

Economic Impact Statement

LSA Document #06-335

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses**Rule Digest:**

In the spring of 2006, the General Assembly approved Senate Enrolled Act 100, which repealed the charity gaming statute codified at Ind. Code 4-32 and created a new charity gaming act that was subsequently codified as Ind. Code 4-32.2. The Act made several changes to the law governing charity gaming in Indiana. The most significant change was the transfer of the administration of charity gaming activities from the Department of State Revenue to the Indiana Gaming Commission, effective July 1, 2006. On that date, the Commission began licensing and regulating charity gaming events.

The new statute transferred existing charity gaming rules to the Commission for a limited time. In addition, the Commission approved emergency rule LSA Document #06-187(E) to preempt the existing rules and establish interim regulations while the Commission staff prepared the proposed rule. The proposed rule will preempt or repeal any other charity gaming related rules including [68 IAC 20](#) and the emergency rules established in LSA Document #06-187(E). The proposed rule provides a comprehensive set of regulations to govern the administration of charity gaming by the Commission.

While comprehensive in nature, the intent of the proposed rule is to formalize present practices of the charity gaming division under the Commission's supervision versus that of the Department of State Revenue. The proposed rule makes only a few minor changes in the administration and regulation of charity gaming activities that will have an impact on small Indiana businesses, primarily the increase in certain licensing fees.

Estimated Number of Small Businesses Affected:

The proposed rule applies to a limited group of qualified organizations that conduct charitable gaming events as well as the licensed manufacturers and distributors that provide supplies for those events.

Manufacturers (1)

Currently, only 17 manufacturers are licensed by the Commission. Only one of those manufacturers qualifies as an Indiana small business. The principal place of business of the remaining licensed manufacturers is outside of Indiana. The licensed manufacturers produce various products related to gaming including punchboards, pull-tabs, cards, dice, chips, and bingo supplies, etc. The North American Industrial Classifications of these manufacturers includes, but is not limited to, the following:

NAICS 323 Printing and related support services

NAICS 339 Miscellaneous manufacturing

Distributors (40)

The Commission currently licenses 51 distributors of gaming supplies. Forty of those distributors are Indiana based. The Commission does not have sufficient information to determine which distributors meet the definition of "small business" in [IC 4-22-2.1-4](#). The Commission has assumed for the sake of analysis that all Indiana based distributors are Indiana small businesses although this may inflate the impact on actual small businesses.

The distributors provide a wide variety of durable and nondurable products to qualified organizations for use in charity gaming events. Most of these distributors may generally be classified as follows:

NAICS 4239 Miscellaneous durable goods merchant wholesalers

NAICS 4241 Paper and paper product merchant wholesalers

NAICS 4249 Miscellaneous nondurable goods merchant wholesalers

Qualified Organizations (2,631)

Indiana Code 4-32.2 specifies the types of organizations that may conduct charity gaming events. A qualified organization must be not-for-profit and exempt from taxation. In addition, bona fide political organizations, not including candidate's committees, and educational institutions may also be qualified organizations. Certain hospitals or health care facilities may conduct some qualified events.

For the purpose of this analysis, the Commission has identified all currently licensed organizations as small businesses. The Commission's charity gaming database currently consists of 2,631 entities qualified to conduct gaming in the state of Indiana. The majority of the qualified organizations conducting events are included in the following industrial classifications:

NAICS 813 Religious, Grantmaking, Civic, Professional, and Similar Organizations (2,238)

NAICS 8131 Religious organizations

NAICS 8132 Grantmaking & giving services

NAICS 8133 Social advocacy organizations

NAICS 8134 Civic and social organizations

NAICS 8139 Business, professional, labor, political, and similar organizations

NAICS 611 Educational Services (377)

NAICS 62 Health Care and Social Assistance (16)

Please note that many of these organizations may not actually meet the definition of an Indiana small business in [IC 4-22-2.1-4](#). A small business is defined as any person, firm, corporation, limited liability company, partnership, or association that is actively engaged in business in Indiana and maintains its principal place of business in Indiana. Small businesses are independently owned and operated, employ 100 or fewer full-time employees, and have gross annual receipts of \$5,000,000 or less.

