

1 MISSOURI GAMING COMMISSION

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6 Open Meeting

7 July 27, 2016

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MISSOURI GAMING COMMISSION

Open Meeting

Missouri Gaming Commission
3417 Knipp Drive
Jefferson City, Missouri

July 27, 2016

BEFORE: Herb Kohn, Chairman
Thomas Neer, Commissioner
Brian Jamison, Commissioner
Larry D. Hale, Commissioner
Rick Lombardo, Commissioner

REPORTED BY:
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1 (WHEREUPON, the open meeting began at
2 11:01 p.m.)

3 CHAIRMAN KOHN: We'll call the
4 meeting of July 27, 2016 Missouri Gaming Commission
5 meeting to order. Angie, please take the roll.

6 MS. FRANKS: Commissioner Lombardo.

7 COMMISSIONER LOMBARDO: Present.

8 MS. FRANKS: Commissioner Neer.

9 COMMISSIONER NEER: Present.

10 MS. FRANKS: Commissioner Hale.

11 COMMISSIONER HALE: Present.

12 MS. FRANKS: Commissioner Jamison.

13 COMMISSIONER JAMISON: Present.

14 MS. FRANKS: Chairman Kohn.

15 CHAIRMAN KOHN: Present. We have a
16 quorum. We're ready to proceed with the meeting,
17 and the first item of business today will be a
18 consideration of the minutes for our meeting of
19 June 29. Is there a motion to approve.

20 COMMISSIONER LOMBARDO: So moved.

21 COMMISSIONER HALE: Second.

22 CHAIRMAN KOHN: Angie.

23 MS. FRANKS: Commissioner Lombardo.

24 COMMISSIONER LOMBARDO: Approve.

25 MS. FRANKS: Commissioner Neer.

1 COMMISSIONER NEER: Approve.

2 MS. FRANKS: Commissioner Hale.

3 COMMISSIONER HALE: Approved.

4 MS. FRANKS: Commissioner Jamison.

5 COMMISSIONER JAMISON: Approved.

6 MS. FRANKS: Chairman Kohn.

7 CHAIRMAN KOHN: Approve.

8 MS. FRANKS: By your vote, you've
9 adopted the minutes of the June 29, 2016 meeting.

10 CHAIRMAN KOHN: As you all know, and
11 this is partly for our audience, this is a special
12 meeting, not ordinarily scheduled in July, but we
13 decided that the proposed regulations and rules for
14 the fantasy sports project were important enough
15 that we should take the time to meet in person and
16 go through those rules.

17 And this is the first of several
18 meetings and actions that we'll be taking in
19 connection with the proposed rules for fantasy
20 sports betting. And the presentation will be made
21 by Ed Grewach, our General Counsel, but before, Ed,
22 you start, we've asked Ed to prepare a timeline
23 because I think it's important for everyone to
24 realize not only the numerous steps that are
25 involved in approving these regulations, both the

1 emergency ones and the permanent ones, but also the
2 length of time that's involved in the process.

3 So, Ed, would you please go through
4 the timeline.

5 MR. GREWACH: Yes. Thank you,
6 Mr. Chairman, Commissioners. You'll see on the
7 agenda today two sets of rules, one set of
8 emergency rules and one set of proposed rules.

9 Now, the emergency -- the law does
10 not become effective till August the 28th, which is
11 a Sunday. So if approved by the Commission today,
12 both sets of rules will be filed with the Secretary
13 of State and the Joint Committee on Administrative
14 Rules of the Legislature on August 29th.

15 Now, the emergency rules become
16 effective ten days after filing with the Secretary
17 of State. So the effective date of the emergency
18 rules will be September the 8th, 2016.

19 Now, pursuant to Section 536, in the
20 rulemaking process there's a series of notices,
21 publications in the Missouri Register and
22 timetables that are involved in the rulemaking
23 process. And part of that is that after that
24 filing, there'll be a public written comment period
25 that will start on October the 3rd, 2016, and will

1 end with a public hearing that will be held on
2 November 2nd, 2016. Now, on the November 2nd
3 public hearing, people will be able to come and
4 make oral comments on the rules as well as on that
5 date file any last-minute written comments that
6 they have.

7 Now, all those rules -- all those
8 comments that we have to the rules will then be
9 incorporated into a final order of rulemaking. So
10 when you see the final order of rulemaking, you'll
11 see the proposed rules, you'll see all the comments
12 that we receive, you'll see our response to the
13 comments. Either we'll say no, that's something
14 let's say that in this case that's controlled by
15 the statute, we don't have authority to waive or
16 modify statutory provisions, or we might say, no,
17 we don't think that's in the State's best interests
18 to agree to the change you've suggested or we might
19 agree to the change and make the change.

20 So when that final order of
21 rulemaking is then drafted, then that document,
22 those documents are then presented to the
23 Commission, and that will happen on the
24 December 7th, 2016 Commission meeting. Now, on
25 that date, then, the Commission can vote on those

1 final orders of rulemaking. It can make whatever
2 adjustments it desires, the Commission desires to
3 make on the final orders. You'll have the staff's
4 recommendations as to the comments, but the
5 Commission is obviously in no way bound to that,
6 and then the Commission at that point in time will
7 make a ruling on the final order of rulemaking.

8 The emergency rules by law are only
9 effective for 180 days, and the -- there's a
10 process even after the December 7th meeting in
11 which the commissioners will approve a final order,
12 permanent order of rulemaking that we need to go
13 through as far as publication in Missouri Register,
14 review by the Joint Commission of Administrative
15 Rules. And so the actual effective date of the
16 permanent rules would be March the 30th, 2017.

17 CHAIRMAN KOHN: Thank you, Ed. So
18 although we'll be discussing these rules today, the
19 emergency rules today and the Commission members
20 may have questions, we will not be taking any
21 comments from the public.

22 MR. GREWACH: That's correct, because
23 the comment period by law is that October the 3rd
24 through November the 2nd time period, and by law we
25 have to incorporate those into the final order of

1 rulemaking. So we would not legally be in a
2 position to accept public comment at this point in
3 time.

4 CHAIRMAN KOHN: Anybody have any
5 questions about the timeline?

6 COMMISSIONER LOMBARDO: Ed, I have a
7 question. Emergency rules become effective 180
8 days from September 8th, 2016. Final permanent
9 rules become effective on March 30th, 2017. I
10 haven't counted, but I'm going to guess that that's
11 more than 180 days, more like 200 days.

12 MR. GREWACH: It is. There's
13 inevitably a gap between the expiration of
14 emergency rules and the effective date. In this
15 case the emergency rules will expire on March the
16 6th, 2017, and the permanent rules not will not
17 take effect till March 30th, 2017.

18 COMMISSIONER LOMBARDO: So do we have
19 24 days without rules?

20 MR. GREWACH: It's not 24 days of
21 anarchy, though, because the statute is very
22 detailed in the requirements of the operator. So
23 the operators will still be subject to all the
24 statutory requirements during that 24-day time
25 period, gap between those two.

1 CHAIRMAN KOHN: You don't see that as
2 an issue? It won't be a problem?

3 MR. GREWACH: We don't see that as a
4 problem. We've dealt with it basically every time
5 we've ever had a set of emergency and proposed
6 rules. It's very common. We don't anticipate any
7 problem happening. Probably aided by the time
8 frame because the key in the rules, as you'll see
9 later on, on the annual operation fee, we require
10 the annual operation fee report to be filed by
11 January the 15th. However, the payment's not due
12 till April the 15th. So this 24-day gap will not
13 be in a gap where anything crucial as far as the
14 rules are concerned is occurring.

15 COMMISSIONER JAMISON: But if there's
16 a violation of the rules between those two dates,
17 then would the same disciplinary process happen or
18 would it have to go through a different venue if it
19 wasn't in our rules?

20 MR. GREWACH: It would go through the
21 same venue. We could not prosecute a violation of
22 the rules during that 24 -- that occurred during
23 that 24 days, but we could prosecute a violation of
24 any statutory provision that occurred during that
25 24 days.

1 COMMISSIONER JAMISON: So basically
2 there would be 24 days, then, that not so much the
3 licensing, but if there was a violation of the
4 rules couldn't be enforced during that period of
5 time?

6 MR. GREWACH: That's correct.
7 Although I think when you go through the rules
8 later, you'll see that the rules really don't
9 expand very much on the statute itself, once again
10 being as specific as the statute is. And we're
11 comfortable that the statute gives sufficient
12 protection to cover that.

