

**COMMISSION MEETING
THURSDAY, JUNE 9, 2005
DRAFT MINUTES**

Chair Niemi called the meeting to order at 1:35 p.m. at Maple Hall located in LaConner. She introduced the members and staff present:

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair, Seattle**
 COMMISSIONER ALAN PARKER, Vice Chair, Olympia
 COMMISSIONER CURTIS LUDWIG, Kennewick
 COMMISSIONER GEORGE ORR, Spokane
 COMMISSIONER JOHN ELLIS, Seattle
 SENATOR MARGARITA PRENTICE, Seattle
 SENATOR JEROME DELVIN, Richland
 REPRESENTATIVE ALEX WOOD, Spokane

STAFF PRESENT: **RICK DAY, Director**
 NEAL NUNAMAKER, Deputy Director
 CALLY CASS, Assistant Director-Field Operations
 AMY HUNTER, Administrator-Legal Division
 DAVE TRUJILLO, Acting Administrator-Licensing
 JERRY ACKERMAN, Assistant Attorney General
 SHIRLEY CORBETT, Executive Assistant

Commissioner Ludwig offered introductory comments about newly appointed Ex Officio Member Senator Delvin, noting that when Senator Delvin is not legislating, he is a Police Officer with the City of Richland. He has been known to spend most of his summers climbing the mountains in Nepal or skiing in South America. Commissioner Ludwig advised that he has known Senator Delvin for quite a while and that “he is a friend and he does a great job representing his District in the State Senate.”

Staff Accomplishments: **Chair Niemi** and **Director Day** presented 5-year service recognition certificates and pins to Commissioner Alan Parker and Special Agent Jenny Kapp; Deputy Director Neal Nunamaker was recognized for his 30-years of service with the state, all of which has been with the Gambling Commission. Commissioner Orr was presented with a plaque and certificate in recognition of his five and a half years with the Commission—his term is scheduled to end on June 30. Commissioner Orr expressed his appreciation.

1. Review of Agenda and Director's Report:

Director Day reviewed and noted changes to the published agenda as follows: removal of the Red Dragon Casino house-banked card room approval—it was determined they were not ready for final approval due to their occupancy permit not being issued. Secondly, it was noted the Petitioner requested a continuation of the Commission's review relating to the Woodshed Bar & Grill d/b/a The Woodshed. Director Day also identified inserts to the agenda packet since publication.

Legislative Issues:

2005 Legislative Activity Report:

Director Day addressed two memorandums, one that provided the final legislative activity report to the Commission. He noted that a Legislative Team was created in an effort to get a broader group of staff involved with the Legislature and to increase the Commission's level of contact with the Legislature. The team started its activities in advance of session and the report documented some of their activities. Director Day pointed out that the team had 16 formal meetings with the Senators and Representatives. He reported that 28 bills were tracked, 24 fiscal notes were produced (the highest number the Commission dealt with for some time), 31 hearings were attended, and the Commission issued eight position statements on proposed legislation. Additionally, Chair Niemi initiated correspondence to the Governor and the Chairs of the two fiscal committees relative to the budget. The Legislative Team is now in the process of preparing for the next session.

Agency Request Legislation:

Director Day explained the process, noting that staff may bring potential topics for consideration to determine if the Commission would be supportive of moving the legislative concept forward. If so, it allows the agency to commence the preparatory work, contact stakeholders, and bring information back to the Commission (in August). At that point, the Commission would make a decision on whether there is a desire to proceed with the proposed legislation.

Director Day addressed two agency concepts. The first addresses activities that are commonly known as sports bracket pools and fantasy sports leagues. He noted that if a person tried to find these two topics in the RCWs, they wouldn't find them directly listed. Over the years, that has resulted in some problems with the agency being able to identify how or if this activity legally falls within the structure that was authorized in Chapter 9.46. This is a very popular activity and does not appear to be directly authorized in the statute. Director Day estimated that the agency receives approximately 30 calls a year from the public. It is obvious that the public is not clear on what is legal and what is not legal, which demonstrates that there is merit this is an issue that should be brought to the Legislature. Staff is suggesting the Commission submit a legislative proposal around the concept of bracket pools—to clarify the policy on whether or not to allow sports bracket pools. The concept would be to allow bracket pools and fantasy sports activities as long as they are between private individuals, and as long as the activities are limited to a \$100 total; all the funds must go back to the participants in those pools. The \$100 limit was selected to be consistent with the current law.

Director Day emphasized this is not an attempt to authorize new or larger gambling activities. It is simply an attempt to clarify what the Legislature would believe is in fact the law in this state. If the Commission concurs, staff will develop this concept and bring it back in August for further Commission consideration.

Commissioner Parker advised that he was interested in the opinions of the Ex Officio members as to whether this is something that would be considered timely and helpful. **Senator Prentice** affirmed it was certainly worth looking, and **Representative Wood** responded that if the Commission was getting that many inquiries a year, then obviously people are confused. He inquired whether agency staff checked with other states and asked if Washington was the only state going down this road. He also inquired if other states or the federal government have statutes in place, or if there are any track records regarding similar experiences. **Director Day** affirmed that staff will check with other states as a part of the legislation development process, if the Commission wishes to proceed.

Assistant Attorney General Ackerman believed there were some states that have legislation that address this issue; if not directly in the context of what is social gambling - as opposed to unregulated social gambling, as opposed to sports pools specifically. He noted the problem the Commission faces every March is that a statute exists—the statute basically says that the only type of sports pool that is legal in the state of Washington is the sheet that has 100 squares on it and individuals may buy a square for one dollar. One dollar is the maximum amount that one may in fact pay to enter one of these pools. By statute, that is the only sports pool allowed in this state. However, that isn't the type of pool that generates the questions in March—it's the standard bracket pool for the "final four"—and so the Commission has been in the position of exercising its enforcement discretion and not pursuing every case. The question is whether the Legislature would want to clarify the statute and allow other types of sports pools, as opposed to the \$100 sports pool. Mr. Ackerman suggested that if they didn't, the dilemma will continue regarding bracket pools not being authorized, and yet, they are clearly being done in a widespread way. He suggested that it was probably appropriate for the agency not to expend resources on one dollar bracket pools—which poses the policy question for the Legislature.

