from house funds to start a PSJ. Licensees must issue~~) a check or (~~make~~) making an electronic bank transfer from the licensee's business account (~~for the seed money to the PSJ account to start the prize fund~~); and

(2) (~~Licensees may replenish the PSJ as funds are depleted with up to five thousand dollars at a time; and~~

~~3~~) Recover seed money by having the custodian issue a check or make an electronic bank transfer from the PSJ account to the licensee's business account.

WAC 230-15-385 Collecting funds for a player-supported jackpot.

Class F or house-banked licensees may collect (~~up to two dollars per hand or game~~) funds from the pot for each player-supported jackpot. Licensees:

(1) Must keep these funds separate from all other fees; and

(2) Must use either the chip rack or drop box method to collect these funds.

WAC 230-15-480 Commissions on winning hands.

The only direct or indirect fee (commission) licensees may collect is a (~~maximum of five percent~~) percentage from a winning hand in house-banked card games.

Staff Proposed Rule Change

- **Card Game Rules: Recordkeeping Rules**

March 2014 - Up for Discussion and Possible Filing

February 2014 - Study Session

January 2014 - Study Session

ITEM 10 (III):

- a) Amendatory Section WAC 230-15-250**
Recordkeeping for card tournaments.
- b) Amendatory Section WAC 230-15-355**
Counting procedures for fees.
- c) Amendatory Section WAC 230-15-400**
Accounting for player-supported jackpot funds.
- d) Amendatory Section WAC 230-15-530**
Completing the credit process.
- e) Amendatory Section WAC 230-15-560**
Operating the cashier's cage.
- f) Amendatory Section WAC 230-15-620**
Concluding the count.



Proposed Amendments to:

- WAC 230-15-250 Recordkeeping for card tournaments.
- WAC 230-15-355 Counting procedures for fees.
- WAC 230-15-400 Accounting for player-supported jackpot funds.
- WAC 230-15-530 Completing the credit process.
- WAC 230-15-560 Operating the cashier's cage.
- WAC 230-15-620 Concluding the count.

March 2014 - Up For Discussion and Possible Filing
February 2014 - Study Session
January 2014 - Study Session

ITEM 10 (III) (a-f) on the March 2014 Commission Meeting Agenda.	Statutory Authority 9.46.070 9.46.0282
Who proposed the rule change?	
Staff.	
Proposed Change	
<p>Staff recently performed a periodic review and updating of the card room records and instructions required to be used by class F and House-Banked card room licensees. In the process of completing the review several minor instances were noted where language in the rule was different than the record keeping packets. Changes are being proposed in the following rules to correct this.</p> <p>WAC 230-15-250 Recordkeeping for card tournaments. Changed daily control sheet to card tournament summary. Changed record of participants to summary of participants, entry fees, and buy-ins. Clarified gross gambling receipts are total tournament entry fees.</p> <p>WAC 230-15-355 Counting procedures for fees. Changed count slip to card game control slip.</p> <p>WAC 230-15-400 Accounting for player-supported jackpot funds. Changed PSJ fund accrual record to PSJ prize fund accrual record.</p> <p>WAC 230-15-530 Completing the credit process. Changed request for credit slip to credit slip.</p> <p>WAC 230-15-560 Operating the cashier's cage. Changed cashier's count sheet to cage inventory count sheet.</p> <p>WAC 230-15-620 Concluding the count. Changed original master game report to master game report. The record was a two part form. Now it's only one.</p>	
History of Rule	
<p>WAC rules require licensees to use specific records to in the operation of their gambling activities. The required records and instructions are maintained on the commission website.</p>	

Impact of the Proposed Change
The proposed changes will bring the record keeping language in the rules in agreement with the card room record keeping packets. It will not change how card room licensees are keeping their records.
A Small Business Economic Impact Statement was not prepared because the rule change would not impose additional costs on any licensees.
Regulatory Concerns
None.
Resource Impacts
None.
Policy Consideration
None.
Statements Supporting the Proposed Rule Change
Representatives of the card room industry including licensees and the Recreational Gaming Association were provided an opportunity to review and comment on these changes. The feedback and responses we received were supportive of the changes.
Statements Opposing the Proposed Rule Change
None.
Licensees Directly Impacted By the Change
Card room licensees.
Staff Recommendation
File for further discussion.
Proposed Effective Date for Rule Change
July 1, 2014.