13 On top of being comfortable with
14 that, there's really no option. The rulemaking
15 process just has time periods built into that which
16 are tied to publication dates of the Missouri
17 Register, which are tied to review time periods by
18 JCAR, the Joint Commission, and that simply doing
19 it as expeditiously as possible, March 30th is the
20 earliest date we can have final rule, permanent
21 rules effective.

22 CHAIRMAN KOHN: Any other questions?
23 Okay. Thank you, Ed. I think that helps a lot to
24 put into context what we're going to be doing today
25 as step one. Deputy Director McGrail, are you

1 ready to proceed?

2 MR. McGRAIL: Mr. Chairman, Tab B is
3 consideration for the emergency rules, which
4 General Counsel Ed Grewach will make the
5 presentation.

6 MR. GREWACH: Thank you. On June the
7 10th, 2016, the Governor signed House Bill 1941
8 titled the Missouri Fantasy Sports Consumer
9 Protection Act. As I indicated before, the law
10 will become effective on August 28th, 2016.

11 One provision of that statute 313.970
12 states that any fantasy sports operator who's
13 operating prior to April the 1st, 2016, and who
14 files an application by October the 1st, 2016, is
15 grandfathered in, can continue operating during the
16 pendency of the investigation and licensure
17 process.

18 The ordinary rulemaking notice and
19 time periods that we talked about before would not
20 give us the ability to have permanent rules in
21 place until March. So we're going to have a
22 situation where we have to have applications ready
23 to be accepted by October 1st. We have certainly
24 the possibility that we may even have someone
25 licensed by the end of the year, just depending on

1 how quickly the investigations of the applications
2 go, and hence the need to have the set of emergency
3 rules.

4 As indicated, emergency rules will be
5 effective ten days after they're filed. The
6 statute also requires, simultaneous with the
7 emergency rules, the filing of the proposed rules
8 so they can then proceed along and become effective
9 close to the same time period as the expiration of
10 the emergency rules. We've talked about the public
11 comment period.

12 Now, as a staff, we -- anticipating
13 the likelihood that the Governor would sign the
14 bill, we began work on drafting these regulations
15 on May the 12th of 2016 when the Legislature
16 approved the House Bill. We in that process
17 reviewed and followed the negotiations and
18 different drafts of the bill that came through. We
19 have reviewed legislation in other states that have
20 regulated fantasy sports. We reviewed and looked
21 at studies and reports done by both the trade
22 associations and independent sources on fantasy
23 sports.

24 Six other states that have approved
25 legislation regulating fantasy sports all did so

1 approximately the same time as we did. So one
2 thing we didn't have initially were other sets of
3 regulations to study, to compare to ours to see if
4 there are any ideas that maybe other states had
5 come across.

6 CHAIRMAN KOHN: Can you tell us those
7 six states?

8 MR. GREWACH: I can, yes. This is
9 before Excel spreadsheets, this is what I used.

10 CHAIRMAN KOHN: I like that better.

11 COMMISSIONER JAMISON: It doesn't
12 look like before. It looks in lieu of.

13 MR. GREWACH: After last month's
14 George Jetson reference, I thought I'd throw that
15 in.

16 But Massachusetts actually adopted --
17 the attorney general there adopted regulations.
18 They didn't do it by statute, but the Massachusetts
19 attorney general adopted regulations. Virginia,
20 Colorado, New York, Indiana, Mississippi and
21 Tennessee.

22 Now, of those, while we were in the
23 process of drafting our rules, Tennessee then
24 adopted a set of rules. And so I had spoken with
25 the general counsel of the secretary of state,

1 who's the regulatory agency there in Tennessee.
2 I've reviewed those rules, and we were able to use
3 some of their ideas, information, and we shared
4 some with them as well between the two states, kind
5 of coordinating our efforts in the rulemaking
6 process.

7 CHAIRMAN KOHN: Where's Nevada?

8 MR. GREWACH: Nevada did not adopt
9 anything additional. Nevada took the position that
10 fantasy sports constituted sports wagering, and
11 that anyone who wanted to conduct fantasy sports in
12 Nevada had to go ahead and just apply for a license
13 under their existing statutory and regulatory
14 framework.

15 So far there's only been one company
16 that has done that in Nevada. So Nevada didn't
17 adopt any new laws or any new regulations. They
18 just said this fits under our existing definition
19 of sports wagering. Therefore, you need to apply
20 for that, for that license.

21 CHAIRMAN KOHN: Okay.

22 MR. GREWACH: We reached out to the
23 Fantasy Sports Trade Association. We reached out
24 to operators. This is an industry, I think as we
25 indicated last meeting, which is really dominated

1 by two large companies, DraftKing and FanDuel, and
2 estimates run between 90 and 95 percent of the
3 market is controlled or held by those two
4 companies.

5 Information we have indicates that
6 there's approximately 70 small companies that
7 divide up the rest of the market share. Two of
8 those small fantasy sports operators are actually
9 located in Missouri.

10 We solicited comments and information
11 and input from those companies. We did, in fact,
12 have a conference call with FanDuel and DraftKing
13 and solicited some information and input from them,
14 incorporated some of their input in the drafting
15 process. We also had a face-to-face meeting with
16 RealTime Sports, one of the Missouri located small
17 fantasy sports operators, and also got some input
18 from the trade associations themselves. So the
19 final product you see before you today is a process
20 of all that process and effort.

21 Now, you'll see under Tab B, you'll
22 also see Item 17 and 18, which do not deal with
23 fantasy sports. They deal with casino credit,
24 because also this legislative session the
25 Legislature passed Senate Bill 833. That changed

1 the process and standards for eligibility for
2 credit on a casino floor.

3 The existing statute defined a
4 qualified person, and it said a qualified person
5 was someone who, using what they call the usual
6 standards of creditworthiness, were creditworthy
7 for at least \$10,000 in loans. Once you became a
8 qualified person, you could borrow whatever amount
9 you wanted to.

10 Senate Bill 833 changed that to where
11 they tied the test of creditworthiness to the
12 amount of money that the patron had in their
13 savings and checking accounts. It also made a
14 distinction that if someone who's applying for
15 credit of less than \$10,000, they had to have
16 either the lesser of \$10,000 or twice the amount of
17 credit they're applying for.

18 So in other words, if you're applying
19 for \$4,000 of credit at a casino, you have to have
20 \$8,000 in a daily demand account, in a checking or
21 savings account before you're eligible to take out
22 the money. If you're applying for 7,000, you need
23 to have 10. If you're applying for credit in
24 excess of \$10,000, you simply have to have an
25 amount in your daily demand accounts equal to the

1 amount of credit that you're requesting.

2 The reason for the rule changes are
3 that our existing rules were tied to the old
4 statutory language. So we needed to adopt new
5 rules to comply with and to be in sync with the new
6 statutory provisions.

7 Now, Mr. Chairman, with your
8 permission, I can go over the rules, the specific
9 rules that we have here presented to us. And under
10 Tab B, Item 1 through 7 are existing rules where we
11 simply had to add a reference or provisions for
12 fantasy sports into those existing rules, waivers,
13 records, settlements, the disassociated person
14 list.

15 One I would like to draw your
16 attention to is Item 3, the change to 13.054. The
17 hearings for fantasy sports disciplines or license
18 issues will proceed differently than they do for
19 the casinos. The casino statute in the 313.800s
20 has specific provision that exempted hearings on
21 those issues from certain sections of the
22 administrative hearing law.

23 And for that reason, when we have a
24 casino discipline, it starts out with a preliminary
25 order by the commissioners. If there's a hearing

1 it goes straight to one of our two contract hearing
2 officers and then, after that hearing, comes back
3 to the Commission for final decision.

4 That exemption from the
5 administrative hearing law does not appear in House
6 Bill 1941. So for that reason, if there's a
7 disciplinary issue or a denial of a license that's
8 appealed, the process is different. The process is
9 the same as it would be in Bingo.

10 First, the issue has to go to the
11 Administrative Hearing Commission. The
12 Administrative Hearing Commission's role at that
13 point is to decide if there are grounds for
14 discipline or grounds for denial of the license.
15 For example, in a discipline case, that's all the
16 Administrative Hearing Commission would do is
17 decide are there grounds for discipline.

18 It would then go to our hearing
19 officer to determine what his recommendation of
20 that discipline should be. Then at that point in
21 time, then it would come back to the Commission for
22 a final decision, the same as you see on the --
23 either the commission side or the occupational
24 license side where you'll get a findings of fact,
25 conclusions of law and recommendation that the

1 Commission would make the final decision on.

2 So it's going to be a longer process,
3 a more complicated process for a hearing on fantasy
4 sports than you would see in the casino discipline
5 and licensure issues. But that's nothing we can
6 determine. It's something that is mandated by the
7 provisions of the statute.