Senator Prentice responded that while the Legislature may have spoken, it certainly hasn't spoken recently on this issue. She affirmed they were certainly aware of this activity. She expressed concern that often these things are not as simple as they appear. She recalled the experience with Bacon Bingo—which didn't appear that complicated, and took the Legislature a couple of years to finally get something passed. She recalled the concern that it would look silly for big government to come in and tell a tiny little town that they couldn't have Bingo on Sunday's in a tavern; however, they were also sending a message that the Legislature was willing to look at something that apparently wasn't quite legal. Senator Prentice thought it would be a good message for the Legislature to say they are taking a look at a lot of things—and this is another issue that needed to be discussed.

Senator Delvin urged the Commission to look at the Legislation—he believed that anytime there are enforcement issues and it's in black and white terms, it gets rid of the gray area. He

advised staff to be prepared to justify the \$100 limit to the Legislators because he believed that would be something they are going to want to tinker with. **Senator Prentice** agreed.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** authorizing the Director and staff to pursue a draft proposal for consideration at the August meeting. *Vote taken; the motion passed with five aye votes.*

Director Day addressed the second proposed agency request legislation noting the Commission supported Senate Bill 5878 to clarify that Internet gambling was an illegal form of gambling. He noted the Internet didn't exist in 1973, and obviously there were no laws to address Internet gambling. The agency has tried to address Internet gambling in the state, and it has become more apparent that it is important to proactively seek clarification and get the RCWs to speak directly to Internet gambling, which would aid in the enforcement efforts. Director Day suggested that since the previous bill dropped by Senator Prentice was still in existence, it may be best for the Commission to tie in with the existing bill and work on that bill or some modification of the bill during the next session. **Senator Prentice** updated the Commission noting that because the bill didn't pass, the Legislature included it as a proviso along with the Lottery; and there was a move to veto that language. The Governor did not; therefore, the ban on Internet gambling is still very clear. However, Senator Prentice believed it would be better to have language in statute rather than in the budget proviso. She affirmed the Legislature was very much concerned. She noted the Lottery Commission does have a dilemma wherein they are supposed to raise money, and there isn't a lot of it available. She stressed the importance of developing a relationship between this Commission and the Lottery because it seemed clear they were not well informed.

Director Day commented that the Commission still has active investigations which will be continued. He advised that Internet gambling also expands to the horse racing arena and he believed the topic merits being directly addressed. The Commission and the Ex Officio members concurred that both agency request legislation concepts should be developed for further consideration.

Correspondence:

Director Day drew attention to an editorial response provided by the Commission to an article printed regarding Indian gaming in the state of Washington. Essentially the letter clarified the perception in the article and ensured that there was an understanding in that Indian gaming in Washington is extensively regulated by three different agencies from three different jurisdictions; the Tribal Gaming Agency, the Washington State Gambling Commission, and the National Indian Gaming Commission. The response letter clarified the Gambling Commission itself has 20 agents that exclusively work on Indian gambling, which resulted in approximately 865 regulatory visits in 2004 (approximately 70 per month). In addition, the Commission investigates the financing of each casino and investigates the criminal background of each of their employees involved in direct gambling activities. The response also emphasized the Commission's commitment to effective gambling regulation is as strong with tribal gaming as it is for non-tribal gaming. Director Day affirmed that staff is developing a communication strategy and trying to keep a closer eye on newspaper articles so the Commission may respond as appropriate.

Director Day affirmed that as requested by Commissioner Ludwig, an acknowledgement letter was directed to Attorney General McKenna concerning the professional work of Assistant Attorney General Paul Goulding's efforts in the Bullseye Distributing LLC case.

Monthly Updates:

Director Day addressed the Administrative Case Update, and noted the Bullseye case has been appealed to the Supreme Court for consideration. Addressing the Congressional Update, Director Day noted a bill has been introduced in the House that offers some amendments to the Indian Gaming Regulatory Act. It is directed primarily to requiring the National Indian Gaming Commission to approve people involved in Class II gaming and to further restrict the development of post 1988 lands. Staff will continue to monitor the bill. Lastly, Director Day addressed the Seizure Case Update, drawing attention to the fact that the Commission seized another vehicle and approximately \$4,000 relative to a bookmaking case at a pull-tab location in the Shoreline area.

Presentation – Rules Streamlining Process Quarterly Update:

Beth Heston, Project Manager, provided a quarterly update on the Rules Simplification Project. She reported that Chapter 05 - *Permitting and Licensing Rules* was scheduled to be finished March 14 of this year and was actually completed on February 28. Chapter 06 - *Rules for all Licensees* was scheduled to begin April 3, and was finished on March 31—the package was done before they were even scheduled to begin. Chapter 15 - *Card Room Rules* was scheduled to begin May 3; however, it is only three quarters of the way done. The *Manufacturer, Distributor, and Gambling Service Supplier* rules were scheduled to begin this week; however, the entire project is on hold as a result of a discussion about formatting which will be further discussed at the August meeting.

Ms. Heston identified the Card Room Rules Small Group members and noted the group met three times. She identified the New Card Room Small Group members and noted they met once and will meet again in July. Ms. Heston advised that she was looking for volunteers to serve on the Small Groups being formed for the Manufacturer, Distributor, Service Supplier, and Bingo Rules. Lastly, Ms. Heston advised she was also looking for volunteers for usability testing—having volunteers pretend that they want to obtain a pull-tab license, and checking to see if they can find what they have to do to get a pull-tab license and what it costs, in the rules. Staff is considering running parallel tests using the new and the old rules manuals and comparing their times. That would give staff a look at how much have we improved and whether there are still sticking points, as well as an indication on how different people approach using the rules. **Director Day** clarified that staff is taking a moment to refocus to make sure the new language (which has a much more informal style), and the informal nature of the redraft matches the Commission's legal needs. The project continues to move forward.

