



## Concise Explanatory Statement

### Notice of Permanent Rule Changes Related to License Fees

This explanatory statement concerns the Washington State Gambling Commission's amendments to:

- WAC 230-05-160 Charitable or nonprofit organization fees
- WAC 230-05-165 Commercial stimulant organization fees
- WAC 230-05-170 Fees for other businesses

The Administrative Procedure Act ([RCW 34.05.325\(6\)](#)) requires agencies to complete a concise explanatory statement before filing amended rules with the Office of the Code Reviser. This statement must be sent to anyone who provided comments about the proposed rulemaking.

Once persons who gave comment during this rule-making process have had an opportunity to receive this document, the Washington State Gambling Commission will file the amended rules with the Office of the Code Reviser. These changes will become effective on June 30, 2023.

The Washington State Gambling Commission appreciates your involvement in the rule-making process. If you have any questions, please contact the WSGC Rules Coordinator at [rules.coordinator@wsgc.wa.gov](mailto:rules.coordinator@wsgc.wa.gov) or at (360) 486-3454.

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### What are the agency's reasons for adopting these rules?

Although the gambling industry has largely recovered from a significant contraction due to the COVID-19 pandemic, the number of licensees has decreased in the last three years. This decline in licensees has caused the Gambling Commission's fee revenues to flatten, while operating costs continue to increase in this inflationary period. 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, which is why an adjustment to the base fees, the quarterly gross gambling receipts rate, and the maximum fees are necessary.

In the case of the electronic raffles and sports wagering vendor fees, these activities are new activities that require adjustment based on an enhanced understanding of the level of effort required to conduct the agency's core functions of licensing, regulation, and enforcement. On the one hand, the electronic raffle activity has required a greater level of staff effort unforeseen when the activity was first launched; and on the other hand and after a year of sports wagering operations, the Commission has greater knowledge of the actual costs associated with licensing the sports wagering vendors and, therefore, should reduce the fee(s).

### The Rule Development Process

The Commission introduced this rule proposal at the January 5, 2023 Commission meeting, and filed the CR-101 with the code reviser on January 13, 2023. It was a topic for public discussion at

the March 9-10, 2023 Commission meeting and the April 11, 2023 Commission meeting. In addition, Commission staff held stakeholder meetings for all licensees on February 13 and 27 and separate Tribal partner meetings on February 13 and 27. The CR-102 with the proposed rule was filed with the code reviser on March 20, 2023. The rule-making hearing on the proposed rule was held at the regular Commission meeting on May 11, 2023 where the Commission heard public comment. As is its practice, the Commission also welcomed public comments via email and through a webform on the Commission's website.

**If there are variances from the proposed rule and final adopted rule, state the reasons for the differences (RCW 34.05.325(6)(a)(ii)).**

There are no variances from the proposed rules filed with the CR-102 and the final adopted rules.

**Summary of all public comments received on this rule proposal and Commission response to the comments**

Public comments fell into five categories: sports wagering vendor fees, electronic 50/50 raffles, fundraising event operators, card rooms, and pull-tab operators. In this document, comments will be grouped together by topic, and the Commission's response will follow the comments.

**SPORTS WAGERING VENDOR FEES**

**February 13, 2023 letter**

Jeff Ifrah, General Counsel of IDEA Growth, wrote to respectfully recommend that the Commission reduce base license fees for all three levels of sports wagering vendors. Ifrah argued that current fees are not only higher than fees for vendors in similar on-premises wagering jurisdictions, they are also higher than fees used for mobile sports wagering in many states.

**February 27, 2023 letter**

Ernest C. Matthews, IV, Vice President and General Counsel of Internet Sports International (ISI), Ltd. in Las Vegas, NV, wrote in support of the Commission's rule-making effort to reduce license fees for sports wagering vendors. ISI's arguments are that the current license fees are not rationally related to costs incurred by the agency for licensing and enforcement purposes; are exorbitant compared to license fees charged to other WSGC-licensed commercial vendors; and, are so high as to make sports book operations cost-prohibitive for Tribes with small venues or remote locations.