Amendatory Sections:

WAC 230-15-250 Recordkeeping for card tournaments.

- (1) Card game licensees must keep tournament records in the format we require.
- (2) On the ~~((daily control sheet))~~ card tournament summary for the first day of a tournament, card game licensees must include the total gross gambling receipts (total tournament entry fees) and attach it to the ~~((record))~~ summary of participants, entry fees, and buy-ins.
- (3) Class F ((L)) licensees must attach the tournament records to the daily card game records for the date they awarded the majority of the prizes in the tournament.

WAC 230-15-355 Counting procedures for fees.

(1) We do not require Class F licensees using the drop box method to collect fees to have a separate count room if they have a secure location to count and they meet all other commission requirements for surveillance and counting procedures in WAC 230-15-275. Class F licensees must:

- (a) Conduct the count at a specific time that licensees have reported to us; and
 - (b) Count all fees at least once every twenty-four hours; and
 - (c) Have at least two card room employees count and record the amount on the ~~((count))~~ card game control slip for each drop box; and
 - (d) Make an entry in the daily card room record for each type of fee collected at each table.
- Licensees must retain card game control slips for each table with the daily records.

(2) If Class F licensees using the drop box method do not have a secure location to conduct the count, they must meet the count room requirements of WAC 230-15-605.

WAC 230-15-400 Accounting for player-supported jackpot funds.

Class F or house-banked licensees must:

- (1) Maintain a separate bank account in a bank, mutual savings bank, or credit union in Washington state for holding player-supported jackpot (PSJ) funds; and
- (2) Deposit only funds from PSJs into the account; and
- (3) Not make payouts from the PSJ funds until licensees have first deposited the funds in the PSJ account. However, licensees may pay out prizes won during the gambling day and deduct administrative expenses before licensees deposit the funds; and
- (4) Transfer or deposit the PSJ funds into the PSJ account or with an armored car service no later than the second banking day after the close of business; and
- (5) Identify all deposits or transfers of PSJ funds by the type of PSJ fund and date of collection. Licensees must keep the validated deposit receipts or transfer information as a part of their required daily records or have online access to their player-supported jackpot bank accounts; and
- (6) Transfer the amount from the PSJ account to the cage or general account before the end of the month if PSJ prizes are paid from the cage or general account. The licensee must keep the transfer information as part of the written records; and
- (7) Reconcile the account balance in their bank statement to the PSJ prize balance on their PSJ prize fund accrual record each month. "Reconcile" means the licensee must compare the two balances, resolve any differences, and document the comparison and the differences in writing. Licensees must keep the reconciliation as part of their records.

WAC 230-15-530 Completing the credit process.

Requesting credit.

(1) The floor supervisor must prepare a request for credit to authorize the cage to prepare a credit slip for removing gambling chips and coin to the cashier's cage.

(2) The floor supervisor and a security employee must sign the request for credit slip at the gambling table from which the gambling chips and coin are being removed.

Transporting requests for credit.

(3) A security department employee verifies the chips and coin to the request for credit and then transports the original of the request for credit and the gambling chips or coin removed from the gambling table directly to the cashier's cage.

(4) The dealer must place the duplicate copy of the request for credit face up on the gambling table. The form must not be removed until a credit slip is received from the cashier's cage.

Filling a request for credit.

(5) The cashier must prepare a credit slip in the format we require whenever gambling chips or coin are removed from the gambling tables to the cashier's cage.