Presentation – Communication Strategy:

Amy Hunter, Communications and Legal Division Administrator explained that the Communication Strategy Project came about as part of the agency's Strategic Plan. It was listed as being an important priority. Staff met with most of the commissioners when the

strategic plan was being developed and received input in a wide variety of areas—and Commissioner Parker had some direct interest in conducting a public opinion survey. One of the comments received indicated that people don't know a lot about the Gambling Commission or what we do. The Communication Strategy Project has six major goals and the project coupled with the public opinion survey supports three of the goals: to maintain a regulatory environment that promotes compliance, to conduct business as simply as possible, and building and strengthening relationships.

Ms. Hunter explained the communication strategy was divided into four different sections. It is an 18-page document that addresses general tips on communication, oral communications, agency publications, and outreach activities. Ms. Hunter highlighted the expectations and anticipated activities within each of the activities. Oral communications included meetings with Legislators and other agency officials, media interviews, tips for telephone interviews and PowerPoint presentations. Ms. Hunter briefly addressed training that will be made available to agency leadership staff regarding public speaking and media preparation. Agency publications were defined as all correspondence and forms, the agency website, statistical booklets, an expanded annual brochure, and a new newsletter for Legislators and other government officials. Outreach activities included conducting a public opinion survey, training for staff on developing and delivering key messages, and contacting local officials, Legislators, media, and editorial boards. She affirmed agency staff plans to expand their level of contact with Legislators as well as other local public officials.

In relation to conducting a public survey, **Ms. Hunter** affirmed the Commission would have several different options. She reported that the Department of Personnel has pre-qualified businesses—25 organizations that have gone through a process with them and who are already listed to do professional service for customer surveys. The Washington State University also has an extensive survey process and the Commission could contract with them through an interagency agreement. Other options include conducting a phone interview and focus group survey, a mail survey, and Internet surveys. Survey costs vary depending on which survey is used, how many people are contacted, who develops the questions (internally developed or someone else assisting), who compiles the data, who analyzes the results, and what type of final report is desired. Ms. Hunter suggested that the different organizations that specialize in surveys would certainly be able to explain what a statistically valid number is and where a good place would be to start. She estimated the cost between \$30,000 to \$50,000, noting that some organizations charge a flat hourly rate, or they may charge based on the number of completed surveys.

Ms. Hunter anticipated doing some level of a Statement of Work in July, and she expected the process to take about four months depending on the contractor's schedules and several other parts of the system. She invited input from members of the Commission interested in assisting with the question development or any other aspect of the survey process.

Chair Niemi called for comments from the Ex Officio members, and inquired if they believed the Commission was more effective last session with their increased legislative contact approach.

Representative Wood affirmed. He said it was important for the Commission to continue to provide a heads up about what might be coming down the pike, and he believed it was almost as important, if not more important, to address the bills that didn't pass because they may reappear next session. **Senator Prentice** agreed it was absolutely essential. She emphasized laying the groundwork in advance of the session is most helpful—that session was not the time to be trying to persuade anyone. She explained that when the groundwork is laid in advance, by the time Legislators see agency staff again during session, they do remember at least a theme. She cautioned that most Legislators are not really willing to spend the kind of time the Gambling Commission Ex Officio members do on the whole issue of gambling because they are very uncomfortable with it—and while certainly some prior knowledge is essential, they'll make decisions often on who talked to them last, or who was the most persuasive. Senator Prentice affirmed the Commission was on the right track, and she advised that she hasn't heard negative things about the Commission. **Senator Delvin** offered a suggestion that the Legislative Newsletter be e-mailed to the Legislators—he believed it was an easier, less costly, and a more efficient manner to communicate not only with the Legislators, but their administrative staff as well.

Commissioner Ellis complimented the project development. He indicated that much of the information on the do's and don'ts in communicating would be very helpful to other state agencies. He asked if there was any procedure available for sharing this valuable guidance. **Ms. Hunter** responded that the Commission would certainly be happy to share the information.

Commissioner Parker stated that he appreciated the report and thought it was well organized and well presented. He commented about the public opinion survey, noting that the question for him wasn't so much about what are the public attitudes about gambling generally, but, more pointed questions about public attitudes about their perceptions of the types of gambling allowed. He explained that gambling is now so well established in our society and economy that it's not a question of whether the public is for or against gambling. Commissioner Parker believed the Commission needed to be more refined in our research of public opinion on what types of gambling they do, and what percentage of the public actually participates in gambling. He believed that as the Commission gets to know the public better and their position on gambling, the Commission could do more as regulators. He affirmed there should be questions about what types of trends are apparent from public opinion and research. Commissioner Parker liked the thought about teaming up with a higher education institution or someone who has credentials in this field in order to be cost efficient and credible. He commented that higher education institutions wouldn't have a particular axe to grind—and he noted the Commission was not trying to grind an axe one way or another—the Commission is simply trying to understand where the public is in there thinking, their behavior, and their trends.

Chair Niemi commented that she recently returned from the National Council of Legislators from Gaming States Convention, where she obtained a book that divided up the United States (west, south, mid-west, and northeast) and identified who does what kind of gambling in each location. She suggested that reference might be a good place for staff to start because some of Commissioner Parker's questions may already be answered in their public opinion poll.

Commissioner Orr agreed that what the Commission was trying to do was good—trying to communicate with everyone. He believed that the average non-gambler in the Washington assumes that when we talk about the Gambling Commission it includes Horse Racing and the Lottery Commission, and they don't understand there are three different organizations. He emphasized the Commission can't lose site of that fact. There were no further comments.

Presentation- Quarterly Activity Reports:

Dave Trujillo reported that at the last Commission meeting, the Commissioners expressed an interest in relation to processing penalties for late quarterly reports. Mr. Trujillo proceeded to describe the current process in place. He explained that there are due dates for the agency's final activity report, and that approximately two to three weeks in advance of that quarter end due date, staff sends out a courtesy notification. Once the quarter ends, the licensee has 30 days to file their report. If the licensee fails to file by the deadline, they are late; however, the Commission allows an additional seven to ten days before acting in order to allow the filings postmarked prior to month end to arrive. After seven to ten days, if the Commission still hasn't received an activity report, an extension letter is sent. Mr. Trujillo explained that for the second quarter of 2003, there were 297 extension letters prepared on the date the reports were considered late. However, only 229 letters were actually sent after the seven-ten day period, and after determinations are made on any places that have gone out of business. Licensees that have current pending administrative actions also do not receive extension letters.