8 COMMISSIONER JAMISON: And that would
9 be only if they appealed the preliminary order?

10 MR. GREWACH: Actually, no, because
11 of the administrative hearing law --

12 COMMISSIONER JAMISON: They have to
13 be in there first.

14 MR. GREWACH: Right. If we want to
15 discipline a casino, you'll see in there that we do
16 put in a process where we give them 30 days notice,
17 ask for their input. Gives us time to talk about
18 it. Maybe we can settle the case. Maybe they have
19 some light they can shed on it to make us change
20 our approach to it.

21 In either event, at some point in
22 time if we decide, no, we're still going to
23 discipline you, we have -- there's no default
24 provision like there is in the casino side where if
25 you don't ask for a hearing it automatically

1 becomes final. We have to go to the AHC. We have
2 to get their determination, AHC's determination
3 that there is cause for discipline, and then it
4 goes through the process from there.

5 COMMISSIONER JAMISON: Right.

6 CHAIRMAN KOHN: How long from
7 beginning to end would that be?

8 MR. GREWACH: I really couldn't tell
9 you.

10 COMMISSIONER JAMISON: You're at the
11 mercy of the AHC's docket, and so it can be a long
12 period of time.

13 CHAIRMAN KOHN: In the meantime, are
14 they out of business?

15 MR. GREWACH: No. No. Because the
16 discipline or revocation would not take effect
17 until the final commission action. Now, the
18 exception I'd make to that comment is, if you
19 applied for a license -- once again, forgetting the
20 people that are grandfathered in. So if somebody
21 comes in in June of 2017 and applies for a license
22 and then in December of '17 we deny it, and then
23 they want a hearing on that denial, they'd still --
24 they still wouldn't have a license until it went
25 through the process. It would have to go to the

1 AHC. Then it'd have to go the hearing officer.

2 Then it would have to come to you.

3 CHAIRMAN KOHN: So you're only
4 talking about disciplinary?

5 MR. GREWACH: We're only really
6 talking disciplinary action.

7 COMMISSIONER HALE: Is this the same
8 procedure that's utilized in Bingo-related cases?

9 MR. GREWACH: It is. It's the exact
10 same process that we utilize that you'll see in
11 Bingo.

12 COMMISSIONER HALE: So the procedure
13 is not foreign to us.

14 MR. GREWACH: No. No. It's just
15 that you see very few -- as a Commission, you see
16 very few Bingo cases. So I wanted to point out
17 that distinction between the two so you could see
18 why a discipline case on -- for fantasy sports is
19 going to take longer to get back to you than on the
20 casino side.

21 If we go to Item 8, definitions --

22 COMMISSIONER JAMISON: I had a
23 question on 7.

24 MR. GREWACH: Sure.

25 COMMISSIONER JAMISON: Is the -- or 6

1 or whatever, wherever it is. I thought that the
2 DAP did not apply to them. Did we have a -- didn't
3 we have a discussion about this, that people on the
4 DAP were not prohibited from this, and so -- but
5 they have to be notified of the DAP, or what is --
6 help me with 6 and 7. Where does the DAP fit into
7 their process?

8 MR. GREWACH: Persons on the DAP list
9 can participate in fantasy sports contests. The
10 only restriction in the statute is a prohibition
11 from the fantasy sports operator from doing a
12 directed individual marketing to a DAP. Because
13 that prohibition is there, then that creates a
14 necessity for the fantasy sports operator to have
15 access to the DAP list so they can comply with that
16 prohibition on that targeted marketing.

17 So if they're going to do a targeting
18 marketing to a group, let's say they go out and
19 they buy a set of e-mail addresses from StubHub and
20 they want to market to those people, they're going
21 to have to go through a process to make sure that
22 none of those people that they're e-mailing this
23 offer to are on the DAP list.

24 COMMISSIONER JAMISON: So a sliver of
25 the DAP rules do apply to them on the marketing and

1 promotional part?

2 MR. GREWACH: Correct. That's the
3 only cross between the DAP and the --

4 COMMISSIONER JAMISON: And are they
5 going to have electronic access to the DAP just
6 like the casinos?

7 MR. GREWACH: They are. They're
8 going to have access to the -- our system
9 electronically to download the names. We do not
10 have e-mail addresses. You know, when we talked to
11 the operators, being Internet-based companies, they
12 indicated that they very rarely, if ever, do any
13 snail mail, you know, direct marketing. Their
14 marketing is through e-mails. And so we don't have
15 e-mail addresses on every person on the DAP list.

16 The statute says they have to take
17 commercially reasonable measures to prevent them
18 from doing a targeted marketing to a DAP. So we'll
19 have -- we'll give them --

20 COMMISSIONER JAMISON: We're going to
21 have to figure out what that reason is?

22 MR. GREWACH: We'll give them access
23 to the e-mail addresses for DAPs that we have.
24 They'll need to scrub, is a term we use, or compare
25 that list we give them to the list they're going to

1 market to and make sure they pull out any e-mails
2 that would go to a DAP.

3 COMMISSIONER JAMISON: Okay. Thanks.

4 MR. GREWACH: So looking at the
5 specific rules, I'd start with Item No. 8 on
6 definitions. Now, this rule, the first thing I'd
7 say about it is --

8 CHAIRMAN KOHN: I'm sorry, Ed. One
9 second. Does anybody else have any questions on 1
10 through 7? Okay.

11 MR. GREWACH: No. 8 is 40.010, which
12 is definitions. It basically tracks the statutory
13 definitions in the house bill. I do want to bring
14 your attention to the emergency statement. Now,
15 the emergency statement you'll see is on every
16 emergency rule that is -- that we're proposing here
17 today.

18 And it -- as you read it, it sets
19 forth the reasons for the emergency rule, one thing
20 we've talked about before, about the fact that
21 they're grandfathered in and the fact that we need
22 to have these in place as soon as possible. Every
23 one of the emergency statements in every rule is
24 going to be the same.

25 If you get to the second to last

1 paragraph where it says, specifically this
2 emergency rule provides. So from emergency rule to
3 emergency rule, you'll see the same language until
4 you get to that paragraph. So I just wanted to
5 point that out first of all.

6 The definition, the regulation on
7 definitions did expand or clarify a few things from
8 the statutory definitions, and the first one is in
9 paragraph 2. The statute talks about anything of
10 value being an entry fee. We wanted to clarify
11 that a free entry was something of value. Probably
12 goes without saying, but we wanted to make that
13 clear to the operators.

14 So in other words, if I pay to enter
15 a fantasy contest and my prize for winning it is a
16 free entry into a larger contest, what I win there
17 is something of value, and the value of that would
18 be what someone else would have to pay to enter
19 that larger contest.

20 So we wanted to make sure that
21 that -- that we captured as revenue everything the
22 statute contemplated in that broad term, anything
23 of value, in fantasy sports contests.

24 When you look at paragraph 6, you'll
25 see --

1 COMMISSIONER JAMISON: Ed, I've got a
2 question. When it says in the definition Internet
3 website or any platform, is there a definition of
4 that, what that platform is? I mean, I thought
5 this was Internet based. Is that just a platform
6 within Internet based or is that something
7 different?

8 MR. GREWACH: No. That's just
9 platform and Internet based, that language is
10 straight out of the statute. So we just --

11 COMMISSIONER JAMISON: Right. I'm
12 just asking. It says, or any platform, but that
13 has to be -- the understanding is that -- does that
14 platform have to be Internet based?

15 MR. GREWACH: Yes. Yeah. Because to
16 be -- to be by definition of the statute a fantasy
17 sports contest, it has to be a contest conducted on
18 an Internet website or any platform in which, and
19 then it goes on to state.

20 COMMISSIONER JAMISON: So it couldn't
21 be an in-house electronic platform that isn't
22 Internet based that's open to everyone?

23 MR. GREWACH: No. It would have to
24 be Internet based.

25 COMMISSIONER JAMISON: Okay.

1 CHAIRMAN KOHN: Go ahead.

2 MR. GREWACH: Also like to point out
3 paragraph 6, key person. We define it there, as
4 you'll see, that language, an officer, director,
5 trustee or principal salaried executive staff
6 officer. Now, that specific language you'll see in
7 the house bill in Section 313.970 on page 7, which
8 talks about the persons that we have authority to
9 investigate in connection with the application for
10 a license.

