# Small Business Economic Impact Statement

## Rules Packages 1 through 3

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

December 16, 2015

**Rules Package:**

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| WAC 230-03-185 | Applying for a manufacturer license. |
| WAC 230-03-190 | Applying for a distributor license. |
| WAC 230-05-030 | Fees for other businesses. |
| WAC 230-06-110 | Buying, selling, or transferring gambling equipment. |
| WAC 230-13-010 | Approval of new amusement games. |
| WAC 230-13-135 | Maximum wagers and prize limitations. |
| WAC 230-13-160 | Basing rent on a percentage of gross receipts. |
| WAC 230-13-080 | Operating coin or token activated amusement games |
| WAC 230-13-005 | Amusement games authorized. |
| WAC 230-13-130 | Display and exchange of amusement game prizes. |
| WAC 230-13-140 | Price to play amusement games must be paid in cash or check. |

**Involvement of Small Businesses:**

We filed the Code Revisor's 101 on October 29, 2015, under WSR#15-22-054.

On November 9, 2015, we sent an email to the Class B and above amusement game licensees that we had email addresses for informing them that we had drafted rules for discussion on Group 12 amusement games. The letter referred licensees to our website, which the general public can access, to view the draft rules. The rules were posted on our website in a special section for Group 12 amusement game updates.

On November 12, 2015, the draft rules were discussed at Study Session, which was open to the general public. Those in attendance were asked to submit any comments or rule change language to commission staff by November 30, 2015.

On December 24, 2015, we sent notice to all commercial and amusement game licensees of the updated rule proposals based the feedback we received during the comment period. We also posted the draft rules on our website.

The rules will be discussed at Study Session on the following dates: January 14, 2016, February 11, 2016, and March 10, 2016. The rules will also be discussed and public comment taken at the Commission meetings held on January 14/15, 2016, February 11/12, 2016, and March 10/11, 2016.

This process provided small businesses opportunities in the development of the new rule.

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

In July 2015, the Commissioners authorized Group 12 amusement games to be played by persons 21 and over. With implementation of this new activity, a number of issues have arisen that require additional rules surrounding Group 12 amusement games.

This rules package would require:

- Manufacturer and distributors of Group 12 amusement games to be licensed (WACs 230-03-185 and 230-03-190);
- Each licensed Group 12 amusement game to have a $250 annual identification stamps and manufacturers will have to reimburse the commission for costs incurred to review group 12 amusement games (230-05-030);
- Only licensed manufacturers and distributors to transfer Group 12 amusement games (WAC 230-06-110);
- A new review and approval process for Group 12 amusement games, which would include submission of an application and a deposit to begin the process (WAC 230-13-010);
- A maximum wager limit of $5 and a $1,000 prize limit for Group 12 amusement games (WAC 230-13-135); and
- Amusement game operators to issue only merchandise defined in rule (WAC 230-13-005).

It would also allow:

- Charitable and nonprofit organizations to pay rent for Group 12 amusement games based on a percentage of revenue the activity generates if the method of distribution is specific (WAC 230-13-160);
- Attended amusement games to accept cash, check, tickets or scrip to play (WACs 230-13-005 and 230-13-140); and
- Coin and token activated amusement game operators to use an electronic token card to activate and receive dispensed points without comingling the two (WAC 230-13-005).

The proposed changes would not allow:

- Charitable and nonprofit organizations to operate Group 12 amusement games as an unlicensed activity under RCW 9.46.0321 and 9.46.0331 (WAC 230-13-005); or
- Operators of Group 12 amusement games to issue gift certificates or gift cards, replay tokens awarded to be replayed, additional plays as prizes, or cash payment (WAC 230-13-005).

Manufacturers of Group 12 amusement games approved prior to May 1, 2016 are not required to be licensed unless and until they make a change to their software or games approved prior to May 1, 2016, which would require approval prior to implementation. At that point, the manufacturer would be required to be licensed prior to the change in the game(s) being reviewed or approved.

Distributors of Group 12 amusement games must be licensed prior to May 1, 2016. Prior to this, distributors of amusement games were not required to be licensed if they facilitated the sale between manufacturers and licensed owners.

Manufacturers and distributors of Group 12 amusement games will have to comply with all the rules in WAC Chapter 230, which includes recordkeeping and reporting requirements.

Currently, only amusement games that are placed in premises that rent the games are required to have an annual identification stamp. Licensees who own and operate amusement games in their own premises do not require annual stamps. Under the rule proposal, all Group 12 amusement games would require annual identification stamps. This will require Group 12 amusement game owners to begin purchasing identification stamps annually for these games that they own and operate in their own facilities. The Group 12 amusement game identification stamp will cost more than other identification stamps.

