



STATE OF WASHINGTON
GAMBLING COMMISSION

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

**January Gambling Commission Meeting Minutes
Hybrid Meeting held at the
Washington Liquor and Cannabis Board
January 5, 2023**

Commissioners Present:

Chair Alicia Levy
Vice Chair Julia Patterson (Via Teams)
Bud Sizemore
Sarah Lawson (Via Teams)

Ex Officio Members Present:

Senator Steve Conway (Via Teams)
Representative Shelley Kloba (Via Teams)

Staff Present:

Tina Griffin, Director; Chris Wilson, Deputy Director; Lisa McLean, Legislative Manager; Suzanne Becker, Assistant Attorney General (AAG); George Schultz, IT; and Julie Anderson, Executive Assistant

Staff Present Virtually:

Gary Drumheller, Assistant Director; Julie Lies, Tribal Liaison; Kriscinda Hansen, CFO; Jess Lohse, Special Agent and Acting Rules Coordinator

There were seven people in the audience and 61 people virtually. Senator Conway and Representative Kloba joined later in the meeting.

Chair Levy welcomed everyone to the January 5th, 2023, meeting of the Washington State Gambling Commission at 9:33 and asked Director Griffin to call the roll to ensure a quorum. At 9:34 the Commissioners went into Executive Session to discuss current potential agency litigation with legal counsel, including tribal negotiations. The public portion of the meeting is expected to reconvene at 10:30 AM.

At 10:30 AM Chair Levy announced that Executive Session would be extended another 30 minutes.

At 11:05 the public meeting reconvened. Chair Levy adjusted the agenda starting with tab 2.

Tab 2

Petition for Reconsideration

Doug Van de Brake, Assistant Attorney General and Andrea J. Clare, Attorney at Law for the licensee presented the materials for this tab. This matter came before the Commissioners of the Washington State Gambling Commission ("Commission") at the Commission's regularly scheduled meeting on January 5, 2023, in Olympia, Washington, on Petitioner The Pub Tavern's Petition For Reconsideration of the Commission's Final Order On Petition For Review. Ms. Andrea Clare, attorney, represented The Pub Tavern. Assistant Attorney General Doug Van de Brake represented the Washington State Gambling Commission's agency staff. The Commission

had before it the entire record of the prior proceedings relating to this matter, as well as additional pleadings prepared for the presentation of the instant motion. The Commission also heard argument by Doug Van de Brake on behalf of the agency staff and Andrea Clare for The Pub Tavern.

Following review of the record and finding no basis to reconsider its previous decision, the Commission denied Petitioner The Pub Tavern's Petition for Reconsideration and affirmed its Final Order On Petition For Review issued on October 13, 2022. The stay of the Final Order was lifted effective immediately.

Tab 1

Consent Agenda

Chair Levy asked the Commissioners if they had any changes to the consent agenda. There were none.

Public Comment:

Chair Levy asked for public comment. There was none.

Commissioner Sizemore moved to approve the consent agenda as presented by staff.

Commissioner Lawson seconded the motion.

The motion passed. 3:0

Director's Report

Director Griffin reported that the Problem Gambling Task Force has finalized their report and findings. The final report was issued from the task force in late December and submitted to the legislative committees at that time. The final report is listed on our website.

Tab 3

Budget Presentation

Krisinda Hansen, Chief Financial Officer (CFO) presented the materials for this tab. CFO Hansen presented a short PowerPoint on the agency's financial position.

Commissioner Sizemore asked if the agency had a three or four month capital reserved as per the Office of Financial Managements (OFM) requirements. **CFO Hansen** replied that OFM does not require a specific amount of working capital reserve, however many agencies set aside two to two and a half months of working capital reserve. She stated that because our revenue is cyclical due to the quarterly licensing our working capital reserve is a three-month balance. **Senator Conway** asked about the agencies vacancy rate. **CFO Hansen** replied that the budget presented represents being fully staffed. He asked a follow up question regarding if the agency was currently understaffed. **CFO Hansen** replied that the agencies most recent employee count is 100.