11 So we put a definition like that in
12 place so that we don't have to every place we want
13 to talk about those four groups of people restate
14 that entire language. And you'll see the term key
15 person throughout the application form and rules
16 relative to the application process.

17 The next number I'd like to direct
18 your attention to is paragraph 9, officer, because
19 again, in the statute it talks about officer but it
20 doesn't really elaborate on who an officer is.
21 So we then looked at some common definitions and
22 developed this definition to again clarify for the
23 applicants and operators what we mean when we say
24 officer.

25 You'll see there that we include what

1 you traditionally think of an officer of a
2 corporation, president, treasurer, secretary,
3 et cetera. We also want to include anybody that's
4 identified in the bylaws or incorporation documents
5 as an officer. Some of these companies may be
6 LLCs, so we want to make sure if it was a member,
7 managing member, that they would be -- they would
8 be considered an officers, sole proprietor or a
9 partner.

10 So those are the ones I wanted to
11 identify as significant in terms of the rule just
12 clarifying some of the statutory terms.

13 COMMISSIONER LOMBARDO: Ed, go back
14 to Brian's question about platforms because, I'm
15 sorry, this may or may not be --

16 COMMISSIONER JAMISON: That's
17 where I -- I'm glad you're coming back.

18 COMMISSIONER LOMBARDO: Okay. You
19 and I are apparently thinking the same today.
20 That's scary.

21 No. 3 says, Internet website or
22 platform. It's in the disjunctive. Then you look
23 at No. 10, says platform. Defines it as an
24 underlying computer system on which application
25 programs can run. Now, to me that says it can

1 either be Internet based or somebody could have a
2 dedicated computer system at their site. Let's say
3 there was a casino that may have a lounge, used
4 their own computer system. That's the way I read
5 it. Am I missing something?

6 MR. GREWACH: I don't necessarily
7 think so. I guess I was just -- I was reading it
8 initially as just being Internet based, but I can
9 see that distinction, that interpretation. I
10 didn't have that in mind as I was looking through
11 the statutes and regulations.

12 COMMISSIONER JAMISON: I think where
13 Rick and I are coming from, that changes things.
14 If you can have an in-house computer system that's
15 not Internet based, that's a whole another --
16 that's a whole other venue. I'm not saying that
17 the statute doesn't or does allow that, but I have
18 a -- I guess I question that a little bit. Is that
19 where you are, Rick?

20 COMMISSIONER LOMBARDO: Absolutely,
21 yeah.

22 COMMISSIONER JAMISON: And that's
23 kind of where my first question was, that -- that I
24 think -- I think, Ed, you're making the assumption
25 that that's inter based. I'm not sure that

1 that's -- or Internet based, which is on the web.
2 I'm not sure that that's what the wording says. I
3 don't know.

4 COMMISSIONER LOMBARDO: Yeah.

5 COMMISSIONER JAMISON: I think we
6 need to know.

7 COMMISSIONER LOMBARDO: I don't have
8 the statute in front of me, but if I just read this
9 rule, I read it as either/or, Internet or you can
10 have your own dedicated computer system.

11 MR. GREWACH: And that's the language
12 from the statute. The statute you'll see on the
13 first page says, contest conducted on an Internet
14 website or any platform.

15 COMMISSIONER JAMISON: See, they
16 don't define platform in the statute.

17 MR. GREWACH: Correct.

18 COMMISSIONER JAMISON: But I guess
19 I'm going to go back to, it's an or, and so if it
20 wasn't different than Internet -- you know, if it
21 wasn't different than an Internet website, why
22 would you have an or? Because if it's a platform
23 that's an Internet website, why would you call
24 it something? Why would you have an or and call it
25 a platform?

1 MR. GREWACH: I think that's a very
2 good question. And I guess in practical terms, as
3 I stand here today, I'd have to say if we get an
4 applicant who does not operate it on the Internet,
5 we'll certainly have to look at that and in the
6 rule-drafting process look at that issue and what
7 other rules may be necessary to accommodate or if
8 the existing rules will accommodate the example
9 you've given where there's a server with an
10 Internet platform. I'm just trying to think, walk
11 through that, where you would go to a specific
12 location.

13 COMMISSIONER JAMISON: Well, I mean,
14 I think a perfect example would be our casino
15 customers. I mean, for the lack of -- it would be
16 to me like a poker room or a fantasy sports room
17 that we don't do this on the Internet so we don't
18 have an outside group of players, but if you're a
19 regular customer or you're a customer of our casino
20 and we have a platform that you can interact with
21 the other customers on the casino and build a pool
22 of players, because it's my understanding that's
23 the way this works is you get a pool of players and
24 they all put their entry fee in and then the
25 winnings come out of that pool of players against

1 -- they're playing against each other. Well, if
2 you could have a platform that wasn't Internet
3 based, I think that a perfect example would be a
4 casino or if you go back to the Bingo, I mean, a,
5 you know, a --

6 CHAIRMAN KOHN: Ed, I think there's
7 enough discussion taking place that, instead of
8 trying to determine the answer now, why don't you
9 take it back, think about it, talk to the staff and
10 see what recommendation you want to make in our
11 next session, whether or not this needs to be
12 changed, amended or eliminated.

13 MR. GREWACH: Certainly can. In the
14 comment period, you may get comments from staff,
15 you know, looking at that issue. Again, you know,
16 we looked at it because, you know, going back to
17 that, if you were just based on one location,
18 that's the only people that could play were the
19 people at that location.

20 So if you look at the fantasy sports
21 lounges that are at the, I'd say about 20 different
22 major sports venues, they're basically just an iPad
23 where you can get on, where you can just access the
24 Internet.

25 CHAIRMAN KOHN: What I'm suggesting

1 is that you take all that into consideration and
2 get back to us.

3 MR. GREWACH: We will. We will do
4 that for sure. Thank you.

5 Going to Item 9 is the application,
6 and you'll see in 313.920 that on page 3 of the
7 bill authorizes us to create an application and
8 gives us six different specified reasons or grounds
9 for denial of a license.

10 The rule as you look at it
11 incorporates two different forms by reference. One
12 is the fantasy sports contest operator application,
13 and the other is the personal disclosure form.

14 Now, the way the rule and the forms
15 are set up is that we will first take the
16 application and we will look at it and determine
17 which individuals we need personal disclosure forms
18 from. We will then identify those, communicate
19 that with the applicant, and then they're given 30
20 days to provide us with those as well as
21 fingerprints or criminal history checks for those
22 persons.

23 You'll see there the catchall any
24 other individuals directed by the Commission. Now,
25 the reason for that is that these existing

1 companies, you may see some relatively
2 nontraditional organizational charts. We're going
3 to look at the organizational chart first of all to
4 determine who we need the disclosure statements
5 from. And you may have somebody who has a position
6 such as director of technical services who may be
7 the most important person in the operation. So we
8 didn't want to again limit ourselves to just saying
9 officers, directors. We wanted to really case by
10 case look at it.

11 The other thing is that we can look
12 at the applications and, if it's a relatively small
13 company, we can really gauge the scope and
14 determine the scope of the investigation necessary
15 based on the application, how many -- you know, how
16 many employees they have, the size of their
17 operation, and that does give some consideration
18 for small businesses.

19 One thing we're required to do when
20 we adopt rules like this is to fill out and file a
21 Small Business Impact Statement, which we have
22 done, and this is one of the areas we pointed out
23 in that Small Business Impact Statement, that we
24 didn't have a cookie cutter, one-size-fits-all
25 approach to the scope of our investigation. If

1 it's a smaller company, it may be a smaller and,
2 therefore, a less expensive investigation.

3 If you look forward to later on in
4 313.970.2, the applicant has to reimburse us for
5 the total cost of the investigation. So the cost,
6 therefore, could be a factor for a smaller business
7 and, therefore, we wanted to make sure we were
8 being flexible in considering that.

9 CHAIRMAN KOHN: I know this has been
10 an issue that's had some conversation built around
11 it. The actual cost of the investigation is
12 computed how? Is it our -- do we keep track of the
13 hours spent by the Highway Patrolmen, or how do we
14 do that?

15 MR. GREWACH: We do. For the Highway
16 Patrolmen or Commission personnel conducting the
17 investigation, we will keep track of their time.
18 We'll have a cost assigned to their salary and
19 fringe benefits, and so per person per hour we'll
20 know what that charge is. Then you'll have certain
21 out-of-pocket costs, travel, per diems, airfare,
22 that will also bill back to the applicant.

23 CHAIRMAN KOHN: So if this is a
24 smaller Missouri-based company where you don't have
25 a lot of air travel, et cetera, is it fair to say

1 that the cost could be significantly less than
2 \$50,000?