Since all qualified organizations are not-for-profit entities, the very nature of these organizations calls into question whether these organizations should be included in the group of small businesses contemplated by the statute. The U.S. Census Bureau does not even track data for some industrial classifications that include these organizations. For example, religious organizations, political organizations, and education institutions were not counted in the 2002 Economic Census. These organizations rarely export their services outside of the state or even local community and do not necessarily contribute to the base economy of the state.

In addition, some of these organizations are subsidiaries of national charitable organizations that do not have a principal place of business in Indiana. The Indiana subsidiary may not be independently operated. Finally, some of the qualified organizations generate gross annual receipts of over \$5,000,000. Seven qualified organizations generate over \$5,000,000 in charity gaming receipts alone.

The Commission does not have sufficient information at this time to determine which qualified organizations specifically meet all the elements of the definition of a small business. Thus, for the purpose of this analysis, the Commission has identified all current qualified organizations as small businesses under [IC 4-22-2.1-4](#). As a result, the projected impact on small businesses as defined in [IC 4-22-2.1-4](#) may be significantly inflated versus the actual impact on small businesses.

Estimated Administrative Costs Imposed on Small Businesses

The proposed rule will impose new reporting schedules and possibly additional administrative costs on qualified not-for-profit organizations licensed to conduct charity gaming events. For a qualified organization operating under an annual license, the organization will be required to submit financial statements on a quarterly basis under the proposed rule rather than annually under previous rules.

A survey of licensed organizations has helped to reveal the estimated cost of these new reporting requirements. The Commission staff contacted organizations from each of the following categories: political, religious, civic/social, health care provider, educational, and other business organizations. The staff randomly selected organizations from each category and requested that they complete a standardized questionnaire providing input on the proposed changes to the reporting requirements. The organizations reported the current average annual cost for financial reporting and estimated the increase in those costs with the quarterly filing required under the proposed rule. Some organizations reported that financial reporting tasks were handled by volunteers and thus the new requirements would not pose any financial cost but would require additional time of the volunteers.

Based on the data gathered, the Commission anticipates the average annual increase in administrative costs to be approximately \$416 per organization that incurs such costs. The current average annual expense for financial reporting for all surveyed organizations that incurred such costs was approximately \$500. The expected increase will raise these average annual costs to \$916, which is approximately an 83% increase.

Currently, 854 organizations hold an annual license with the Commission and would be subject to these increased costs. However, as noted above, the Commission estimates that a portion of the organizations holding an annual license use volunteers to fulfill the reporting requirements. Based on the survey responses, the Commission believes that approximately 30% of these organizations utilize volunteers at no cost to the organization. These organizations will experience no financial impact but will simply require more volunteer time to handle the proposed reporting requirements. Adjusting for the "volunteer" factor, the total financial impact of the new reporting requirements for qualified organizations is estimated to be approximately \$248,685. Again, the impact is based on the assumption that all qualified organizations are small businesses. The impact on actual small businesses may be substantially less.

Estimated Total Annual Economic Impact on Small Businesses*Impact of Initial License Fee Increase*

The revised charity gaming statute authorizes the Commission to set the initial license fee for a qualified event not to exceed \$50. Currently, the initial license fee is \$25, which was the maximum fee allowed under the old law. The proposed rule will continue to set the initial licensing fee at the maximum amount allowed under the statute. The \$50 initial fee in the proposed rule represents a \$25 increase in the initial licensing fee.

