



April 7, 2003

ENGROSSED SENATE BILL No. 71

DIGEST OF SB 71 (Updated April 2, 2003 4:58 PM - DI 14)

Citations Affected: IC 35-45; noncode.

Synopsis: Illegal Internet gambling sites. Makes it a Class D felony for an operator of an Internet site to knowingly or intentionally use the Internet to engage in unlawful gambling or professional gambling. Provides that interactive computer services have a cause of action against a person who initiates or assists in the transmission of a commercial electronic mail message that violates the prohibition of using the Internet to engage in unlawful gambling.

Effective: July 1, 2003.

Ford, Broden, Meeks C, Long
(HOUSE SPONSORS — DENBO, HASLER)

January 7, 2003, read first time and referred to Committee on Economic Development and Technology.

January 14, 2003, amended, reported favorably — Do Pass.

January 23, 2003, read second time, ordered engrossed.

January 24, 2003, engrossed.

January 27, 2003, read third time, passed. Yeas 49, nays 1.

HOUSE ACTION

March 4, 2003, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

April 7, 2003, amended, reported — Do Pass. Recommitted to Committee on Ways and Means.

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ES 71—LS 6252/DI 105+



April 7, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

ENGROSSED SENATE BILL No. 71

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-45-5-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. As used in this
3 chapter:
4 "Gain" means the direct realization of winnings.
5 "Gambling" means risking money or other property for gain,
6 contingent in whole or in part upon lot, chance, or the operation of a
7 gambling device; but it does not include participating in:
8 (1) bona fide contests of skill, speed, strength, or endurance in
9 which awards are made only to entrants or the owners of entries;
10 or
11 (2) bona fide business transactions that are valid under the law of
12 contracts.
13 "Gambling device" means:
14 (1) a mechanism by the operation of which a right to money or
15 other property may be credited, in return for consideration, as the
16 result of the operation of an element of chance;
17 (2) a mechanism that, when operated for a consideration, does not

ES 71—LS 6252/DI 105+



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1 return the same value or property for the same consideration upon
2 each operation;

3 (3) a mechanism, furniture, fixture, construction, or installation
4 designed primarily for use in connection with professional
5 gambling;

6 (4) a policy ticket or wheel; or

7 (5) a subassembly or essential part designed or intended for use
8 in connection with such a device, mechanism, furniture, fixture,
9 construction, or installation.

10 In the application of this definition, an immediate and unrecorded right
11 to replay mechanically conferred on players of pinball machines and
12 similar amusement devices is presumed to be without value.

13 "Gambling information" means:

14 (1) a communication with respect to a wager made in the course
15 of professional gambling; or

16 (2) information intended to be used for professional gambling.

17 **"Interactive computer service" means an information service,
18 a system, or an access software provider that provides or enables
19 computer access to a computer served by multiple users. The term
20 includes the following:**

21 (1) A service or system that provides access to the Internet.

22 (2) A system operated or services offered by a library, a
23 school, a state educational institution (as defined in
24 IC 20-12-0.5-1), or a private college or university.

25 **"Operator" means a person that owns, maintains, or operates
26 an Internet site that is used for interactive gambling.**

27 "Profit" means a realized or unrealized benefit (other than a gain)
28 and includes benefits from proprietorship or management and unequal
29 advantage in a series of transactions.

30 SECTION 2. IC 35-45-5-2 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) A person who
32 knowingly or intentionally engages in gambling commits unlawful
33 gambling.

34 (b) Except as provided in subsection (c), unlawful gambling is a
35 Class B misdemeanor.

36 (c) An operator who knowingly or intentionally uses the
37 Internet to engage in unlawful gambling:

38 (1) in Indiana; or

39 (2) with a person located in Indiana;

40 commits a Class D felony.