3 MR. GREWACH: I think that's fair to
4 say, yes.

5 COMMISSIONER LOMBARDO: Ed, the
6 \$50,000 figure is a not to exceed figure? So if
7 you're looking at the two large players in the
8 industry, it's not going to exceed \$50,000 for
9 them?

10 MR. GREWACH: Correct, and it can't
11 by statute. That's the cap on it. If it's less,
12 they pay the actual cost. If it's more, they pay
13 \$50,000. I know there's been some discussion about
14 that you might see about the application fee, which
15 is \$10,000 or 10 percent of their last year's net
16 revenue from Missouri residents.

17 Little misleading in that you -- so
18 if you had \$7,000 last year in net revenue from
19 Missouri residents, you could send us an
20 application with a check for \$700. But if the
21 investigation cost you \$5,000, we're going to bill
22 you for \$4,300.

23 So the application, that 10 percent
24 really isn't a cap on costs. That's just what you
25 need to give us to get the process started. Your

1 actual cost is going to be the actual cost of the
2 investigation.

3 COMMISSIONER LOMBARDO: And the
4 application fee is credited against the
5 investigation fee?

6 MR. GREWACH: That's correct.
7 If you look at Item 10 --

8 CHAIRMAN KOHN: Ed, just to complete
9 that, the money that we collect goes where?

10 MR. GREWACH: The money we collect
11 for this purpose goes into our operating fund to
12 reimburse the Commission for its expenses in
13 conducting the investigation.

14 CHAIRMAN KOHN: And the annual fee?

15 MR. GREWACH: The annual operating
16 fee goes into the Gaming Proceeds for Education
17 Fund, none of which comes to us. That goes
18 directly to education.

19 CHAIRMAN KOHN: That's the part I
20 wanted to hear.

21 MR. GREWACH: So there's two
22 different sources of revenue under this: The
23 investigative costs, which go toward our operating
24 expenses, and the 11 and a half percent goes to the
25 schools.

1 COMMISSIONER LOMBARDO: Ed, where do
2 the fines goes, assuming there are any fines at any
3 point?

4 MR. GREWACH: Fines by constitutional
5 provisions go to the school district. If it's a
6 Missouri company, they go to the school district in
7 the county -- the school districts in the county
8 where the business is located. If they're an
9 out-of-state company, which is probably going to
10 be, other than the two smaller companies we have,
11 they go to the Cole County school districts.

12 Section 10 is a Commission approval
13 for procedures. If you look at 313.930, which
14 you'll find on page 4 of the bill, requires the
15 operator to have procedures which are approved by
16 the Commission for the eight items that they
17 outline there. The rule then in paragraphs A
18 through H incorporates those requirements. We do
19 require by rule that they give us those with the
20 initial application.

21 We also provide that they -- once
22 we've approved them, they can't alter these
23 procedures unless we get their approval (sic). We
24 require 15 days notice before they plan any
25 implementation so we have time to review it. If we

1 approve it, fine, they can go ahead. If we don't,
2 they have to continue to maintain the previously
3 approved procedures for those items.

4 Those items, as you can see on there,
5 are really for the most part for the protection of
6 the patron accounts, to prevent unauthorized
7 withdrawals, to protect the money from creditors,
8 to segregate the funds, to maintain the cash
9 reserve. So we will review those, and they cannot
10 be licensed until we've approved those processes.

11 Item 11 is 40.040, contest operator
12 responsibilities. Paragraph 1 is an important one
13 that we, in our experience as regulators, it's
14 important to us to have the ability to demand
15 information and documents from the licensees.

16 Paragraph 2 talks about updating
17 information on an application if any changes that
18 are material as defined in the rule take place.

19 Paragraph 5 does also create a duty
20 on the operators to report any facts they have
21 reasonable grounds to believe indicate a violation.
22 It's very important that we get early notice of any
23 potential violations so we can investigate those
24 while the facts and evidence are still fresh and we
25 can review those.

1 Similar reason, paragraph 6 also
2 creates an obligation for them to notify us if
3 they're under investigation by another
4 jurisdiction, so again we can early on get involved
5 with monitoring, tracking that, determining if it
6 creates any individual or specific Missouri
7 violation in the course of that.

8 CHAIRMAN KOHN: Is there any kind of
9 formal relationship between the six states, or
10 seven, I guess, including us, with regard to
11 regulations?

12 MR. GREWACH: Nothing formal, no.
13 No. I have had some conversations with both
14 Tennessee and Indiana concerning their process, but
15 there is no formal coordination other than us
16 staying in contact with each other.

17 CHAIRMAN KOHN: And on the side of
18 the operators, is there any kind of an industry
19 organization that you're aware of?

20 MR. GREWACH: There are two. There's
21 the Fantasy Sports Trade Association, which is a
22 general umbrella that includes the two big
23 operators and the others, and then there's actually
24 a small --

25 CHAIRMAN KOHN: You said and the

1 others. I know there's two others in Missouri.

2 How many others are there?

3 MR. GREWACH: Reports we've seen
4 estimate that there are 70 small operators.

5 CHAIRMAN KOHN: In addition to the
6 two big ones?

7 MR. GREWACH. We can't verify that,
8 but that's just the reports, studies that we've
9 seen indicate that.

10 CHAIRMAN KOHN: And two of those are
11 in Missouri?

12 MR. GREWACH: Two of those are in
13 Missouri.

14 Item 12, we have operational
15 requirements for the fantasy sports operators.
16 We've talked before about the eight requirements
17 that they have to submit to us and they have to get
18 our approval.

19 When you look at the statute
20 beginning with 313.930 and 940, which start on page
21 5 and go through page 6 of the bill, it sets out a
22 number of requirements that the operators need to
23 have but do not require our specific approval for.
24 However, in the application process, you know, we
25 are going to review those, make sure they comply

1 with the statute because compliance with the
2 statute is a prerequisite for licensure.

3 We do require those to be submitted
4 with the application and within five days of any
5 subsequent revision. So if they change them, we
6 need to see that. We need to know that the change
7 is taking place, although again we don't need to
8 approve those before they're implemented.

9 Paragraph 4, you can see that there
10 are different places in the statute that requires
11 reasonable or sometimes use the term commercially
12 or technologically reasonable measures to verify
13 age, identity, address for the various purposes of
14 the statute, prohibitions let's say against a
15 person opening more than one account, prohibitions
16 against anyone under 18 playing.

17 We've clarified that by saying that
18 they have to get independent verification using
19 independent sources outside the player seeking to
20 open an account and that third-party services may
21 be used. In other words, we just want to get right
22 up front and say you can't just ask somebody what
23 your date of birth is and say, okay, that's my
24 commercially and technologically reasonable method
25 for determining their age. We need them to go to

1 some outside source either by themselves or hire a
2 third party to make that verification.

3 And then paragraph 6 talked about, I
4 think, what Commissioner Jamison talked about
5 before, the individual targeted marketing, The
6 process they have, download the DAP list to scrub
7 it against the marketing list that they're using to
8 make sure they don't violate that provision of the
9 statute.

10 COMMISSIONER LOMBARDO: Ed, I still
11 have some confusion about the DAP list because I'm
12 looking at 313.940. Subsection 5 says, the
13 licensed operator shall develop an online
14 self-exclusion form and process to exclude from
15 play any person who's filled out the form. So to
16 me that says, as a fantasy sports player, you can
17 ask to be on the DAP list. Is that --

18 MR. GREWACH: No. Those are actually
19 two different lists. Each operator is going to
20 have its own self-exclusion list, and they're going
21 to have a process on their site or platform to sign
22 up for that.

23 COMMISSIONER LOMBARDO: So should we
24 not call that a DAP list?

25 MR. GREWACH: Not call that a DAP

1 list.

2 COMMISSIONER LOMBARDO: What do we
3 call it?

4 MR. GREWACH: The operator
5 self-exclusion list.

6 COMMISSIONER LOMBARDO: Can't come up
7 with a really good acronym for that?

8 MR. GREWACH: No, I can't.

9 CHAIRMAN KOHN: OSEL.

10 MR. GREWACH: So then, once again,
11 the only reference to our DAP list is on the
12 targeting marketing, so they can have -- but
13 they're required to have their own self-exclusion
14 program and have guidelines for it and how people
15 get on, get off, and how that's executed in their
16 system.