Chair Levy asked for any other questions. There were none.

Tab 4

Request to Initiate Rule Making – Increase License Fees

Lisa C. McLean, Legislative/Policy Manager and Rules Coordinator (LPM) presented the materials for this tab. **LPM McLean** began her presentation by reiterating the RCW 9.46.070(5)

requires the Commission to set fees to generate funds necessary to cover all costs of regulation, licensing, and enforcement.

In the last 20 years, the Commission has increased fees approximately every five years (1998, 1999, 2002, 2003, 2007, and 2014). The last fee increase was an across-the-board increase of 6 percent effective November 2014.

At its inception, a license fee structure was created primarily based on a “class” system with 25 fees. By 2017, the fee structure had grown to approximately 194 different fees for commercial organizations, nonprofit organizations, and individuals. In September 2017, staff introduced to the Commissioners several new and amended rules designed to simplify the fee structure and eliminate the “class” system and advance payment of annual fees. Commissioners voted to file the draft rules for further discussion.

In January 2018, Commissioners approved the new and amended rules, creating a new license fee structure. The simplified license fee structure established base fees by license type, set fee rates as a percentage of gross gambling receipts, and established maximum annual fees. This new license fee structure became effective in May 2018.

Although the gambling industry has largely recovered from a significant contraction due to the COVID-19 pandemic, the number of licensees has decreased. While there were 2,920 organizational licensees as of September 30, 2019, the number has declined to 2,545 as of September 30, 2022. This decline in licensees has caused revenues to flatten. At the same time, operating costs continue to increase in this inflationary period to include increases in salaries and benefits, supplies and equipment, and government services from agencies such as the Attorney General’s Office and Department of Enterprise Services.

The current license fees are not projected to be sufficient to cover the agency’s costs of licensing, regulation, and enforcement beginning in fiscal year 2024.

Staff recommends initiating rulemaking to address license fee increases to cover the cost of licensing, regulation, and enforcement.

Chair Levy asked if there were any public comment. There were none in the chat or on the website.

Commissioner Sizemore urged staff to make sure we evaluate each component going forward so that we are doing the best by our licensees to generate the revenue necessary.

Commissioner Patterson moved to initiate rulemaking as proposed for further discussion.

Commissioner Sizemore seconded the motion.

The motion passed. 4:0

Tab 5

Request to Initiate Rule Making – Sports Wagering Vendor License Fees

Lisa C. McLean, Legislative/Policy Manager and Rules Coordinator (LPM) presented the materials for this tab. **LPM McLean** stated that on March 25, 2020, Governor Jay Inslee signed House Bill 2638, authorizing sports wagering for Class III Tribal facilities under terms negotiated in Tribal-State Compacts.

Effective August 30, 2021, the Commission amended WAC 230-05-170 (1) to add license fees for three different types of sports wagering vendors:

- Major Sports Wagering Vendor - \$65,000
- Mid-Level Sports Wagering Vendor - \$10,000
- Ancillary Sports Wagering Vendor - \$5,000

A major sports wagering vendor provides integral sports wagering goods or services. A mid-level sports wagering vendor provides services or equipment related to data, security, and integrity. An ancillary sports wagering vendor provides necessary sports wagering support services.

LPM McLean mentioned at the time of adoption, Tribal partners and stakeholders expressed concern regarding the high license fees. Due to the concerns expressed, the Commission agreed to reevaluate the license fees for sports wagering vendors before the second year of renewal at the end of June 2023 since there was not enough data on the actual costs incurred before the first renewal period. She also stated that as sports wagering is an authorized Tribal-only gambling activity, the costs to the Gambling Commission for licensing and enforcement must be supported by licensing fees collected from sports wagering vendors. The expenses related to licensing and enforcement should not be passed on to the licensees not benefiting from the activity. The amount of the vendor fees established in 2021 was based on the Commission's best estimate of the costs associated with both licensing and enforcement of a new gambling activity and its best guess of the number of vendors who would be applying for each license type. Now that the Commission has experienced a year of licensing and enforcement of these vendors, it has the necessary information to determine vendor fees. **LPM McLean** stated that staff recommendations are to initiate rulemaking to facilitate further discussion of the sports wagering vendor license fees.