Right now operators can introduce new amusement games that meet the standards without approval as long as they provide commission staff a description of the game, rules of play, and the group number of the game with an explanation of why that group was chosen at least sixty days before introducing the game.

As proposed, this process would remain the same for Group 1 through 11 amusement games. Group 12 amusement games would require an application and $2,000 deposit to be submitted with the equipment to begin the review process for approval. The game would be tested for compliance of rules and laws during a sixty day review process. Group 12 amusement games must allow for a means of identifying and validating approved software by a third-party application or device. The applicant is responsible for reimbursing the commission for the actual cost of the review.

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

All businesses, as an ordinary course of doing business, maintain a check register, sales invoices, cash receipts register, etc. Manufacturers and distributors of Group 12 amusement games will be required to maintain these same accounting records.

Group 12 amusement game manufacturers, distributors, owners or operators will need to purchase annually and record I.D. stamps purchased and affixed to these games. They

will also need to submit two reports to us a year containing the quarterly gross receipts from the sale, lease or operation of the Group 12 amusement games.

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

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

The cost for a Group 12 amusement game manufacturer's license will depend on the amount of Group 12 amusement games sales and lease proceeds the manufacturer anticipates having each year in Washington, the cost of the pre-licensing investigation and equipment review costs.

A manufacturer application and annual license fee ranges from $1,398 for annual gross sales up to $250,000 to $4,498 for annual gross sales over $2.5 million. The application fee is meant to cover the cost of enforcement for one-year so the applicant must also pay the actual cost of the pre-licensing investigation, which will include an on-site visit to verify the ownership, and financial source of funds, and manufacturing process. The actual costs vary by applicant and depend upon the complexity of ownership and financing as well as the location of the business. For example, the average costs for a medium-sized company located in the mid-west can range from $30,000 to $60,000 for the pre-licensing investigation.

To have a Group 12 amusement game reviewed for approval under the proposed rules, manufacturers would submit an application and a $2,000 deposit. The actual costs of the review must be paid by the manufacturer, which would be offset by the initial deposit. Costs for the review can vary but could average between $3,000 to $5,000.

The cost for Group 12 amusement game distributor application and license will vary depending upon their annual sales and leases in Washington. The application and annual license fees range from $1,398 for annual gross sales up to $250,000 to $4,498 for annual gross sales over $2.5 million.

Owners of Group 12 amusement games will be required to purchase annual identification stamps, including owners who operate these games in their own facilities. The annual cost of a stamp is proposed to be $250. Currently, owners of amusement games placed in locations they don't own pay $29.68 for annual identification stamps. Under the proposed rules, Group 12 amusement game owners would be required to place a $250 annual identification stamp on each game they leased or owned.

Charitable and nonprofit licensees operating Group 12 amusement games would pay more for renting these games to manufacturers, distributors or Class B or above amusement game owners under the rule change. Currently, charitable and nonprofit

licensees can rent amusement games at an amount not to exceed 22% of the gross gambling from the amusement games. Under the proposed rules, owners could rent Group 12 amusement games to charitable and nonprofit licensees for a percentage of revenue the games generate if the method of distribution is specific. The additional cost to charitable and nonprofit licensees who rent Group 12 amusement games is undeterminable. It will vary by charitable and nonprofit organization and game owner.

We cannot determine the actual costs to small businesses of complying with the additional operational compliance, reporting, and record keeping requirements as proposed by this rules package because there are too many variables based on the competency or experience of the staffing of the manufacturer, distributor, owner or operator.

Future manufacturers, distributors, owners, or operators of Group 12 amusement games may already have knowledgeable staff, such as a bookkeeper, to comply with recordkeeping and accounting functions and with the Group 12 amusement game approval process.

If future manufacturers, distributors, owners, or operators of Group 12 amusement games do not have knowledgeable staff, then they would likely need to hire a bookkeeper to assist them with the recordkeeping and accounting functions. We cannot determine the actual costs to small businesses for hiring a bookkeeper to assist with the recordkeeping and accounting functions because there are too many variables that would play into determining the costs, such as experience level needed, size of the company, sales volume, and location of business.

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

Licensees and stakeholders have said that the Group 12 amusement games will not be profitable for them to manufacturer, distribute and operate if they cannot:

- Award cash, gift certificates, or gift cards as prizes;
- Replay tokens, coupons or tickets received as prizes; or
- Give additional replays as prizes.

RCW 9.46.0201 states that an amusement game means a game played for entertainment in which only merchandise prizes are awarded. Merchandise is not defined in rule or law currently.