17 COMMISSIONER LOMBARDO: Okay. And so
18 there's a fantasy sports exclusion list.

19 MR. GREWACH: It's actually going to
20 be operator by operator. Each operator will
21 have -- so I might be playing both FanDuel and
22 DraftKing, and I might sign up for FanDuel's
23 exclusion list but not DraftKing. It's not an
24 industry-wide. It's just operator by operator has
25 their own self-exclusion list.

1 COMMISSIONER LOMBARDO: So this is
2 quite a bit different than the DAP list as we've
3 come to know it?

4 MR. GREWACH: Yes, it is. It would
5 be -- if you want to make an analogy, if each of
6 the 13 boats in Missouri had their own list, you
7 know, that's basically what you're looking at here,
8 you know. So each operator will have their own
9 list and their own procedures and process for that.

10 COMMISSIONER NEER: And they'll
11 provide those processes to us?

12 MR. GREWACH: They do. They don't
13 need to get our -- they do. They just don't need
14 to get our approval on it. They do have to show us
15 that they have that system in place.

16 COMMISSIONER LOMBARDO: And if they
17 violate their own procedures, that could be a
18 ground for discipline?

19 MR. GREWACH: It could, yes. Under
20 Tab 13, 40.060, we have the cash reserve and
21 segregated account requirement. Now, this again is
22 something mandated for us to -- for the companies
23 to have and for us to approve pursuant to 313.930
24 paragraph 3, which you'll find on page 4 of the
25 bill.

1 And there's several provisions that
2 come into play here. In subparagraph 2, they need
3 to have procedures to make it clear that the money
4 in the players' accounts is not the property of the
5 licensed operator and is not available to the
6 licensed operator's creditors. Second is they've
7 got to -- they have to segregate the funds. The
8 third is they have to maintain a reserve in the
9 form of cash or cash equivalents for the benefit
10 and protection of the funds in those accounts.

11 So when you look at the rule we've
12 drafted, what we've endeavored to do here is to
13 give some guidance on how to comply with those
14 requirements, and we've given the operators two
15 options, and the first in paragraph 2A is to set up
16 a cash reserve.

17 Now, that would be a process in which
18 you take the amount of money in the -- that you
19 have on the books for Missouri residents in their
20 accounts and set that aside, an equal amount of
21 money in a separate account that would then be held
22 in trust for those players. And then there's
23 restrictions in 2A on how that money can be
24 accessed, can only be released with our approval,
25 and they would have to have it in an FDIC-insured

1 bank and all the other provisions you'll see there,
2 again, with the goal of making sure, A, that money
3 is protected from any creditors of the operator,
4 and B, that it's available in the event of a
5 bankruptcy or default or lawsuit, creditor judgment
6 against the operator, that those funds are there.
7 And it gives you the mechanism of, if that happens,
8 where the money goes, how it's processed,
9 interpleader in Cole County and how we take care of
10 that situation.

11 2B is another option, which is the
12 setting up of a separate segregated account with a
13 separate corporate entity. Now, I'll say as a
14 preface two things. One is that this is the method
15 that the two larger operators currently have in
16 place, and the concept here is you would have an
17 operating -- and this is, in fact, how they do it
18 now.

19 You have an operating company and you
20 have a deposit company. And as players deposit
21 money, it's deposited into the deposit company,
22 which is a separate legal entity. And you'll see
23 here --

24 CHAIRMAN KOHN: Not controlled by the
25 operator entity?

1 MR. GREWACH: It is somewhat
2 controlled by the operating entity. Now, we do
3 have certain requirements in here. One is that
4 they have at least one board member that's
5 independent of the operating entity. We require
6 that unanimous vote for the corporate directors to
7 file bankruptcy. We even require them to get
8 permission from the MGC to file bankruptcy. They
9 have in their articles of incorporation
10 prohibitions on incurring debt, prohibitions on
11 commingling funds between the two entities.

12 So it's designed to give that
13 protection. So if you're a creditor of the
14 operating company, you're not a creditor of the
15 deposit company, but there would be some degree of
16 control by the operating company.

17 CHAIRMAN KOHN: Okay. But what kind
18 of control does Missouri Gaming Commission have
19 over the deposit company? I'm not sure what you
20 call it, a non-operating company.

21 MR. GREWACH: Right.

22 CHAIRMAN KOHN: What do you call it,
23 deposit company?

24 MR. GREWACH: Yeah. Just for the
25 sake of discussion, call it the deposit company.

1 Well, we have -- the restrictions we set forth in
2 here that have to be in their bylaws, we have to
3 approve them. They can't change any of those
4 without our express written consent.

5 You'll see later, either way they go,
6 they have to then on the 15th day of each month
7 give us the balances in their player account and
8 the cash in the bank to make sure we can reconcile,
9 make sure there are adequate funds there for the
10 protection of those players.

11 COMMISSIONER LOMBARDO: Is the
12 deposit company licensed as the operating company
13 is? Are they under the license of the operating
14 company?

15 MR. GREWACH: They're under the
16 license of the operating -- they'll be a
17 wholly-owned subsidiary.

18 CHAIRMAN KOHN: What do I remember in
19 New York? I'm not sure if it was the deposit
20 company, but somebody went out of business or
21 refused to make payments or -- I can't remember,
22 but it seemed like some action was taken by a
23 company other than the operating company.

24 MR. GREWACH: In the particular case
25 that I'm aware of, the company held both accounts

1 in their name. Went out of business. They didn't
2 file bankruptcy. They just closed their doors and
3 they just took the money. The money was gone.

4 CHAIRMAN KOHN: That's the money that
5 our Missouri residents need protection from, isn't
6 it?

7 MR. GREWACH: Yes. And I think that
8 was the impetus of the statutory language that you
9 see.

10 CHAIRMAN KOHN: Will our Missouri
11 residents that have money with the deposit company,
12 which is only partially regulated as opposed to the
13 operating company which is fully regulated, will
14 that money be protected? What if that company
15 takes bankruptcy, what happens to the Missouri
16 residents' money?

17 MR. GREWACH: If the operating
18 company files bankruptcy, then the money in the
19 deposit company would not be affected by that
20 because the creditors in the bankruptcy would not
21 be creditors of the deposit.

22 CHAIRMAN KOHN: I'm talking about the
23 deposit company, which you said it's a separate
24 entity. So it could take bankruptcy.

25 MR. GREWACH: The restriction in the

1 rule is it can only take bankruptcy with MGC's
2 prior written approval. And it has a section in
3 the bylaws that prohibit it from incurring any
4 debt.

5 COMMISSIONER JAMISON: They can't use
6 that money sitting in the reserve as collateral to
7 a creditor?

8 MR. GREWACH: Correct.

9 COMMISSIONER JAMISON: So it can't be
10 encumbered?

11 MR. GREWACH: Correct.

12 COMMISSIONER JAMISON: They may run
13 off with the money, but that would be whole other
14 legal issue that would be handled through --

15 CHAIRMAN KOHN: I'm concerned because
16 of the New York bankruptcy, and I don't remember
17 the details of it either, but I would hate to see
18 that, that we set something up that would allow the
19 non-controlled company to take bankruptcy.

20 MR. GREWACH: I don't believe that
21 this setup would permit the non-controlled, the
22 deposit company from filing bankruptcy. To follow
23 up on what Commissioner Jamison said, and I was
24 about to say that, I mean, if you look at it from
25 the point of view can we ever completely protect

1 them, no more than you can ever completely protect
2 somebody from embezzling funds. They're always
3 going to have the ability to take the money.

4 What we looked at in drafting the
5 rules to try to come up with protections from a
6 bankruptcy scenario, and we had the -- we did some
7 research independently, and the -- one of the
8 operators sent us a memo and some legal research
9 that they did and we reviewed it. And based on
10 that, we're comfortable that these guidelines would
11 protect the deposit company's funds from the
12 operating company's bankruptcy.

13 COMMISSIONER LOMBARDO: Is there any
14 kind of a bond requirement anywhere in the statute?

15 MR. GREWACH: There is not. Other
16 states have it. We do not. Of course we have it
17 on the casino side. We have a bond that protects
18 tax revenues, gives us some certain amount relative
19 to tax revenues. But here, in ours, the statute
20 simply said reserve in cash or cash equivalents,
21 that the property not be property of the operator,
22 money not be property of the operator and
23 segregated. So those are the only three provisions
24 we had to work with in drafting that rule.

25 COMMISSIONER LOMBARDO: So absent

1 criminal activities, it's unlikely somebody could
2 take the money?

3 MR. GREWACH: I would agree, yes.
4 Everything we'll have in the bylaws, in the
5 regulation, in the agreements between the deposit
6 company and the bank, all that will be designed to
7 protect it absent some malfeasance of someone.