**March 7, 2023 letter**

Dustin Klatush, Chairman of the Confederated Tribes of the Chehalis Reservation, wrote in support of the effort to reduce the adverse impact of certain higher licensing fees on Tribal casino locations, such as Lucky Eagle Casino & Hotel, which have a lower population customer base and/or are in more remote parts of the state, making them unable to offer a competitive product to the market. The high fees have significantly limited competition for operating consulting

partners for smaller locations, limiting the economic benefit of sports wagering to all Tribal casino operations across the state.

### **March 8, 2023 letter**

Michael Rasmussen, CEO of Willapa Bay Enterprises Corporation, wrote in support of the letter submitted on February 27, 2023 by Internet Sports International, Ltd. Rasmussen added that the current high fees assessed on potential sports betting suppliers make it difficult for Tribes to take advantage of this new gaming activity, especially if the Tribe is in a remote location or an area of low population density.

**WSGC RESPONSE:** The Commission acknowledges these public comments and believes that the significant reduction in the major, mid-level, and ancillary sports wagering vendor fees addresses the concerns raised in the public comments. After a year of sports wagering, the Commission has a better understanding of its costs to carry out its responsibilities authorized under the compacts and their appendices. The rule will reduce the license fees for vendors before the second year of renewal at the end of June 2023.

### **ELECTRONIC 50/50 RAFFLES**

#### **February 13, 2023 Stakeholder Meeting**

Eric Pettigrew of the Seattle Kraken noted that the electronic 50/50 raffle is a relatively new activity registering a great deal of initial success in helping the nonprofits. The jump in fees [for electronic 50/50 raffles] will affect licensees' ability to hire people and do things in a mobile fashion. He asked if the Commission would consider a slower ramp up so that electronic 50/50 raffles can complete the overall expansion [across all major sports teams].

Agreeing with Pettigrew, Natalie Ojeda of Seattle Sounders Football Club noted that most of the groups doing electronic 50/50 raffles are nonprofits, and the money is going back into the community.

#### **February 22, 2023 Teams Meeting**

WSGC Director Griffin and staff met with representatives of the Seattle Seahawks and Seattle Kraken to discuss the Commission's proposal for increasing base fees, gross gambling receipt rate, and maximum fee for electronic 50/50 raffles. The sports team representatives explained that the fee increase is coming at a time when not all local sports teams have had a chance to engage in the new electronic raffle activity, and the proposed new fees might make it impossible for them to join in the future. Commission staff explained the challenges faced in licensing and regulating this new activity and the unique characteristics of the new activity that make it more costly to license and regulate than at first expected. After the meeting, staff provided further information on the staff effort via email and answered additional questions.

### **March 9-10, 2023 Commission Meeting**

Drew Johnston, Director of Government Affairs and Compliance with the Seattle Seahawks, commented on behalf of the qualified sports teams to express their concerns of the significant fee hike that is unique to electronic 50/50 raffles. The teams did recognize that the agency's costs have exceeded projections, and they appreciated the Commission working with them to slightly narrow those fees down, but the fact remains that it is a significant jump, especially on gross receipts, and will result in Washington having the highest 50/50 fees in the nation. That fact concerns the teams regarding the long-term viability of the activity and its ability to maximize charitable benefits for Washingtonians. The teams plan to submit a letter to further detail their concerns and some ideas on how to grow the game and make it a long-term benefit for Washington.

### **April 6, 2023 via letter**

The major Washington sports teams – the Kraken, Mariners, Seahawks, and Sounders FC – wrote to acknowledge their understanding that the Gambling Commission's regulatory costs for the new electronic 50/50 raffle activity has exceeded expectations. They appreciated the Commission's decision to bill only for actual pre-operational review expenses. Nonetheless, the teams hope that, as the activity matures in Washington, the regulatory costs will decline with corresponding decreases in fees so that the activity can survive and provide charitable benefits to communities in Washington.