41 SECTION 3. IC 35-45-5-3 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) A person who

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- 1 knowingly or intentionally:
- 2 (1) engages in pool-selling;
- 3 (2) engages in bookmaking;
- 4 (3) maintains, in a place accessible to the public, slot machines,
- 5 one-ball machines or variants thereof, pinball machines that
- 6 award anything other than an immediate and unrecorded right of
- 7 replay, roulette wheels, dice tables, or money or merchandise
- 8 pushcards, punchboards, jars, or spindles;
- 9 (4) conducts lotteries ~~gift enterprises~~, or policy or numbers games
- 10 or sells chances therein;
- 11 (5) conducts any banking or percentage games played with cards,
- 12 dice, or counters, or accepts any fixed share of the stakes therein;
- 13 or
- 14 (6) accepts, or offers to accept, for profit, money or other property
- 15 risked in gambling;
- 16 commits professional gambling, a Class D felony.
- 17 **(b) An operator who knowingly or intentionally uses the**
- 18 **Internet to:**
- 19 **(1) engage in pool-selling:**
- 20 **(A) in Indiana; or**
- 21 **(B) in a transaction directly involving a person located in**
- 22 **Indiana;**
- 23 **(2) engage in bookmaking:**
- 24 **(A) in Indiana; or**
- 25 **(B) in a transaction directly involving a person located in**
- 26 **Indiana;**
- 27 **(3) maintain, on an Internet site accessible to residents of**
- 28 **Indiana, the equivalent of:**
- 29 **(A) slot machines;**
- 30 **(B) one-ball machines or variants thereof;**
- 31 **(C) pinball machines that award anything other than an**
- 32 **immediate and unrecorded right of replay;**
- 33 **(D) roulette wheels;**
- 34 **(E) dice tables; or**
- 35 **(F) money or merchandise pushcards, punchboards, jars,**
- 36 **or spindles;**
- 37 **(4) conduct lotteries or policy or numbers games or sell**
- 38 **chances therein:**
- 39 **(A) in Indiana; or**
- 40 **(B) in a transaction directly involving a person located in**
- 41 **Indiana;**
- 42 **(5) conduct any banking or percentage games played with the**

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1 computer equivalent of cards, dice, or counters, or accept any
2 fixed share of the stakes therein:

3 (A) in Indiana; or

4 (B) in a transaction directly involving a person located in
5 Indiana; or

6 (6) accept, or offer to accept, for profit, money or other
7 property risked in gambling:

8 (A) in Indiana; or

9 (B) in a transaction directly involving a person located in
10 Indiana;

11 commits professional gambling over the Internet, a Class D felony.

12 SECTION 4. IC 35-45-5-4.5 IS ADDED TO THE INDIANA CODE
13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2003]: **Sec. 4.5. (a) A prosecuting attorney may send written
15 notice to a person who uses the Internet as described in section 2(c)
16 or 3(b) of this chapter. The notice must:**

17 (1) specify the illegal gambling activity;

18 (2) state that the operator has not more than thirty (30) days
19 from the date notice is received to remove the illegal gambling
20 activity; and

21 (3) state that failure to comply with subdivision (2) may result
22 in the filing of criminal charges against the person.

23 The attorney general shall maintain a depository for the purpose
24 of collecting, maintaining, and retaining each notice sent under this
25 section. A prosecuting attorney who sends a notice under this
26 section shall forward the notice to the attorney general for deposit.

27 (b) The manner of service of a notice under subsection (a) shall
28 be:

29 (1) in compliance with Rule 4.1, 4.4, 4.6, or 4.7 of the Indiana
30 Rules of Trial Procedure; or

31 (2) by publication in compliance with Rule 4.13 of the Indiana
32 Rules of Trial Procedure if service cannot be made under
33 subdivision (1) after a diligent search for the operator of the
34 Internet server.

35 (c) A notice mailed under subsection (a):

36 (1) is admissible in a criminal proceeding under this section;
37 and

38 (2) constitutes prima facie evidence that the operator had
39 knowledge that illegal gambling was provided on the Internet
40 server.