8 I guess it's like the money in a law
9 firm's escrow account. It's never really
10 protected. A lawyer could always just take that.
11 If he writes a check, bank's going to honor it. So
12 same thing here. I mean, you can never completely
13 protect --

14 COMMISSIONER NEER: That's a lawyer
15 thing, right?

16 MR. GREWACH: That's a hypothetical.
17 It's never happened. I got some frowns when I gave
18 that example.

19 COMMISSIONER JAMISON: Only on that
20 end of the table.

21 MR. GREWACH: Any other questions?
22 Item 14, which is 40.070, deals with operational
23 fees. We talked about before, it's 11 and a half
24 percent of the net revenue, which the statute in a
25 prior section defines as the total amount of entry

1 fees less the amount of prizes multiplied by the
2 resident percentage, which is again a fraction of
3 the entry fees paid by Missouri residents divided
4 by the entry fees paid by everybody else.

5 We have, as we've indicated here,
6 required the annual operation fee to be filed on
7 January 15th of every year, and that's on a
8 calendar year basis. So what they file for us on
9 the 15th is going to be for that net revenue
10 calculation for the calendar year prior to that.
11 And the form, as you can see, is a simple one-page
12 form, but we do require supporting documentation so
13 we can verify those calculations are correct.

14 Point out, too, that the statute's
15 setup in such a way with the companies that are
16 grandfathered in, they owe this annual operation
17 fee on April 15th of 2017 regardless of where we're
18 at with their license application. Now, in all
19 likelihood they'll be licensed by then, but on
20 the -- in the event they're not, they still have to
21 pay this fee from August 28th through December 31st
22 of 2016 for net revenue for that time period. Then
23 after that, every year they'll file on a calendar
24 year basis for that.

25 Item 15 is an emergency rule as to

1 records for 40.090. You see there we require the
2 records to be kept five years. We also require a
3 breakdown by state. The purpose of that is to help
4 us reconcile the annual operation fee reports if we
5 need to.

6 If they tell us these were the total
7 entry fees, these were the Missouri entry fees, we
8 can ask for a more specific breakdown state by
9 state to double check the math to make sure that
10 the amount is correct.

11 And the five-year time period gives
12 us -- helps us to investigate -- investigate
13 complaints because there is a provision in the
14 statute that requires us to take some role in
15 investigating complaints that may come up.

16 Item 16 is audits. The audit
17 requirement is created by the bill, 313.990 found
18 on page 8 of the statute, and it requires them to
19 annually contract with a certified public
20 accountant to perform a financial audit of the
21 operator and authorized Internet website to ensure
22 compliance with the statute. The audit -- they're
23 required to have the audit to us by March 1st of
24 each year.

25 The rule then just goes on to clarify

1 some of the things we would like to see in the
2 audit. Most specifically, we want the outside
3 auditors to audit the most recently filed annual
4 operation fee report to also double check those
5 numbers and entries against the company's,
6 operator's records.

7 CHAIRMAN KOHN: And just to clarify,
8 there's no rule that indicates that the audit has
9 to be performed by one of the, say, big six public
10 accounting firms?

11 COMMISSIONER LOMBARDO: There's only
12 four of them now.

13 MR. GREWACH: No. The statute just
14 said the certified public accountant is the only
15 requirement in the rule.

16 CHAIRMAN KOHN: It could be a local
17 firm?

18 MR. GREWACH: It could be, yes. CPA
19 is the only requirement, qualification for the
20 auditors.

21 Some other states have more
22 restrictive requirements than that in their
23 statutes. Some limit -- for example, there's one
24 state that says the same auditor can't do more than
25 two audits in a row. But our statute does not. It

1 just says a CPA has to do the audit and then gives
2 the content of what the audit has to have.

3 COMMISSIONER LOMBARDO: And the
4 commission staff has the right to do its own
5 audits, correct?

6 MR. GREWACH: Absolutely, yes.

7 COMMISSIONER LOMBARDO: Do we have
8 regularly scheduled audits for fantasy sports? Do
9 they take place annually, biannually, anything like
10 that?

11 MR. GREWACH: At this point, no, we
12 do not have any sort of process/scheme in place to
13 conduct those. I think we're just waiting at this
14 point to see how many applicants we get, what the
15 volume is.

16 I pointed it out before, but it's
17 probably worth pointing out again that we are
18 regulating an activity that's completely new to us,
19 and we're regulating people that have never been
20 regulated before. So it's a little bit of a
21 perfect storm of those two things that is going to
22 be a little bit of a learning process on both sides
23 as we go through.

24 COMMISSIONER HALE: I understand that
25 the operator is required to provide a copy of the

1 audit report annually?

2 MR. GREWACH: They are, yes. And if
3 there are no other questions, that for Items 1
4 through 16 is the presentation of the emergency
5 rules that relate to fantasy sports. Mr. Chairman,
6 I didn't know if you wanted me to go on at this
7 point and cover Items 17 or 18 or if you want to --

8 CHAIRMAN KOHN: No. Let's go ahead
9 and vote on this and then we'll do the next one.
10 And I understand from my note from Angie that in
11 this motion to approve these -- wait a second. Can
12 we even do that when you're going back and checking
13 on one of the issues that we talked about?

14 COMMISSIONER JAMISON: I've got a
15 suggestion for that. My suggestion would be, is we
16 delete No. 10, the definition for platform, leave
17 the vague -- or not vague, but the undetermined
18 definition of platform in the first definition
19 because that's directly from the statute, and
20 somewhere down the process the definition of
21 platform will be determined for us either by a
22 legal ruling or commission meeting at a later time.

23 CHAIRMAN KOHN: And we'll put that in
24 the resolution, but is everybody okay with that
25 general concept of leaving out the platform

1 language?

2 COMMISSIONER LOMBARDO: I think that
3 makes sense. We as the Commission can revisit
4 after we get more information, and we can correct
5 that if we need to.

6 MR. GREWACH: Absolutely. Right.
7 Because in the final order of rulemaking you'll be
8 able to act in response to any comments that you
9 get from any source.

10 CHAIRMAN KOHN: Brian, can you make a
11 motion, then, with respect to Tab B items leaving
12 out the one, and you need to refer to each section.

13 COMMISSIONER JAMISON: Okay. Do you
14 want me to make a motion on all of them in a row
15 and make --

16 CHAIRMAN KOHN: In a group, yeah.

17 COMMISSIONER JAMISON: Okay. And
18 make my amendment. Okay. I can do this, I think.

19 CHAIRMAN KOHN: I know you can do it.

20 COMMISSIONER JAMISON. I move that we
21 adopt emergency rules 11 CSR 45-1.100, 45-3.010,
22 45-13.054, 45-13.055, 45-13.065, 45-17.030,
23 45-17.040, and 45-40.010 with the amendment of the
24 deletion of No. 10, the definition for platform
25 being deleted from that rule. Going on, 45-40.020,

1 45 --

2 CHAIRMAN KOHN: Hold on one second.

3 Angie, can he leave out the 45 on each one of
4 these?

5 MS. FRANKS: Yes.

6 COMMISSIONER JAMISON: Okay. 40.030,
7 40.040, 40.050, 40.060, 40.070, 40.090 and 40.100.

8 CHAIRMAN KOHN: Is there a second?

9 COMMISSIONER HALE: Second.

10 CHAIRMAN KOHN: Any discussion on the
11 motion? Angie.

12 MS. FRANKS: Commissioner Lombardo.

13 COMMISSIONER LOMBARDO: Approve.

14 Ms. FRANKS: Commissioner Neer.

15 COMMISSIONER NEER: Approve.

16 MS. FRANKS: Commissioner Hale.

17 COMMISSIONER HALE: Approve.

18 MS. FRANKS: Commissioner Jamison.

19 COMMISSIONER JAMISON: Approve.

20 MS. FRANKS: Chairman Kohn.

21 CHAIRMAN KOHN: Approve.

22 MS. FRANKS: By your vote you've
23 adopted the emergency rules 11 CSR 45-1.100, 3.010,
24 13.054, 13.055, 13.065, 17.030, 17.040, 40.010 as
25 amended to delete Section 10 regarding the

1 platform, 40.020, 40.030, 40.040, 40.050, 40.060,
2 40.070, 40.090 and 40.100.

3 CHAIRMAN KOHN: And the record will
4 show that each one of those has the CSR 45 in front
5 of it. Thank you. Ed, let's go on to the credit
6 rules.