**WSGC RESPONSE:** The Commission acknowledges these public comments related to electronic 50/50 raffles; and, after the initial public comments received on February 13, the Commission reduced and restructured the initial draft proposed increase of fees related to this activity. The proposed rule filed with the CR-102 contained this adjustment. The Commission believes that the revised fee increase reflects the increased costs of regulating this activity.

### **FUNDRAISING EVENT OPERATORS**

#### **February 13, 2023 Stakeholder Meeting**

David Trout, counsel to many service suppliers, noted that, as fees go up, participation decreases. Other states have witnessed this phenomenon. The charitable gaming community is more sensitive to price increases.

#### **February 14, 2023 via email**

Brian Keller of Let It Ride Casinos, Inc. wrote to oppose the increase in charges for companies that run fundraising events for nonprofits. The Legislature already limits these events to \$10,000, and the activity comes with a number of complicated requirements. Increasing the maximum fee from \$1,000 to \$1,600 (a 60% increase) is punitive to the people that are trying to raise money where government funds fall short. Without the help of these companies, nonprofits would have to stick to bake sales and auctions.

**WSGC RESPONSE:** The Commission acknowledges these public comments related to companies running fundraising events for nonprofits; and, after the initial public comments received on February 13, the Commission reduced the initial draft proposed fee adjustment. The proposed rule filed with the CR-102 contained this adjustment. The structure of the Commission’s fees – with a base fee, a percentage of gross gambling receipts, and a maximum fee – was adopted in 2018 with the goal of creating a system that would reflect the level of staff work involved in licensing, regulation, and enforcement. The Commission believes that the adjusted fees are an accurate reflection of the Commission’s costs for regulating this activity.

## **HOUSE-BANKED CARD ROOMS**

### **February 13, 2023 Stakeholder Meeting**

Vicki Christopherson, representing Maverick Gaming, raised a general concern. The inflation that the Gambling Commission faces is something the card rooms face as well. She urged Commission staff to keep that in mind when the operators come to the Commission with ideas to keep card rooms viable. She believed that the discussion on license fees was disconnected from other conversations between the Commission and the card rooms regarding rules.

Victor Mena of Last Frontier and New Phoenix noted that the proposal is the highest rate increase in 15 years.

### **March 9-10, 2023 Commission Meeting**

Josh Herschlip with Buzz Inn Steakhouses was against the proposed fee increase and noted that his business was also dealing with inflation – all of which cannot be transferred to the customer. As license fees are increased, the number of card rooms necessarily will decrease (until there are no card rooms). Herschlip asked the Commission to figure out ways to help businesses generate revenue and not just increase fees, reiterating the need to find ways to modernize the industry. He considered the proposed 60 percent increase large even if it was only going to affect the top three businesses. Everyone wants to be one of those top three, and it should not be punishment for doing a good job. Increases are coming from everywhere (minimum wage, but also wages for managers), but the avenue for revenue generation seems very limited.

Barry Murray from Imperial Palace commented on the reference made to top three card rooms, which are in the \$15-16 million revenue range. Their fee comes out to be a 0.25-0.3 percent fee. Still, there were 29 card rooms paying the capped fee and operating at a mid-range of \$5 million or so. Something to keep in mind when it is capped and not based on a percentage. For the middle of the road and bottom people – they are the ones really getting punched on this increase. The card rooms are certainly on record against the fee increase. With the fee increase, the 38 house-banked card rooms will soon go down to 28 because it is not viable.