Mr. Trujillo shared some of the unusual reasons and excuses that have been offered by licensees in explanation as to why their reports were filed late. He also emphasized that there are some legitimate reasons for being late, and in those cases the Commission is empathetic and understanding. After an extension letter is sent, the licensee has until the end of the month to file their report, and staff places a reminder phone call during the third week of the month. Once the extension due date passes, a settlement in lieu of charges is sent and the licensee has until that month end to respond. If the licensee fails to respond, the matter is referred for charges.

Ms. Hunter clarified that the Commission receives approximately 10,000 reports a year, or approximately 2,500 reports every quarter, and she affirmed the majority of the licensees are sending their reports on time. She explained that the Communications and Legal Division (CLD) gets the cases in one of four ways. One is when the settlement offer (the \$300 fine) has been rejected, or, if there hasn't been a response but someone has written back and said they don't want to pay \$300. Cases are also received in CLD if the licensee has a current case pending, or if they have an agreed order violation. Ms. Hunter explained that if the licensee was late with three reports, and part of the typical first settlement was that they agreed to file all their reports on time over the next two years—and if they were late, that case would automatically come to the legal division. Lastly, if a licensee has been late three out of the last eight quarters, the case would be referred to CLD for charges. Ms. Hunter reported that out of 115 existing cases, 14 cases were related to quarterly activity reports, which represents approximately 35 percent of CLD's workload.

Ms. Hunter explained the penalty structure. The first time a licensee would get a statement of charges is after they have gotten a phone call, after they've had extensions, and after they've had a settlement in lieu of charges. The first time, staff would settle the charges with a fifteen day suspension with 5 days deferred—if the licensee is late again, they have to serve those five days and then vacate the 10 days by paying a fine. As licensees violate agreed orders the days of suspension and fines payable increase with the second and third charge. At that point, administrative charges are issued (and CLD has the licensee's full history).

Over the last month, staff has been looking at possible other options. **Ms. Hunter** suggested that one option is to strictly adhere to the deadlines. The reports are due at the end of each quarter (April 30, July 30, October 31, and January 31). Another option would be to discontinue the 30 day extension letter. A third option is to have agents issue the Notice of Violation and Settlement (NOVAS)—much like a ticket, where the agent would give the person a \$200 ticket, and if they choose not to pay, they would receive administrative charges later. The fourth option would be to increase the fines. She cautioned that if the Commission stops doing some things, we may have to consider having agents issue tickets, for example, which may have a different impact on agency resources.

Staff's first recommendation would be to discontinue sending extension letters. Staff also recommends looking at some enhanced penalties—having a \$1,300 fine (instead of \$1,050) commencing in February, when the next reports are due. She noted that when the new rule is in place the reports will only be due every six months, which means the first report will be due January 30. An option would be to implement that with the reports that are due July 30; however, staff suggests advanced notification in the agency's newsletter would be appropriate to let the licensees know about the changes and the expectations, especially in relation to strictly adhering to deadlines.

Commissioner Ludwig advised that he liked all of the suggestions, particularly the notice of violation and the appropriate fines. He explained that the Commission has been talking about this for several months; however, he believed the people that need to know this information (the tavern owners that sell punchboards and pull-tabs) are never at the meetings. He asked why the Commission doesn't just send them a message on a card stock 8 ½ x 11 paper, simply saying something like "Penalties or Fines for Quarterly Report Violations are Increasing" in big bold letters—then set out the increased amounts on that notice. He stressed the need to get the attention of the people that are constantly violating this rule.

Commissioner Orr emphatically agreed. They both agreed the sooner the education could be provided, the better. **Director Day** agreed that an education campaign would be included in the plan before actual enforcement is initiated, and he reiterated the recommendation to start doing that education campaign now and then start the enforcement activities with the quarterly report due at the end of January. Commissioners Ludwig and Orr concurred.

Commissioner Ellis stated that he was curious about the relative impact of vacating the suspension vs. paid penalties, because in each instance a person may avoid any suspension by paying the fine. He asked whether many people simply have their licenses suspended because they can't pay the fine, or, because they decide it is more cost effective to have their license suspended. **Ms. Hunter** affirmed there are some; however, they are few and far

between—she suggested that perhaps three people a year don't have the money and prefer serving the time down over paying the fine.

Chair Niemi called for public comments.

Dolores Chiechi representing the Recreational Gaming Association welcomed Senator Delvin to the Commission and expressed a heartfelt “good-bye” to Commissioner Orr.

Gary Murray representing the Great American Gaming Association addressed the topic of planned legislation the Commission wished to endorse and bring forward. He asked if the Commissioners would be interested in comments from the industry or the general public before recommending draft legislation. **Director Day** responded that part of the process in developing a legislative concept included informal stakeholder contacts. Additionally, when the legislative presentation is made in August, there would be another opportunity for public and industry input.

2. **House-Banked Card Room Review:**
Red Dragon Casino, Mountlake Terrace:

The house-banked card room review for the Red Dragon Casino was removed from the agenda. **Mr. Trujillo** reported that there are 95 house-banked card rooms currently operating and there are nine applications pending.

3. **New Licenses, Changes, and Tribal Certifications:**

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-20. *Vote taken; the motion passed with five aye votes.*

4. **Defaults:**

T&C Davenport, Inc., d/b/a Town Tavern: (No representative present)

Amy Hunter reported that staff is requesting that the pull-tab license for Town Tavern be revoked for failure to submit their quarterly activity report for the fourth quarter, and failure to pay their gambling taxes. The business has been repossessed by the landlord and the landlord has paid all of the back gambling taxes. Staff is asking that the former owner's license be revoked. Charges were sent by regular mail, staff received no response, and by failing to respond Town Tavern has waived their right to a hearing. Staff requests that an order be entered revoking the prior owner's license.