Chair Levy asked if there were any public comment. There were none in the chat or on the website.

Commissioner Sizemore moved to initiate rule-making proceedings as proposed for further discussion on sports wagering vendor license fees.

Commissioner Lawson seconded the motion.

The motion passed. 4:0

Tab 6

Petition for Discussion and Possible Filing – Wager Limits for House-Banked Card Games

Jess Lohse, Special Agent (SA) presented the materials for this tab. SA Lohse said Vicki Christophersen, representing Maverick Gaming, is proposing to amend WAC 230-15-140 as follows:

- Increase the maximum single wagering limit from \$300 to \$500 for all house-banked gaming tables. Provided that if the licensee has a “high limit room” they may increase the single wagering limit to \$1,000 for a select number of high limit tables as follows:
 - Cardrooms with 1-5 total tables – no more than 1 high limit table; or
 - Cardrooms with 6-10 total tables – no more than 2 high limit tables; or
 - Cardrooms with 11-15 total tables – no more than 3 high limit tables.
- Add a definition of “high limit room” meaning a clearly identified area of the gaming facility separated by a permanent physical barrier or a separate room in the gaming facility.
- Restrict access to high limit tables in the high limit room to only prescreened players and players who are not self-excluded from gambling or exhibit problem gambling behaviors.

SA Lohse stated the reasons the petitioner feels the change is necessary:

- To reflect current economic conditions and customer demand; and
- Wagering limits have not been increased since 2009 and operating costs have increased significantly since then; and
- Minimum wage has nearly doubled since 2009 and supply chain issues and inflation has had a negative impact on card room revenue; and
- To keep the wagering limits for card rooms fair and consistent with competitors, specifically Tribal casinos. Tribal compacts have been steadily amended to increase wagering limits at their casinos.

The petitioner feels the effect of this rule change will allow house-banked card rooms to compete on a more level playing field with Tribal casinos.

At the August 2022 meeting Commissioners accepted a petition and chose to initiate rulemaking to amend WAC 230-15-140 related to wagering limits for House-Banked card games. However, Commissioners expressed several questions they had and information they felt they needed before proceeding forward.

- Option A: Allows for wagering limits over the current maximum limit of \$300 but not to exceed \$500 under certain conditions. Conditions include: 1) limits over \$300 must be approved in internal controls; 2) only three tables are authorized to have limits greater than \$300; 3) the licensee must establish a designated space (i.e. a high limit room/area) for tables where limits over \$300 will be played; 4) problem gambling signage must be posted in the high limit room/area; and 5) verification that players are not on the self-exclusion list prior to them gambling at limits greater than \$300.
- Option B: Increases the maximum wagering limit from \$300 to \$500 for a single wager.
- Option C: Increases the maximum wagering limit from \$300 to \$400 for a single wager.
- Option D: Increases the maximum wagering limit from \$300 to \$500 for a single wager. In addition, it allows for wagering limits up to \$1,000 under certain conditions. Conditions include: 1) limits over \$500 must be approved in internal controls; 2) only three tables are authorized to have limits greater than \$500; 3) the licensee must establish a designated space (i.e. a high limit room/area) for tables where limits over \$500 will be played; 4) problem gambling signage must be posted in the high limit room/area; and 5)

verification that players are not on the self-exclusion list prior to them gambling at limits greater than \$500.

On August 10, 2022, Tony Johns, General Manager of Chips/Palace Casino in Lakewood, WA, sent a letter to the Commission on behalf of Evergreen Gaming in support of the petition to raise wagering limits.

On September 28, 2022, staff held a stakeholder meeting to discuss the wagering limit petition. There were 14 participants from the gaming industry. The consensus was support for the petition to raise wagering limits for house-banked card games. No participant in the meeting was against raising wagering limits.