41 (d) A person outside Indiana who transmits information on a
42 computer network (as defined in IC 35-43-2-3) and who knows or

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1 should know that the information will be broadcast in Indiana
 2 submits to the jurisdiction of Indiana courts for prosecution under
 3 this section.

4 SECTION 5. IC 35-45-5-4.6 IS ADDED TO THE INDIANA CODE
 5 A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 6 2003]: Sec. 4.6. (a) An interactive computer service may, upon its
 7 own initiative, block the receipt or transmission through its service
 8 of any commercial electronic mail message that it reasonably
 9 believes is or will be sent in violation of this chapter.

10 (b) An interactive computer service is not liable for any action
 11 voluntarily taken in good faith to block the receipt or transmission
 12 through its service of any transmission that it reasonably believes
 13 is or will be sent in violation of this chapter.

14 SECTION 6. IC 35-45-5-4.7 IS ADDED TO THE INDIANA CODE
 15 A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 16 2003]: Sec. 4.7. (a) An interactive computer service that handles or
 17 retransmits a commercial electronic mail message has a right of
 18 action against a person who initiates or assists the transmission of
 19 a commercial electronic mail message that violates this chapter.

20 (b) This chapter does not provide a right of action against:

- 21 (1) an interactive computer service;
- 22 (2) a telephone company; or
- 23 (3) a CMRS provider (as defined by IC 36-8-16.5-6);

24 whose equipment is used to transport, handle, or retransmit a
 25 gaming web page that violates this chapter.

26 (c) It is a defense to an action under this section if the defendant
 27 shows by a preponderance of the evidence that the violation of this
 28 chapter resulted from a good faith error and occurred
 29 notwithstanding the maintenance of procedures reasonably
 30 adopted to avoid violations of this chapter.

31 (d) If the plaintiff prevails in an action filed under this section,
 32 the plaintiff is entitled to the following:

- 33 (1) An injunction to enjoin future violations of this chapter.
- 34 (2) Compensatory damages equal to any actual damage
 35 proven by the plaintiff to have resulted from the initiation of
 36 the commercial electronic mail message. If the plaintiff does
 37 not prove actual damage, the plaintiff is entitled to
 38 presumptive damages of five hundred dollars (\$500) for each
 39 commercial electronic mail message that violates this chapter
 40 and that is sent by the defendant:

- 41 (A) to the plaintiff; or
- 42 (B) through the plaintiff's interactive computer service.



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(3) The plaintiff's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action.

(e) A person outside Indiana who:

- (1) initiates or assists the transmission of a commercial electronic mail message that violates this chapter; and**
- (2) knows or should know that the commercial electronic mail message will be received in Indiana;**

submits to the jurisdiction of Indiana courts for purposes of this chapter.

SECTION 7. [EFFECTIVE JULY 1, 2003] IC 35-45-5-2 and IC 35-45-5-3, both as amended by this act, apply to crimes committed after June 30, 2003.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Economic Development and Technology, to which was referred Senate Bill No. 71, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 35-45-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. As used in this chapter:

"Gain" means the direct realization of winnings.

"Gambling" means risking money or other property for gain, contingent in whole or in part upon lot, chance, or the operation of a gambling device; but it does not include participating in:

- (1) bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries; or
- (2) bona fide business transactions that are valid under the law of contracts.

"Gambling device" means:

- (1) a mechanism by the operation of which a right to money or other property may be credited, in return for consideration, as the result of the operation of an element of chance;
- (2) a mechanism that, when operated for a consideration, does not return the same value or property for the same consideration upon each operation;
- (3) a mechanism, furniture, fixture, construction, or installation designed primarily for use in connection with professional gambling;
- (4) a policy ticket or wheel; or
- (5) a subassembly or essential part designed or intended for use in connection with such a device, mechanism, furniture, fixture, construction, or installation.