(6) The cashier must compare the request for credit to the chips or coin and sign the credit slip.

(7) A security department employee must compare and verify the request for credit to the credit slip and sign the credit slip.

(8) Security must transport the credit slip to the gambling table.

(9) The cashier retains the original of the request for credit.

Receiving the credit.

(10) On receiving the request for credit slip, the dealer and the floor supervisor verify the amount of the credit slip and sign the credit slip.

(11) After the dealer and floor supervisor sign the credit slip, the security employee must observe that the dealer immediately places the duplicate credit slip and the duplicate request for credit in the drop box attached to the gambling table from which the gambling chips or coin were removed.

(12) The security department employee must return the original credit slip to the cashier's cage. The cage cashiers must keep together and control the original of the credit slip and request for credit.

(13) If an error is made on the credit slip, the cage cashier must write "VOID" on the original and duplicate of the slip and sign the slip.

(14) At the end of the day or shift, the cage cashier must forward all slips to either:

(a) The count team for agreement with the duplicate of the credit slip and duplicate of the request for credit removed from the drop box. After the count, all credit slips and requests for credit must be forwarded to the accounting department for agreement with the triplicate; or

(b) The accounting department for agreement with the duplicate credit slip and duplicate request for credit slip removed from the drop box and the triplicate of the request for credit slip.

WAC 230-15-560 Operating the cashier's cage.

(1) House-banked card game licensees must have a cashier's cage used for securing and accounting for all chips and moneys in the card room portion of the business premises. Licensees must ensure that their cage cashiers, at least:

(a) Maintain the cage inventory including currency, coin, player checks, gambling chips, forms, documents, and records normally associated with the operation of a cage; and

(b) Receive gambling chips, cash, checks, and other cash equivalents from players in exchange for currency or coin or for check consolidations, total or partial redemptions, or substitutions; and

(c) Receive cash or chips from the count room; and

(d) Perform functions necessary to ensure accurate accountability of funds and chips consistent with these requirements, including, at least:

(i) Reconciling the total closing inventory with the total opening inventory; and

- (ii) Receiving request for fill slips in exchange for issuing fill slips and requested chips or coin; and
 - (iii) Receiving chips or coins removed from gambling tables in exchange for issuing a credit slip; and
 - (iv) Receiving documents with signatures that ensure the effective segregation of duties; and
 - (v) Counting and recording the face value of each cage inventory item on a ~~((cashier's count))~~ cage inventory count sheet, along with the total opening and closing inventories, at the end of each of their outgoing shifts; and
 - (vi) Signing, at their incoming and outgoing shift, ~~((the cashier's count sheet and))~~ the cage inventory count sheet, attesting to accuracy of the count; and
 - (vii) Preparing the overall cage reconciliation and accounting records; and
 - (viii) Forwarding, at the conclusion of the daily gambling activity, copies of the ~~((cashier's count sheet,))~~ cage inventory count sheet, and related documents to the accounting department for reconciling the agreement of opening and closing inventories, notification of error slips, and the agreement of amounts on other forms, records, and documents recording transactions.
- (2) Licensees may sell merchandise items out of the cashier's cage as long as they have a separate bank and receipting system for the sale and accounting of these items.

WAC 230-15-620 Concluding the count.

- (1) After the count team finishes their count, the cage cashier or accounting department employee must verify the contents of the drop boxes.
- (2) In the presence of the count team and before looking at the master game report, the verifier must recount the cash, either manually or mechanically.
- (3) The verifier must sign the master game report verifying that the cash count is accurate.
- (4) Each count team member must sign the report attesting to the accuracy of the information recorded.
- (5) After the report is signed, the ~~((original))~~ master game report must be taken directly to the accounting department, along with the requests for fills, the fill slips, the requests for credit, the credit slips, and the table inventory slips removed from drop boxes. The cage cashiers must not be allowed access to any of these records.