The fee will only apply to organizations seeking a license for the first time. In FY2004, 171 organizations sought qualification to be licensed for the first time. In FY2005 and FY2006, the number of new applicants increased to 202 and 203, respectively. Thus, in the past three years, the Commission has averaged 192 newly approved qualified organizations per year. Based on these figures and assuming that all new applicants are qualified small businesses, the Commission estimates that the total cost of the increase in the initial licensing fee

will average \$4,800 annually.

Impact of Manufacturer and Distributor License Fee Increase

Manufacturers and distributors must be licensed to sell or distribute supplies used in charity gaming in Indiana. The proposed rule would increase the initial and annual renewal fees for manufacturers and distributors to \$5,000. The initial and renewal fees for manufacturers and distributors have been set at \$3,000 for manufacturers and \$2,000 for distributors since 1992. The proposed rule recommends a \$2,000 increase in fees for manufacturers and a \$3,000 increase for distributors to \$5,000 each.

The increased cost to small businesses is outlined in the following table:

	Current Application Fee	Proposed Application Fee	Yearly Revenue	Proposed Revenue	Difference
Indiana Based Manufacturers (1)	\$3,000	\$5,000	\$3,000	\$5,000	\$2,000
Indiana Based Distributors (40)	\$2,000	\$5,000	\$80,000	\$200,000	\$120,000

The total annual increase in costs to Indiana small businesses will be \$122,000. The impact is based on the assumption that all Indiana based manufacturers and distributors are small businesses. The impact on actual small businesses may be substantially less.

Impact of Additional Purchase Requirements

Qualified organizations have always been required to purchase bingo equipment, pull-tabs, and other similar gaming supplies from licensed suppliers. The proposed rule provides the Executive Director of the Commission the option of including, in certain circumstances, additional gaming supplies to the list of supplies that must be purchased from a licensed supplier. To the extent that the Executive Director exercises this option, the number of available outlets for these supplies would be reduced since organizations will no longer be able to purchase the specified gaming supplies from general retailers. The exact cost of this rule change is difficult to calculate; however, the Commission staff believes that such an action, if necessary, will not significantly impact the costs of qualified organizations. Based on anecdotal evidence, many qualified organizations already purchase the type of gaming supplies contemplated under the proposed rule from a licensed distributor or manufacturer and at prices that are competitive or lower than those of unlicensed vendors. The large number of existing manufacturers and distributors provides sufficient outlets to create a competitive market for the business of the qualified organizations. In addition, the purchase of supplies from a licensed vendor may yield higher quality products and dependability for the qualified organization. Even if prices are increased, the cost to qualified organizations would be offset by the benefit to the licensed distributors and manufacturers who are capitalizing on the restricted supply and may also be small businesses under the statute.

Total Annual Economic Impact on Small Businesses

Based on the foregoing, the total estimated annual economic impact on Indiana small businesses as a result of the proposed rule is \$375,485.

Justification of Requirements or Costs

Change in Reporting Requirements

According to [IC 4-32.2-5-5](#), qualified organizations are required to maintain accurate records of all financial aspects of an allowable event. Qualified organizations are required to deposit funds received from an allowable event in a separate and segregated account set up for that purpose. All expenses of the qualified organization with respect to an allowable event shall be paid from the separate account. To assist in monitoring compliance of these statutory requirements, qualified organizations must make accurate reports of all financial aspects of an allowable event to the Commission within the time established by the Commission.

The proposed rule changes the reporting schedule of qualified organizations holding an annual license from annual reporting of their gross financial revenue to the Commission to quarterly reporting. The Commission has recognized a need to identify issues of fraud, money laundering, and under-reporting of income in a timelier manner. Manufacturers and distributors are statutorily required under [IC 4-32.2-9-8](#) to file a quarterly report listing the manufacturer's or distributor's sales. The proposed rule will bring the qualified organizations holding annual licenses in alignment with the quarterly reporting requirements of manufacturers and distributors. The change will allow more timely analysis of the financial reports submitted by qualified organizations in comparison with those of manufacturers and distributors. The change will improve the Commission's ability to monitor for compliance and will ensure the integrity of charity gaming.