In the application of this definition, an immediate and unrecorded right to replay mechanically conferred on players of pinball machines and similar amusement devices is presumed to be without value.

"Gambling information" means:

- (1) a communication with respect to a wager made in the course of professional gambling; or
- (2) information intended to be used for professional gambling.

"Operator" means a person that owns, maintains, or operates

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an Internet site that is used for interactive gambling.

"Profit" means a realized or unrealized benefit (other than a gain) and includes benefits from proprietorship or management and unequal advantage in a series of transactions."

Page 1, line 7, delete "A person" and insert "**An operator**".

Page 1, line 7, delete "in".

Page 1, line 8, delete "such a way as".

Page 2, line 13, delete "A person" and insert "**An operator**".

Page 2, line 14, delete "in such a way as".

Page 3, line 10, delete "or the attorney".

Page 3, line 11, delete "general".

Page 3, line 12, delete "in a way" and insert "**as**".

Page 3, line 16, delete "or block".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 71 as introduced.)

FORD, Chairperson

Committee Vote: Yeas 10, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, Ethics and Veterans Affairs, to which was referred Senate Bill 71, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, between lines 16 and 17, begin a new paragraph and insert:

""Interactive computer service" means an information service, a system, or an access software provider that provides or enables computer access to a computer served by multiple users. The term includes the following:

- (1) A service or system that provides access to the Internet.**
- (2) A system operated or services offered by a library, a school, a state educational institution (as defined in IC 20-12-0.5-1), or a private college or university."**

Page 3, line 1, after "lotteries" delete ",".

Page 3, line 1, strike "gift enterprises,".

Page 3, line 2, after "games" delete ",".

Page 3, line 29, delete ", gift enterprises,".

Page 3, line 30, after "games" delete ",".

Page 4, between lines 37 and 38, begin a new paragraph and insert:

"SECTION 4. IC 35-45-5-4.6 IS ADDED TO THE INDIANA CODE A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4.6. (a) An interactive computer service may, upon its own initiative, block the receipt or transmission through its service of any commercial electronic mail message that it reasonably believes is or will be sent in violation of this chapter.

(b) An interactive computer service is not liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any transmission that it reasonably believes is or will be sent in violation of this chapter.

SECTION 5. IC 35-45-5-4.7 IS ADDED TO THE INDIANA CODE A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4.7. (a) An interactive computer service that handles or retransmits a commercial electronic mail message has a right of action against a person who initiates or assists the transmission of a commercial electronic mail message that violates this chapter.

(b) This chapter does not provide a right of action against:

- (1) an interactive computer service;**
- (2) a telephone company; or**
- (3) a CMRS provider (as defined by IC 36-8-16.5-6);**

whose equipment is used to transport, handle, or retransmit a gaming web page that violates this chapter.

ES 71—LS 6252/DI 105+



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(c) It is a defense to an action under this section if the defendant shows by a preponderance of the evidence that the violation of this chapter resulted from a good faith error and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid violations of this chapter.

(d) If the plaintiff prevails in an action filed under this section, the plaintiff is entitled to the following:

- (1) An injunction to enjoin future violations of this chapter.
- (2) Compensatory damages equal to any actual damage proven by the plaintiff to have resulted from the initiation of the commercial electronic mail message. If the plaintiff does not prove actual damage, the plaintiff is entitled to presumptive damages of five hundred dollars (\$500) for each commercial electronic mail message that violates this chapter and that is sent by the defendant:
 - (A) to the plaintiff; or
 - (B) through the plaintiff's interactive computer service.
- (3) The plaintiff's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action.

(e) A person outside Indiana who:

- (1) initiates or assists the transmission of a commercial electronic mail message that violates this chapter; and
- (2) knows or should know that the commercial electronic mail message will be received in Indiana;

submits to the jurisdiction of Indiana courts for purposes of this chapter."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 71 as printed January 15, 2003.)

LYTLE, Chair

Committee Vote: yeas 11, nays 0.

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