7 MR. GREWACH: Thank you,
8 Mr. Chairman. As I indicated before, there was a
9 change in the eligibility for credit on casinos in
10 Senate Bill 833. Effective date of that law is
11 August 28, 2016. The changes presented in 8.140
12 and in Chapter 8 of the minimum internal control
13 standards are to bring us into compliance with the
14 changes that will be effective on August 28th.
15 There were references to the old method of -- or
16 standard for qualification for credit in those two
17 rules.

18 Now, that's what's in the emergency
19 rule. You'll see later in the actual proposed
20 rules there are additional changes in Chapter 8
21 because we were actually in the process of doing
22 some changes, some tweaking to the existing minimum
23 internal controls at the time this bill passed. So
24 that's -- for everything else, the proposed rules
25 and the emergency rules will be identical, with the

1 exception of later on when we get to that chapter.
2 But right now the only issue would be a motion to
3 approve these two emergency rules.

4 CHAIRMAN KOHN: Okay. I'm a little
5 confused. Does the motion need to include that
6 exclusionary language that you just talked about?

7 MR. GREWACH: No. As they're drafted
8 here, these emergency rules cover exactly what we
9 need to cover to bring us into compliance with the
10 statute by October 28th.

11 CHAIRMAN KOHN: Brian, you're on.

12 COMMISSIONER JAMISON: I move for
13 passage of 11 CSR 45-8.140 and 9.108.

14 CHAIRMAN KOHN: Is there a second?

15 COMMISSIONER NEER: Second.

16 CHAIRMAN KOHN: Discussion on the
17 motion? Angie.

18 MS. FRANKS: Commissioner Lombardo.

19 COMMISSIONER LOMBARDO: Approve.

20 MS. FRANKS: Commissioner Neer.

21 COMMISSIONER NEER: Approve.

22 MS. FRANKS: Commissioner Hale.

23 COMMISSIONER HALE: Approve.

24 MS. FRANKS: Commissioner Jamison.

25 COMMISSIONER JAMISON: Approve.

1 MS. FRANKS: Chairman Kohn.

2 CHAIRMAN KOHN: Approve.

3 MS. FRANKS: By your vote you've
4 adopted emergency rules 11 CSR 45.8.140 and 9.108.

5 CHAIRMAN KOHN: Okay. Ed, C.

6 MR. GREWACH: Under Tab C, Items 1
7 through 16 are proposed rules that are identical to
8 the emergency rules that you've just adopted in
9 your prior motion.

10 CHAIRMAN KOHN: Brian, are you up to
11 it?

12 COMMISSIONER JAMISON: I'm ready. I
13 move for passage of 11 CSR 45-1.100, 3.010, 13.054,
14 13.055, 13.065, 17.030, 17.040, 40.010 with the
15 amendment of removing the definition of platform,
16 which is No. 10 in the definitions, 40 --
17 continuing on, 40.020, 40.030, 40.040, 40.050,
18 40.060, 40.070, 40.090 and 40.100.

19 COMMISSIONER LOMBARDO: Why don't you
20 just go on and do the credit rules, too?

21 COMMISSIONER JAMISON: Well, he's got
22 some different wording.

23 MR. GREWACH: And I prefer them to be
24 separate because for the purpose of tracking later
25 on in the rulemaking process.

1 CHAIRMAN KOHN: Is there a second on
2 Brian's motion?

3 COMMISSIONER NEER: Second.

4 CHAIRMAN KOHN: Angie.

5 MS. FRANKS: Commissioner Lombardo.

6 COMMISSIONER LOMBARDO: Approve.

7 MS. FRANKS: Commissioner Neer.

8 COMMISSIONER NEER: Approve.

9 MS. FRANKS: Commissioner Hale.

10 COMMISSIONER HALE: Approve.

11 MS. FRANKS: Commissioner Jamison.

12 COMMISSIONER JAMISON: Approve.

13 MS. FRANKS: Chairman Kohn.

14 CHAIRMAN KOHN: Approve.

15 MS. FRANKS: By your vote you've

16 adopted proposed rules and amendments

17 11 CSR 45.1.100, 3.010, 13.054, 13.055, 13.065,

18 17.030, 17.040, 40.010 as amended deleting

19 Section 10 platform being deleted, 40.020, 40.030,

20 40.040, 40.050, 40.060, 40.070, 40.090 and 40.100.

21 CHAIRMAN KOHN: Thank you. The last

22 two credit rules.

23 MR. GREWACH: The last two items, 17

24 and 18, are again identical to the emergency rules,

25 with the exception that there are some minor

1 changes in Chapter 8 which really deal not
2 substantively but for procedures for issuance of
3 casino credit that we were again in the process of
4 working on at the print in time that Senate Bill
5 833 was passed.

6 CHAIRMAN KOHN: Is there a motion?

7 COMMISSIONER JAMISON: I move for
8 adoption of 11 CSR 45-8.140 and 9.108.

9 CHAIRMAN KOHN: Second?

10 COMMISSIONER HALE: Second.

11 CHAIRMAN KOHN: Angie.

12 MS. FRANKS: Commissioner Lombardo.

13 COMMISSIONER LOMBARDO: Approve.

14 MS. FRANKS: Commissioner Neer.

15 COMMISSIONER NEER: Approve.

16 MS. FRANKS: Commissioner Hale.

17 COMMISSIONER HALE: Approve.

18 MS. FRANKS: Commissioner Jamison.

19 COMMISSIONER JAMISON: Approve.

20 MS. FRANKS: Chairman Kohn.

21 CHAIRMAN KOHN: Approve.

22 MS. FRANKS: By your vote you've
23 adopted proposed rules and amendments
24 11 CSR 45-8.140 and 9.108.

25 CHAIRMAN KOHN: I think that

1 concludes. Ed, do you have anything else for us?

2 MR. GREWACH: No, Mr. Chairman.

3 CHAIRMAN KOHN: No?

4 MR. GREWACH: No. Just the closed
5 session.

6 CHAIRMAN KOHN: Yeah. Brian, who do
7 you want to close?

8 COMMISSIONER NEER: I'll handle it.

9 COMMISSIONER JAMISON: Tom's
10 volunteering.

11 COMMISSIONER NEER: Make a motion for
12 the closed meeting under Section 313.847, Missouri
13 statute regarding investigatory, proprietary and
14 application records and 6.021 subsection 1, Revised
15 States of Missouri, legal actions, subsection 3 and
16 subsection 13, personnel, and subsection 14,
17 records protected from disclosure by law.

18 COMMISSIONER JAMISON: Second.

19 CHAIRMAN KOHN: Motion is made and
20 seconded. Angie.

21 MS. FRANKS: Commissioner Lombardo.

22 COMMISSIONER LOMBARDO: Approve.

23 MS. FRANKS: Commissioner Neer.

24 COMMISSIONER NEER: Approve.

25 MS. FRANKS: Commissioner Hale.

1 COMMISSIONER HALE: Approve.

2 MS. FRANKS: Commissioner Jamison.

3 COMMISSIONER JAMISON: Approve.

4 MS. FRANKS: Chairman Kohn.

5 CHAIRMAN KOHN: Approve. So we will
6 go into closed session, which I don't think will be
7 very long, and come back out to reconvene the open
8 session, which will also not be very long.

9 (WHEREUPON, the open meeting
10 concluded t 12:25 p.m.)

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C E R T I F I C A T E

3 STATE OF MISSOURI)

) ss.

4 COUNTY OF COLE)

5

I, Kellene K. Feddersen, Certified

6

Shorthand Reporter with the firm of Midwest

7

Litigation Services, do hereby certify that I was

8

personally present at the proceedings had in the

9

above-entitled cause at the time and place set

10

forth in the caption sheet thereof; that I then and

11

there took down in Stenotype the proceedings had;

12

and that the foregoing is a full, true and correct

13

transcript of such Stenotype notes so made at such

14

time and place.

15

Given at my office in the City of

16

Jefferson, County of Cole, State of Missouri.

17

Kellene K. Feddersen, RPR, CSR, CCR

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MISSOURI GAMING COMMISSION
Second Open Session Minutes
July 27, 2016

The Missouri Gaming Commission (the “Commission”) went into open session at approximately 1 p.m. on July 27, 2016, at the Missouri Gaming Commission, 3417 Knipp Drive, Jefferson City, Missouri.

Commissioner Jamison moved to adjourn the open session meeting. Commissioner Hale seconded the motion. After a roll call vote was taken, Lombardo – yes, Neer – yes, Hale – yes, Jamison – yes, and Kohn – yes, the motion was unanimously approved.

The meeting ended at 1:01 p.m.