WAC 230-13-005 currently allows coin and token activated amusement games to dispense merchandise prizes, or coupons, tickets or tokens redeemable for merchandise prizes. The rule does not allow additional plays as prizes.

The Commissioners approved the Group 12 amusement games in July 2015. The rule became effective on August 10, 2015. The first Group 12 amusement game wasn't approved until September 23, 2015. As of December 10, 2015, approximately 60 Group 12 amusement games have been put into play in Washington. From July 31, 2015 to November 30, 2015, we have had an increase of 7.4% or 48 new amusement game licensees.

We have four new Group 12 amusement games in process for approval. We understand from licensees and stakeholders that a number of contracts for Group 12 amusement games have been signed for amusement games once they are approved between manufacturers and distributors/owners to buy or lease games and between distributors/owners and operators for lease.

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

We do not currently license Group 12 amusement game manufacturers or distributors, and there are approximately 785 businesses (licensed group 1 through 12 amusement game premises and owners) currently affected by this rule change since this new category of amusement games were approved by the Commission in July 2015. In addition, Group 12 amusement games can only be placed where persons over the age of 21 can play, further limiting the number of impacted businesses. We do not know how many of the 785 current licensed premises and amusement game owners will be able to have Group 12 amusement games due to the age limit restriction. Thus, a disproportionate cost to small businesses cannot be found since there is insufficient information to make this determination, such as the number of employees of potential manufacturers or distributors, cost of labor, cost of sales, etc.

We also cannot determine the impact of licensure, the proposed Group 12 amusement game approval process, identification stamp cost increases, additional record keeping and reporting requirements will have on manufacturers and distributors considering these amusement games were only approved in July 2015.

We do not know who will be paying for the annual identification stamps for the Group 12 amusement games, specifically if it would be the manufacturers, distributors, owners or operators. Therefore, we cannot determine what, if any, impact this new fee will have on small businesses.

Group 12 amusement games are only allowed to be played by persons over 21 years of age. These games must be placed in areas only accessible to this age group. We cannot determine the cost to the owners or operators of Group 12 amusement games that these rule changes will have on them because we don't know which small businesses desire to have Group 12 amusement games or have the requisite areas in their facilities to accommodate these games.

These rule changes have the greatest impact on the manufacturers, distributors, owners and operators of Group 12 amusement games. These games were approved by the Commission in July 2015 with an effective date of August 2015. The first game was not approved until late-September 2015. We have not collected any financial information from licensees to know the financial impact of this new activity. We do have financial information regarding the Group 1 through 11 amusement games. In fiscal year 2014 (July 1, 2013 to June 30, 2014), we had 28 charitable and nonprofit licensees that reported net win, gross receipts less prizes paid, of $115,191 from amusement games operated in Washington. We also had 68 commercial licensees reporting net win $20,194,874 from amusement games operated in Washington.

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

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

      We have not proposed additional record keeping or reporting requirements for operators. Manufacturers and distributors of Group 12 amusement games will be required to be licensed in order for the Gambling Commission to be able to regulate this new amusement game.

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

      We have not proposed additional record keeping or reporting requirements for operators. Manufacturers and distributors of Group 12 amusement games will be required to be licensed and this is necessary in order for the Gambling Commission to be able to regulate this new amusement game.

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

      Unless we receive a complaint, we do not perform routine inspections on amusement games.

   d. **Delaying compliance timetables;**

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

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

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

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

When we gave notice of the proposed rule changes in November 2015, we told licensees to submit their comments and suggested rule changes to us. We incorporated licensee suggested rule changes without requiring them to go through the petition process for changes that were not suggested by staff.

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

On November 9, 2015, we sent an email to the Class B and above amusement game licensees that we had email addresses for informing them that we had drafted rules for discussion on Group 12 amusement games. The letter referred licensees to our website, which the general public can access, to view the draft rules. The rules were posted on our website in a special section for Group 12 amusement game updates.

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

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

We cannot determine the impact of jobs gained or loss as a result of compliance with the proposed rule because:

- This is a new activity that was authorized in July 2015 and has only been in effect since late-September 2015, when the first game was approved. We don't have any information on the impact Group 12 games have actually had on the industry, how many new jobs were created due to this new rule, or how many jobs might be affected by the proposed rule changes to determine what impact these rule changes will have.

- We don't know anything about the potential manufacturers or distributors since they have not had to be licensed before. We would need to know such things as the demand for the games in Washington and detailed business information to make these determinations.
- Group 12 amusement games can only be played by people over the age of 21. These games must be placed in areas only accessible to this age group. We do not know how many businesses have space that would accommodate these games to determine job impact at this point.