On September 28, 2022, staff held a meeting with tribal partners to discuss three outstanding petitions to include the wagering limit petition.

On October 26, 2022, the petitioner submitted two documents to the WSGC.

On December 1, 2022, the petitioner submitted an untitled document to the WSGC describing various wagering limits for different states. WSGC staff has not independently verified the alleged facts contained in the document.

Chair Levy asked if commissioners had any questions. **Commissioner Patterson** asked for clarification. **Chair Levy** remembered that at the August 2022 meeting Commissioner Reeves had a lot of questions and even Representative Kloba had some concerns and specific questions. She asked staff if they could go back through the August 2022 transcripts and minutes to determine if the questions were answered for a full understanding, wanting a little more time prior to choosing one option over another. **Commissioners Sizemore** asked if after hearing from all the Commissioners today, would there be enough information to move this process along. He stated that would be his proposal. **Commissioner Lawson** supports the rule change and would also like to see the information verified by staff.

Chair Levy asked if the public had any questions.

Vicki Christopherson, from Maverick Gaming spoke. She said, *“Thanks again for continuing to work on this important proposal. I guess what I want to start with is Lisa and your finance person basically made our case. The same reason that you are seeking to increase license fees, those issues with respect to the cost of doing business, it hasn't been since 2018 that our wager limits have been adjusted. It's been since 2009. We're now on 14 years without an adjustment to the wager limit in card rooms. So for the industry, when we look at the fact that it is in fact shrinking, it is a very difficult industry to be in, and making sure that the companies can remain solvent just as the commission needs to do as well. I think it's important that these issues that we bring forward in rule petitions are addressed in a timely manner.*

You're right, the hearing happened in August, and Jess will correct me, I'll have to go back and look at my email, but I'm pretty sure we provided all of this information in September-ish, maybe

October, which seems to me to be enough time to get some verification about the information that we provided. The state's wager limits information we provided is publicly available and we only compared of states that had commercial wagering, commercial gaming like ours so that we could be doing an apples to apples comparison. I understand in talking to many folks over the last several months that there's some policy concerns or questions around whether high limit in the thousand dollars range is the right way to go. And to me that issue, it's fair to say that that issue needs some more discussion and something we would be willing to continue to do. But with respect to the adjustment from three to our suggested 500, honestly, to us, that seems fairly routine given that it's been since 2009, since our wager limits have been adjusted.

It does not out of the ordinary. And again, given the constraints and the realities that all businesses including state agencies are dealing with now, the cost of workers, the cost of benefits, the cost of supplies and goods, the cost of food, everything is going up. And you can see the consolidation happening in our industry, it's happening partly because of these issues. And in our opinion, the commission has an obligation to work with us to ensure that the industry can remain solvent.

We have a bit of frustration in that we have now four rule petitions before you, three of them have been 10 months with no discussion or action, this one since August. And so I understand the desire for more time. At the same time we really look to collaborate. We're not going to oppose fee increases. That's obviously something that comes with our work with the commission, but we just ask for the same consideration for our businesses as we continue to go forward. So I would hope that the commission could move forward with initiating rulemaking on the \$500 limit. That still gives you plenty of time because you wouldn't be adopting it now. You'd be directing staff to draft language, which then you could continue to get answers to your questions while that conversation is going on. A delay in initiating rulemaking until March then puts us again several months until some action can be taken. So that's our request. I appreciate the consideration, appreciate the complexities, and we stand ready to answer any questions. Thank you”.

Luke Esser spoke on behalf of the Kalispel Tribe. He said, “And our interest in this rule's petition was initially drawn by the petitioner's reference to tribal gaming as was indicated on the first page of the staff report. The final bullet under the petitioner feels this changes as needed for several reasons. And the final bullet initially was to keep the wagering limits for card rooms fair and consistent with competitors, specifically tribal casinos. And I think we have hopefully put that issue to rests with the discussion about how fundamentally different tribal gaming is as created on and regulated under India Gaming Regulatory Act at the federal level versus the state structure for commercial gaming.

