

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

Date: May 30, 2014

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

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

The proposed new rule also provides:

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

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

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

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

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

Summary of letters supporting the petition:

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

Summary of letters opposing the petition:

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

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

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

May 2014 Commission meeting:

Persons testifying in support:

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

Persons testifying in opposition:

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

April 2014 Commission meeting:

Persons testifying in support:

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

Persons testifying in opposition:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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