Commissioner Orr made a motion seconded by **Commissioner Ellis** to enter into a default order revoking T&C Davenport, Inc., d/b/a Town Tavern's license to conduct punchboard and pull-tab gambling activities. *Vote taken; the motion passed with five aye votes.*

Kuhnles Tavern: (No Representative Present)

Ms. Hunter reported that Kuhnles Tavern has a Class D pull-tab license. Charges were brought based on their failure to submit their reports for the 4th quarter of 2004. Their report was due January 30, it was not received until April 22, almost three months late. The

licensee has a long history of not submitting their reports on time. The licensee was also late with the quarterly report that was due for the first quarter. The business is still open and an agent recently spoke with a bookkeeper. Charges were sent by regular mail, staff received no response, and by failing to respond Kuhnles Tavern has waived its right to a hearing.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to revoke Kuhnles Tavern's license to conduct punchboard and pull-tab activities. *Vote taken; the motion passed with five aye votes.*

Stephanie Pelio, Card Room Employee: (Ms. Pelio was not present)

Ms. Hunter explained that staff is requesting that Stephanie Pelio's Class III certification be revoked based on her failure to disclose her criminal history. The Class III certification is issued to employees such as dealers that work at tribal casinos. It is an individual certification—the Tribe issues a license and the Commission certifies the license. In this case, the Puyallup Tribe has already terminated Ms. Pelio. Staff is asking for the Class III certification to be revoked so that Ms. Pelio may not submit a transfer application to work as a (non-tribal) card room employee. The Director brought charges against Ms. Pelio, they were not returned, and staff received no response. Ms. Pelio has subsequently waived her right to a hearing.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** ordering Stephanie Pelio's Class III certification to conduct authorized gambling activities be revoked. *Vote taken; the motion passed with five aye votes.*

Catherine Chapman, Card Room Employee: (Ms. Chapman was not present)

Ms. Hunter noted that staff is asking that Catherine Chapman's application for a card room employee license be denied based on her failure to accurately and fully disclose her criminal history. The charges were sent by regular mail, they were not returned. A courtesy call was placed to Ms. Chapman's residence and a message was left with a gentleman asking him to let Ms. Chapman know of the deadline to request a hearing and also leaving the Commission's phone number if she had any questions. Staff received no response; therefore Ms. Chapman has waived her right to a hearing and staff is requesting a default order be entered denying her application.

Commissioner Orr made a motion seconded by **Commissioner Ellis** ordering Catherine Chapman's application to conduct authorized gambling activities be denied. *Vote taken; the motion passed with five aye votes.*

Glenn Cavazos, Card Room Employee: (Mr. Cavazos was not present)

Ms. Hunter reported that staff is requesting Glenn Cavazos' application be denied based on his failure to disclose criminal history including six criminal convictions. The Director brought charges against Mr. Cavazos by regular mail. They were not returned and staff received no response. Mr. Cavazos has waived his right to a hearing and staff therefore requests that a default be entered denying his application for a card room employee license.

Commissioner Orr made a motion seconded by Commissioner Ludwig ordering Glenn Cavazos' application for a card room employee license to conduct authorized gambling activities be denied. Vote taken; the motion passed with five aye votes.

Cory Bankhead, Card Room Employee: (Mr. Bankhead was not present)

Ms. Hunter advised that staff is requesting that Mr. Bankhead's Class III license be revoked based on his failure to fully disclose his criminal history, including a pending forgery charge. The Suquamish Tribe has already terminated Mr. Bankhead. Charges were brought and they were not returned. A courtesy call was placed to Mr. Bankhead and a message left on his answering machine reminding him of the deadline to request a hearing. Staff received no response, and by failing to respond Mr. Bankhead has waived his right to a hearing.

Commissioner Orr made a motion seconded by Commissioner Ludwig ordering Cory Bankhead's license to conduct authorized gambling activities be revoked. Vote taken; the motion passed with five aye votes.

Chrep Vat, Card Room Employee: (Ms. Vat was not present)

Ms. Hunter noted that staff is requesting that Ms. Vat's license be revoked based on her taking back part of a bet that she had already placed while she was playing as a patron at a house-banked card room in Lakewood. Charges were brought against her and they were not returned. Two courtesy calls were placed and messages left on Ms. Vat's answering machine reminding her of the deadline to request a hearing. There was no response and she has therefore waived her right to a hearing.

Commissioner Orr made a motion seconded by Commissioner Ellis ordering Chrep Vat's license to conduct authorized gambling activities be revoked. Vote taken; the motion passed with five aye votes.

5. Commission Chair/Vice Chair Elections:

Commissioner Orr made a motion seconded by Commissioner Ellis placing the name of Curt Ludwig in nomination for Chair. Commissioner Orr then made a motion seconded by Commissioner Ellis to close nominations for the Chair position. Vote taken; the motion passed unanimously (Commissioner Ludwig abstained).

Commissioner Ludwig responded that he was very grateful for the confidence that his colleagues have placed in him.

Commissioner Orr made a motion seconded by Commissioner Ludwig placing the name of Alan Parker in nomination for Vice Chair. Commissioner Orr made a motion seconded by Commissioner Ludwig to close nominations for the position of Vice-Chair. Vote taken; the motion passed unanimously (Commissioner Parker abstained).

Commissioner Parker expressed his appreciation.

6. Other Business/General Discussion/Comments from the Public:

Mike Moran commented that over the last 15 years he has been able to call George Orr his State Representative, a member of caucus they both worked for, and a friend. He offered his opinion that Commissioner Orr has done a wonderful job with the Gambling Commission and he thanked Mr. Orr for his service.

Director Day, on behalf of the staff, thanked Commissioner Niemi for her service as Chair this past year.

7. Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation/Adjournment:

With no further comments, **Chair Niemi** called for an executive session at 4:15 p.m. to discuss pending investigations, tribal negotiations and litigation. She announced no action would be taken subsequent to the executive session. At 4:55 p.m., Chair Niemi recalled the public meeting and adjourned the meeting until 9:30 a.m., Friday, June 10, 2005.