The alternative option to the proposed reporting requirements would be to leave the rules as is. However, this option would allow certain crimes and under-reporting of income to go unnoticed for a longer period of time. The length of time between an event and the financial reporting can negatively impact the prosecution of crimes related to the event and may impact licensing fees and excise taxes if income is under-reported.

Initial License Fee Increase

In accordance with [IC 4-32.2-6-2](#), the Commission shall establish an initial license fee schedule. However, the license fee that is charged to a qualified organization in the first year that the qualified organization applies for a license. The General Assembly increased the maximum amount of the fee in SEA 100 from \$25 to \$50. The cost of processing a new application for a license far exceeds the new \$50 maximum. In the proposed rule, the Commission set the fee at the maximum amount allowed under the statute to recapture as much of the processing costs as possible. This change also aligns the initial licensing fee with the license renewal fee scheduled in [IC 4-32.2-6-3](#) for qualified organizations reporting gross revenues of less than \$15,000. The increase in the initial fee reflects the increase in renewal fees approved by the General Assembly in SEA 100. The proposed rule change is not expected to increase or decrease the number of qualified organizations already affected by the current regulations.

Manufacturer and Distributor License Fee Increase

Pursuant to [IC 4-32.2-6-1](#), the Commission is required to charge a license fee to an applicant under this article. The Commission also must establish a license fee schedule for the renewal of licenses for manufacturers and distributors. The initial and renewal licensing fees for manufacturers and distributors is currently set at \$3,000 for manufacturers and \$2,000 for distributors. The existing fee structure has not changed since 1992. The proposed rule recommends a \$2,000 increase in fees for manufacturers and a \$3,000 increase for distributors to \$5,000 each.

With charity gaming now under the Commission's administration, the Commission would like to pursue more aggressive background investigations into manufacturers and distributors of gaming equipment. The fee increase will support administrative and investigative costs associated the Commission's goal, without impacting current state revenues. By adjusting the fees, the Commission properly imposes the costs of the investigation directly on the regulated entity seeking entry into a carefully regulated market. The fee increases are the only method made available to the Commission to recover costs without impacting revenues of the state of Indiana.

The proposed change would also bring Indiana's fees in line with other states that do not differentiate between manufacturers and distributors. Of eight states surveyed regarding their manufacturer and distributor licensing fees, five states, Nebraska, West Virginia, Minnesota, Ohio, and Illinois, had annual licensing fees of \$5,000 dollars or greater for manufacturers and distributors. The remaining three states, Michigan, Kentucky, and Washington, had annual fees of approximately \$4,000 or less. None of the states differentiated between a manufacturer and distributor when assessing their licensing fees. The balancing of the fees under the proposed rule will finally reflect the fact that the Commission's investigations of manufacturers and distributors are similar in nature and incur similar costs.

The fee increase would not only align Indiana's fee structure for manufacturers and distributors with those in other states, but would also bring licensing fees for charity gaming manufacturers and distributors in line with the \$5,000 annual licensing fee required by suppliers of casino gaming supplies and equipment, also under the regulatory authority of the Indiana Gaming Commission. The fee increase is also in line with the recent 100% increase in renewal licensing fee schedule for qualified organizations applying to conduct charity gaming events that was recently established in the SEA 100 and codified at [IC 4-32.2-6-3](#). The proposed rule changes are not expected to increase or decrease the number of manufacturers or distributors already affected by the current regulations.

Purchase Requirements

Any change in the requirements to purchase gaming supplies from licensed distributors will serve to protect the integrity of the games at charity gaming events. Licensed suppliers provide specialized products that reduce the opportunity for tampering with gaming equipment or cheating at gambling games. Licensed distributors also report their sales to the Commission, which allows improved auditing of qualified organization records on purchases of gaming equipment.

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