I am among those who thought that there was going to be a thorough review by staff in the lead up to this discussion as to the foundations of the authorization by the legislature for the card rooms in the state of Washington. And while Maverick certainly has the right to present their response to that background, I think the commission would benefit from a more objective analysis.

And one point I'll make, but I don't think it's been addressed at all, is that it is still part of state law RCW 9.46.070 about the gaming commission. The commission shall have the following powers and duties sub two to authorize and issue licenses for a period not to exceed one year to

any person association or organization operating a business primarily engaged in the selling of items and food or drink for consumption on the premises. And so I think the commission should, before even entertaining an increase in these betting limits, go back and take a look at the foundation that the legislature has provided to you for the whole construct of card room gaming in the state of Washington.

And the final point I want to make is regarding inflation and the suggestion that there's a merited increase, your staff has done a good job of pointing out that there's been four different benchmarks over time for the betting limits in the card rooms, the initial \$25 in 1997, up to \$100 in 2000, up again 2004 to \$200, up again in 2009 to \$300. And if you examine each of those and adjust for inflation, it's only the most recent of those for which there would be any argument that an inflationary adjustment is warranted. So I would encourage you to have staff verify that I took a look at my own numbers on usinflationcalculator.com, so I'm no expert in the field. But for most of those different benchmarks that have been adopted over time, you're already above with the current \$300 limit what inflation would've called for at this point in time. So I think there's a lot of unanswered questions for the commissioners to gather more information on before making a and rendering a judgment on this proposal. So thank you for the opportunity to share those thoughts”.

Commissioner Patterson stated she was ready to make a motion, she thought testimony was pretty compelling for how the commission has been delaying the process. And, then no explanation as to what the outstanding questions are that our staff have broadly addressed. For the record, she stated that she feels that unless the commission explains exactly what they don't know or that we're uncomfortable about, we should move forward.

Chair Levy asked for further comment and a motion.

Commissioner Sizemore read RCW 9.46.070 subsection two , which describes business primarily engaged in selling items of food or drink in to the record. He also said that there is a different part of the statute 9.46.0217 that is the definition of commercial stimulants, and it doesn't include the term primary. He asked about the conflicting interpretations of the two. He wanted to make sure that the agency is staying within the boundaries of their RCW and authority.

Director Griffin stated that we do have a definition for commercial stimulant in WAC.

Commissioner Lawson agreed that she would like to see more analysis of the information that was put forward to be done by commission staff that would be a bit more objective. She would still like to see the minutes from the prior discussion to really be able to draw those lines linking the questions that were asked by each commissioner and the answer that was provided by the petitioner in the materials. As well as additional time to read and analyze the RCW and the WAC and come to some sort of conclusion about what those statutes and regulations say.

Commissioner Sizemore expressed concern about the \$1,000 high limit proposal and suggested removing that from the options provided.

*Commissioner Patterson moved to go forward with Option B, which will increase the maximum wagering from, \$300.00 to \$500.00 for a single wager.
Commissioner Sizemore seconded the motion.
The motion passed. 4:0*

Commissioners took a five-minute break.

Tab 7

Petition for Final Action - Pull-Tab Inventory Control

Jess Lohse, Acting Rules Coordinator, presented the materials for this tab. In November 2022, the Commissioners chose to file draft language for further discussion. The petition is up for final action.

Chair Levy asked if the petitioner was on the phone or in the audience. He was not. Chair Levy asked if there was any public comment. There was none.

*Commissioner Sizemore moved to approve final action as presented by staff, making the rules effective 31 days after filing with the Code Revisor.
Commissioner Patterson seconded the motion.
The motion passed. 4:0*

Tab 8

Legislative Session Update

Lisa C. McLean, Legislative/Policy Manager and Rules Coordinator (LPM) presented the materials for this tab. **LPM McLean** stated that our HB 1132 will be introduced into the community safety justice and re-entry committee on the house side. It is expected to go from there to appropriations.

Chair Levy asked if there were any public comments or comments from the Commissioners. There were none.

The commission meeting adjourned at 1:07 PM.