**WSGC RESPONSE:** The Commission acknowledges these public comments related to house-banked card rooms; and, after the initial public comments received on February 13, the

Commission reduced the initial draft proposed fee adjustment related to this activity. The proposed rule filed with the CR-102 contained this adjustment. The structure of the Commission's fees – with a base fee, a percentage of gross gambling receipts, and a maximum fee – was adopted in 2018 with the goal of creating a system that would reflect the level of staff work involved in licensing, regulation, and enforcement. The Commission believes that the adjusted fees are an accurate reflection of the Commission's costs for regulating this activity.

## **PULL-TAB OPERATORS AND DISTRIBUTORS**

### **February 14, 2023 letter**

Wendy Winsor, CFO of WOW Distributing, wrote as a pull-tab distributor, noting that the Commission fails to distinguish between pull-tab distributors and other types of distributors. The pull-tab distributors sell paper purchased from licensed manufacturers that can only be sold to licensed operators. This middleman role is significantly different from other licensed distributors (a point made during fee simplification in 2017-18). As such the pull-tab tickets are essentially "double-taxed" by charging both the manufacturer and the distributor 3.146 percent of gross gambling receipts. The pull-tab operator pays the Department of Revenue based on gambling revenue and can deduct the tax paid. Pull-tab distributors are in a unique situation and require a unique solution. If Commission fees are based on the level of staff effort needed in relation to the license class, there is very little need for Commission staff to interact with pull-tab distributors who provide information to the Commission regarding a manufacturer or an operator. In fact, WOW Distributing spends a significant amount of its own effort educating individuals on the pull-tab rules, confirming license status of operators, documenting and transmitting documentation related to sales and purchases of licensed products – all services for which it charges no fee.

### **February 27, 2023 Stakeholder Meeting**

Wendy Winsor of WOW Distributing asked if the Commission had ensured that costs aligned with fees on pull tabs, which have gone up dramatically. Could the Commission re-evaluate the cost of regulating pull-tab distributors to ensure they are not getting double-taxed?

### **February 28, 2023 via email**

Carolyn Kenyon of Freedom Flies, LLC asked how businesses are expected to pay for the fee increase and if there were any proposals to reduce taxation. She suggested that maybe payouts should be deducted all across the board.

Richard E. Fritton II of Home Plate Clubs, Inc. wrote to strongly object to the proposed 10 percent base fee increase and 6 percent quarterly gross gambling receipt rate increase. He noted that the increase would cost his business nearly \$5,000. Fritton noted that prices for pull tabs have increased 15 percent, minimum wage has increased dramatically, costs of all goods have increased. He noted that Washington State University had reviewed several possible scenarios for what sports betting in Washington could look like and analyzed the potential revenue and economic impacts (e.g., jobs) under each scenario. Based on that study, Fritton stated that the

projected impact of retail sports betting at Tribal casinos could be as much as \$322 million. Thus, he did not think it was reasonable to increase fees for pull tabs when there is other new revenue being generated from sports wagering. He noted that neighborhood service businesses, such as Home Plate Clubs, are as important to the communities served as the casinos are.

### **March 1, 2023 via email**

John Schoeffler of Swinging Doors in Spokane wrote to explain that he and his wife operate a dead game service in Spokane called Games A Weigh, servicing roughly 50 accounts in eastern Washington. They can attest to the higher costs for food and beverage products, pull-tab games, taxes, and labor. Schoeffler is also a manager at Swinging Doors, a high volume pull-tab licensee by today's standards – although, by no means, close to the gross sales of its heyday. Schoeffler believes that the pull-tab industry in Washington could greatly benefit from a Pull-Tab Dealer license, which would be similar to obtaining a Food Handler's permit or a Class 12/13 Liquor Service permit. Under this suggestion, individuals dealing pull tabs at any licensed operator would be required to obtain a Pull-Tab Dealer permit, which would require attendance in person or online at a training class every 1-2 years, which would cover important rules and regulations and touch on the topic of problem gambling. If individuals were caught stealing, they could have their permits revoked. Fees collected for the permit would help offset rising costs for the Commission without adding further costs to the licensees. Schoeffler recommended a dealer fee of \$50-\$100 to obtain a permit and each renewal. He also recommended that the term of each permit be no more than two years so that knowledge of pull-tab rules and regulations is renewed often, and Commission revenue is more substantial.