Minutes submitted by,

Shirley Corbett
Executive Assistant

**COMMISSION MEETING
FRIDAY, JUNE 10, 2005
DRAFT MINUTES**

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Seattle, Chair**
COMMISSIONER ALAN PARKER, Vice Chair, Olympia
COMMISSIONER CURTIS LUDWIG, Kennewick
COMMISSIONER GEORGE ORR, Spokane
COMMISSIONER JOHN ELLIS, Seattle
SENATOR MARGARITA PRENTICE; Seattle
SENATOR JEROME DELVIN; Richland

STAFF PRESENT: **RICK DAY, Director**
NEAL NUNAMAKER, Deputy Director
CALLY CASS, Assistant Director-Field Operations
AMY HUNTER, Administrator-Communications & Legal
DAVE TRUJILLO, Acting Administrator-Licensing
JERRY ACKERMAN, Assistant Attorney General
SHIRLEY CORBETT, Executive Assistant

8. Approval of Minutes – May 12-13, 2005:

Assistant Attorney General Jerry Ackerman offered a correction on Page 7 (the last sentence), amending the language so that the last sentence would read, “Mr. Ackerman believed part of the NIGC conundrum is that Tribes in some states are alleging that various states are still refusing to negotiate in good faith over Indian gambling.”

Commissioner Orr made a motion seconded by **Commissioner Parker** to accept the minutes of the regular meeting of May 12-13, 2005 as amended. *Vote taken; the motion passed with four aye votes (Commissioner Ellis abstained due to his absence from the meeting).*

9. Petition for Review:

Logs Restaurant, White Salmon:

Assistant Attorney General Sara Olson was present for the State as well as **Petitioner Ramona Halverson.**

Assistant Attorney General Olson explained that pursuant to Washington Administrative Code 230-50-560 sub paragraph (1) filing of a Petition for Review must be complete within 20 days of service of the initial order. Also pursuant to WAC, the service of the Initial Order is complete three days after mailing. In this particular case the Initial Order was signed on March 31, 2005. Service was complete on April 3, 2005, and the Petition for Review was due to be filed with the Commission on April 23, 2005. She explained a Petition for Review was never filed with the Washington State Gambling Commission. The Office of the Attorney General received a copy of the Petition for Review on April 20, 2005. The Office of Administrative Hearings also received a copy of the Petition for Review. On April 25, 2005, the Gambling Commission received a copy of a Declaration of Service and a copy of the Initial Order. The Declaration of Service indicated that the Petition for Review had been filed with the Office of the Attorney General as well as filed with the Office of Administrative Hearings. Ms. Olson explained it was never filed with the Gambling Commission, and the only way that the Gambling Commission even knew there was a Petition for Review in this case, was because she provided the Gambling Commission with a copy. Pursuant to those facts, the staff respectfully requests this petition be dismissed.

Ms. Halverson affirmed that she struggled with filing the review and tried to fill it out exactly as required and then handed them to an independent party for mailing. She advised that she didn't realize that the Commission didn't get a copy of the Petition for Review.

Chair Niemi recessed to an executive session at 9:40 a.m., to discuss whether to dismiss the petition due to untimely filing. She recalled the public meeting at 9:55 a.m.

Commissioner Parker made a motion seconded by **Commissioner Orr** to deny the petition to dismiss. *Vote taken; the motion passed unanimously.*

Chair Niemi proceeded with hearing the Petition for Review in this matter. Petitioner Halverson and Assistant Attorney General Sara Olson presented their cases. A copy of the hearing transcript is available upon request. At the conclusion of the testimony, Chair Niemi recessed the meeting for an Executive Session to deliberate the case, and then recalled the public meeting.

Commissioner Parker made a motion seconded by **Commissioner Orr** to affirm the findings and judgment of the Administrative Law Judge. *Vote taken the motion passed unanimously.*

Petition for Review:

The Roost, Inc. d/b/a/ Woodshed, Belfair:

Chair Niemi called the room and determined that Petitioner Lersedna Campbell was not present. **Assistant Attorney General Sara Olson** noted Ms. Campbell, owner of The Roost Inc., d/b/a The Woodshed, submitted a written request for a continuation of the Commission's review until the August meeting on June 8, 2005. She reported that Commission staff opposed this Motion to Continue for two reasons; Washington Administrative Code 230-5700 requires that the motion be made immediately upon receipt of the Notice of Hearing, and, that the Motion to Continue must contain specific detailed

information regarding why the Motion to Continue is being filed. **Ms. Olson** reported the Notice of Hearing was mailed to the petitioner on May 26, and the Motion to Continue was not received until two days ago. Additionally, there is no indication as to why a continuance is necessary other than they were unable to attend, which doesn't provide the Commission with notification as to why a continuance is necessary. Ms. Olson requested that the Motion to Continue be denied.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to deny the Motion to Continue, and, because a representative from the Woodshed was not present, to enter a Default Order affirming the Initial Order. *Vote taken; the motion passed unanimously.*

Commissioner Ludwig voiced his opinion that his vote would have been different had there been some explanation as to why the licensee needed or deserved a continuance.

10. Recreational Gaming Activities:

WAC 230-02-505:

Ms. Hunter explained this rule deals with recreational gaming activities, which are typically held in conjunction with some type of a holiday party. True gambling is not occurring because participants are using scrip, or fake money. However, the Commission issues licenses to the people who have professional equipment which is why the rule is before the Commission. Two major issues have been identified, whether or not poker can be allowed at these activities, and staff would support that change; and secondly, how many times a year the events may be conducted. The current rule only allows two events per year. Testimony was received last month from Geri Windecker with Wild Bills, one of the companies that provide the professional equipment. She expressed concern about being restricted to two times a year, especially when they are working with a large organization that has multiple departments or locations such as Microsoft. A letter was recently received from West Coast Casino Parties, another distributor, and they address the same concerns that restricting the events to two times a year is not helpful.

Staff has developed and recommends filing Alternative #2 for further discussion. It allows poker and allows two events per year for a "single department of an organization, business, or association." Staff would require that the people providing the service send the Commission a monthly schedule of activities they are being contracted for, and they must also identify any prior recreational gaming activities that were conducted by a licensed distributor on behalf of that organization. This will enable staff to continue to track the locations and control the equipment. Staff believes the events should be limited to two times a year because they were not intended to be full-time activities, and retains the scope of a limited event. Ms. Hunter also noted that one of the original suggestions was that the events should be open to the public, and staff did not believe that was the intent for the activity. She explained that if Alternative #2 is filed this month it can be heard for final action in August.