Bob Materne, Jr. of the Swinging Doors noted that, if the increase in the license fees for pull-tab operators was to ensure regulation and enforcement in the coming years, the Commission should be aware that there will be no pull-tab operators in the coming years if the fees continue to increase. The cost of games has gone up, the cost of labor has gone up, the cost of the dead game service has gone up, and the margins are shrinking. After more than 20 years of increases without being able to raise "prices" from \$1 per tab maximum, operators recently were allowed to charge \$2 and \$5 per ticket. The license fees should be based on gross receipts less payouts. If a customer buys \$20 worth of pull tabs and wins \$500, the business is \$480 in the hole and has to pay fees on the \$20. Businesses have survived COVID shutdowns and are dealing with significant levels of inflation, supply chain issues, and product shortages. Pull-tab operators will not survive if they do not get some sort of relief, such as sports gaming, perhaps. Some may not want "expansion of gambling," but pull-tab sales have gone from over \$3 million per year in the mid- to late 90s to just over \$1 million per year now. Take \$2 million dollars out of any small business, increase every aspect of their financial operation, and see how many survive.

Dennis Stanger of Stangcorp Inc. noted that pull-tab operators continue to have their margins squeezed. The cost of the games are up as much as 50 percent in the last few years. Cities increased the gambling tax by 20 percent on gross receipts a few years ago. The Commission

increased Stangcorp's license by 38 percent during fee simplification. While pull-tab operators are now allowed to charge \$2 and \$5 for games, the cost of the games have gone up well over \$100. There is no way to make up for the lost margins because operators cannot raise the cost of individual pull tabs. Every time there is some sort of increase, it is the operator who takes the hit with no way to pass it on to the customer.

### **March 9-10, 2023 Commission Meeting**

Bill Tacket, operator of Buzz Inn Steakhouses, has been in the industry since 1973. Pull tabs have traditionally been a stimulus for bars and taverns. If one does well in the food & beverage business, they can do well in the pull-tab business. It supports 795 families today, but it faces the same problems of rising costs that the Commission faces. Paper costs went up \$2,000 per restaurant. A business only uses 30 percent of the pull-tab paper that it buys, while 70 percent has to go to the landfill for security purposes. If the staff of the Commission could just work with the businesses to modernize the pull-tab industry – while respecting the regulatory limitations – it could all prosper.

### **March 10, 2023 via email**

Todd Phelps of Screaming Yak, Morty's Tab & Grille, and Fieldhouse Pizza & Pub noted that his businesses have spent the last three years trying to recover from the COVID closures. They continue to struggle due to slow business, high wages, significant employee turnover, and recruitment difficulties. Increasing taxes on small businesses would be another hit to the bottom line. Business cannot continue to experience tax increases from every agency in the state. At some point, it will cease to be worth continuing to sell pull tabs.

### **March 28, 2023 via email**

Barbara Jones – affiliation unknown – wrote to oppose the increase of the price for pull-tab games. That increase by the manufacturers – coupled with the proposed increase in license fees – makes it hard to keep up with the costs. The pull-tab operators have no ability to raise the price for pull tabs to offset these ongoing increases.

**WSGC RESPONSE:** The Commission acknowledges these public comments from pull-tab distributors and operators; and, after the initial public comments received on February 13, the Commission reduced the initial draft proposed fee adjustment. The proposed rule filed with the CR-102 contained this adjustment. The structure of the Commission's fees – with a base fee, a percentage of gross gambling receipts, and a maximum fee – was adopted in 2018 with the goal of creating a system that would reflect the level of staff work involved in licensing, regulation, and enforcement. The Commission believes that the adjusted fees are an accurate reflection of the Commission's costs for regulating this activity.