Commissioner Ellis inquired if there were some typographical errors in the draft rule—the initial sentences focus on a single department of an organization, business or association; however, the third sentence addresses whether a licensed distributor contracts with an "organization's department, business or association." He believed it should probably say "if

a licensed distributor contracts with a department of an organization or department or association.” **Ms. Hunter** affirmed there was a switch in the description and a wrong effective date, which would be corrected.

Chair Niemi called for public comments.

Dan Blagovich, President of West Coast Casino Parties explained that the rule allows for two RGA’s per year, per company or organization. He advised that he understood the concern that if RGA’s were opened up, the Commission may have the possibility of getting multiple phone calls from people who believe these activities might be illegal activities, which would require the Commission to follow up on the calls.

Currently, the licensees have been operating RGA’s for over a dozen years under the assumption that each division may in fact have two events. The goal now is to get rule clarification for future enforcement. If the proposal goes into effect allowing only two events, **Mr. Blagovich** believed the opposite goal would be achieved. Instead of getting calls from the public thinking the activity is illegal, the licensee’s would have to call the Commission to make sure, for example, that Microsoft’s IT Department did not in fact already have two parties. He reported that licensees conduct approximately 300 parties a year, and, in order to get those 300 parties a year there are many quotes, which would equate to approximately 4,800 (90 per week) calls to the Gambling Commission to clarify whether or not a specified company/department had already conducted a party in order not to exceed the authorized two events.

Mr. Blagovich believed the rule proposal would be contradictory to what the Commission is trying to achieve. He explained the rule would affect the licensee companies, their employees, and event planners; and he provided copies of response letters from the event planners, venues, and employees affirming they would be impacted.

Mr. Blagovich offered some suggestions on automating the Commission’s phone system in response to public inquiries regarding RGA’s without having to use agency manpower to return the calls. He also suggested the Commission Website could also list legal activities in an attempt to alleviate calls.

Commissioner Parker responded to Mr. Blagovich’s comments regarding a licensee calling the Commission to verify RGA numbers/locations and questioned if there was any legal impediment in making a website log for the criteria. He agreed that would seem to be a fairly efficient manner compared to having to make phone calls. He liked the idea of having some kind of a search process and wasn’t sure whether there would be an issue of public information in terms of listing everyone who has sponsored an event. **Mr. Blagovich** expressed concern that if people were able to check the website for the companies/departments hosting events, they could become targets to go to for future business; whereas, currently if he requests information from the Gambling Commission it has to be very specific for non-solicitation purposes. If the information is posted on the website, he was confident it would be used for solicitation.

Mary Jo O'Neill from Events Extraordinaire agreed with Mr. Blagovich's comments. She also provided copies of letters from people that would be affected. She addressed another issue relating to working with event planners—noting that when she files her monthly report of activity with the Commission, it goes under the name of event planner, and if she only conducted two events for one event planner, her business would suffer tremendously. Ms. O'Neill agreed the licensees don't want to post who they are doing business with because it is proprietary information as far as each business is concerned. Ms. O'Neill also noted that Microsoft doesn't know what the rest of Microsoft has done, and she didn't see how it was possible to put the burden on the licensee of trying to figure out what has happened previously in a company. She noted another way to get business is through venues—they have a group coming in and they will contact the licensee to make arrangements for the party. The contract comes through the venue, and she questioned if they would they be limited to two events (citing the Westin Hotel), noting this is only for fun—it is not gambling it is just gaming. Ms. O'Neill affirmed that the New Rule #1 would be the easiest for the licensees to comply with.

Geri Windecker from Wild Bill's Interactive Events supported New Rule Alternative #2 because she believed it would solve a lot of the licensee problems. She echoed Mr. Blagovich's comments and also provided copies of response letters.

Jacque Bergoneaut from Columbia Tower Club advised the Commission the situation at hand would severely limit his capabilities to work with the various companies. There were no further comments.

Ms. Hunter recommended the Commission file Alternative #2—staff's rationale in the rewrite of Alternative #2 was to require that the businesses ask “have you had other events in the last year”—which staff did not feel would be an overwhelming burden to be asking. She also clarified the Commission does post the names of all the licensees on the website. The Commission has a similar situation with pull-tab distributors—they have to make sure they are selling to licensed operators, and the Commission posts all the operators so they can double check that they are in fact selling to someone who has a license. She affirmed it would not be out of the ordinary for the Commission to be posting where activities are occurring.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to file Alternative #2 for further discussion. *Vote taken; the motion passed unanimously.*

Director Day clarified that the current rule restricts the activities to two events per organization, and, Alternative #2 basically would allow two per division or department in an organization, which does relax the current rule.

11. Problem Gambling Fee:

WAC 230-04-208:

Ms. Hunter stated the rule is a repealer of the of the Problem Gambling Awareness Fee the Commission passed last fall and was to become effective on June 30. When the rule was passed there was a lot of discussion about whether the Legislature was going to pass a law

that dealt with Problem Gambling, which is why the Commission inserted a sunset clause noting the rule would go away should that happen. Additionally, the final Legislation passed also had a clause preventing the Commission from imposing a fee for Problem Gambling purposes as long as the B&O tax was in effect. By virtue of the Commission's rule and the law, this fee no longer exists. Staff recommends filing the repealer for further discussion.

Commissioner Ludwig made a motion seconded by Commissioner Orr to file for further discussion the repeal WAC 230-04-208, noting it is simply a formality in view of the Legislature's adoption of Engrossed Substitute House Bill 1031. Vote taken; the motion passed unanimously.

12. Raffles:

WAC 230-20-325 and WAC 230-20-335:

Assistant Director Cass reported that Item 12-A is a proposed amendment to WAC 230-20-325 which discusses the manner for conducting a raffle. The rule supports the recent budget reductions by simplifying the raffle regulations and by including requirements in the rule directly. The rule currently allows tickets to be drawn in an alternative drawing format. It also allows tickets to be sold at a discount. If an organization wants to operate an alternative drawing format or offer tickets at a discount they must currently have a raffle license and written approval prior to holding the event. The proposed amendment describes approved alternative drawing formats and discount plans for organizations to follow and eliminates the need for staff to review and provide written approval for alternative drawing formats and discount plans.

Currently incentives for selling raffle tickets is limited to nine cash awards, and the fair market value of the awards may not exceed \$10 or two percent of the raffle gross gambling receipts. The proposed change allows the fair market value of the incentives to increase to five percent or less of the gross gambling receipts. Subsection (5) also affirmatively states that raffle tickets may not be sold over the Internet. There are no statements against the proposed rule change at this time, and staff recommends filing for further discussion.

Commissioner Orr made a motion seconded by Commissioner Ellis to file the amendatory section for WAC 230-20-325 as recommended for further discussion. Vote taken; the motion passed unanimously.

Ms. Cass noted that Item 12-B contains proposed amendments regarding members-only raffles. The changes are very similar to WAC 230-20-325 except they address members-only raffles. Members-only raffles are raffles where qualified organizations sell tickets only to their members and all phases of the raffle are completed on the same day, at the same location, and without interruption. Organizations offering members-only raffles must have a license and staff's written approval before operating any of these events. As in WAC 230-20-325, the proposed rule change will add specific descriptions for authorized member-only alternative drawing formats for licensed organizations. The changes are specified in Subsection 10 of this rule. It eliminates the written approval process for these activities. In addition, the amended Subsection 11 allows an increase in non-cash sales similar to rule

WAC 230-20-325. There are no statements against the proposed rules change at this time. Staff recommends filing for further discussion.

Commissioner Ludwig made a motion seconded by Commissioner Orr to file WAC 230-20-335 as recommended for further discussion. *Vote taken; the motion passed unanimously.*

13. Credit and Pricing Restrictions:

WAC 230-12-330, WAC 230-12-340, WAC 230-12-345, WAC 230-12-350, and WAC 230-12-320:

Ms. Cass explained that as a matter of background, Items 13-A through 13-E are part of the Commission's budget reduction plan.

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

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

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

manufacturers and the distributor may again make purchases using 60-day terms. Staff then files the notice and monitors the situation, which creates quite a work load.

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

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

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

Ms. Cass stated that Item 13-C is a proposed repealer to WAC 230-12-345 which requires gambling equipment such as card tables to be used or rented on a cash basis. This rule was adopted in 1997, when house-banked card rooms were authorized to mirror WAC 230-12-340 which prohibits credit between manufacturers, distributors, and operators. The rule currently requires manufacturers and distributors to report the delinquent accounts to the

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

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

Item 13-E is a repeal proposal to WAC 230-12-320. This rule limits the amounts of gifts that manufacturers, distributors, and operators may offer as incentives to purchase their goods. The original intent was to prevent the influence over one another in the different marketing levels and to limit the amount of gifts the different levels may offer to each other. The rules were intended to control the marketplace activities and the competition. The proposed amendment removes the restrictions related to gifts and promotional items between the manufacturers, distributors, and operators, and the Commission would no longer be involved in how companies reward buyers with their merchandise. Staff recommends filing the rule for further discussion.

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

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

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

to repeal WAC 230-12-330 the prohibition against discriminatory pricing, and WAC 230-12-340 the rule that prohibits credit. She reported that she sent letters and some rule proposals with possible compromise language for Commission staff/Rules Team consideration and further discussion with the industry in an effort to reach a mutual agreement on addressing the staff's concerns while at the same time not deregulating this portion of the industry. **Ms. Magnuson** noted the discriminatory pricing rule has been in effect since "day one"—to prohibit discriminatory pricing and require manufacturers to sell to all distributors in the marketplace on the same terms. Since that rule has been in place, other states have also used the rule to solve problems they experienced within their jurisdictions.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. McCoy echoed that sentiment, noting the bottom line is that the Commission does have the authority and the reason, and after several more pages of discussion, a vote was taken unanimously passing and adopting the rules package. He reiterated that vote was taken eight years ago and since then there have been virtually no debt problems or complaints about predatory marketing. Mr. McCoy felt this was a very successful policy. He suggested the industry is in exceptionally good health from a regulatory perspective, which means the

Commission could eliminate the position; however, still keep the rules package in tact and establish a section on the Commission's website allowing the manufacturers/distributors to post their pricing and sales notices and credit violations for all to see. This would give the field agents the audit information they need should a complaint arise. **Mr. McCoy** urged the Commission to deny the filing of these proposals and pursue the alternative solutions to the problem. **Commissioner Ludwig** thanked Mr. McCoy for the historical research on the rule.

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

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

Jay Gerow from ZDI Distributing advised that he has been a distributor for 23 years, and unlike everyone else, he was in favor of the repeal of this section. Over that time period the industry has gone up and down. He affirmed that at one point there were 27 distributors that were facing bankruptcy and his company was not one of them due to good business practices. He emphasized that he would like to see a fair market. He noted that in terms of size, his company is probably rated number three or four. He also noted his license fee is based on the volume of business they conduct and therefore he has to pay a higher volume than a small distributor. However, he affirmed that right now, the small distributor is unable to buy products at the same price as the larger distributors, which he believed was contradictory to what the rules are about. He reiterated that he would like to see a fair market—noting it's very restricted and doesn't allow for a lot of marketing. Mr. Gerow advised the market was very stagnant and he felt that part of the decline was attributed to the fact that distributors weren't allowed to do any creative marketing; and they would like to see something change. **Commissioner Ellis** addressed the restrictions on credit and verified if distributors were able

to get bank financing to the extent they were needed. **Mr. Gerow** affirmed; however, he reported his company has never needed to do so. **Commissioner Ellis** verified that as a practical matter, that area was not an important concern. Mr. Gerow affirmed.

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

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

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

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

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

industries. He advised he would support the motion to file in order to have further opportunities to consider the considerations and their impacts.

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

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

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

14. Other Business/General Discussion/Comments from the Public:

With no further comments, **Chair Niemi** announced the next meeting would be held on August 11-12, in Vancouver, and adjourned the meeting at 11:55 a.m.

Minutes by,

Shirley Corbett
Executive Assistant