

Economic Impact Statement

LSA Document #08-523

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

During the 2008 Legislative Session, the General Assembly approved House Enrolled Act 1153 (the "Act"), which authorizes type II gaming for taverns that are issued a retailer's endorsement by the Alcohol and Tobacco Commission (the "ATC"). Type II gaming includes pull tabs, tip boards, punchboards, winner-take-all drawings, and raffles. The Act became effective on July 1, 2008, and is codified as [IC 4-36](#). On that date, the ATC began licensing and regulating type II gaming activities.

The Act authorizes the ATC to adopt rules to govern the administration of type II gaming. In addition, the Act authorizes the ATC to promulgate emergency rules to establish interim regulations while the ATC staff prepares the proposed rule. The proposed rule will preempt or repeal emergency rules established in LSA Document #08-824(E).

Pursuant to the Act, the ATC must adopt rules for the establishment, implementation, and operation of type II games and to ensure that the type II gaming operations are consistently operated in a fair and honest manner. The administrative rules are necessary in order to effectuate this purpose. The proposed rule requires record keeping procedures in the operation of type II gaming activities that will have a minor impact on small businesses. However, these standards are necessary to prevent fraud and dishonest practices and to facilitate the collection of revenue in the form of excise taxes and license fees.

Estimated Number of Small Businesses Affected:

The proposed rule applies to taverns that conduct type gaming activities as well as the licensed manufacturers and distributors that provide supplies for those activities. Under [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 one hundred or fewer full-time employees, and have gross annual receipts of five million dollars or less.

Manufacturers (1)

To qualify for a manufacturer's license, a manufacturer must first be a holder of a charity gaming license issued by the Indiana Gaming Commission. As of June 24, 2008, there are 22 manufacturers licensed by the Indiana Gaming 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 pull tabs, punchboards, tip boards, and miscellaneous gaming supplies. 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 (39)

To qualify for a distributor's license, a distributor must first hold a charity gaming license issued by the Indiana Gaming Commission. As of June 24, 2008, there are 52 distributors licensed by the Indiana Gaming Commission. Thirty-nine of those distributors are based in Indiana. 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 purposes of this analysis that all Indiana-based distributors are Indiana small businesses although this assumption may inflate the impact on actual small businesses.

The distributors provide a wide variety of durable and nondurable products to retailers for use in type II gaming activities. 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

Retailers (1,200)

To qualify for a retailer's endorsement, a retailer must first hold a valid alcoholic beverage permit issued by the Commission and operate a "tavern" for on premises consumption. As defined by [IC 4-36-1-18](#), a "tavern" means a separate room of the licensed premises in which a minor cannot be present, that is used primarily for serving of alcoholic beverages by the drink, and where food service is considered secondary. The Commission's database does not have (nor possesses a capacity) a separate category called a "tavern" since taverns are treated as restaurants by the Commission. Pursuant to [IC 7.1-3-20-9](#), a "restaurant" means a place where food is habitually furnished in consideration of payment and where 25 persons may be served at one time. The Commission does not have sufficient information to determine which retailers meet the definition of "small

business" in [IC 4-22-2.1-4](#). The Commission has assumed for the purposes of this analysis that all retailers are Indiana small businesses. According to the Commission's database, there are currently 5,200 permit holders operating a "restaurant" in Indiana. Out of those 5,200 restaurants, ATC estimates that about 1,200 retailers operate a "tavern", therefore, qualifying to hold a type II endorsement. The retailers qualified to conduct type II gaming are included in the following industrial classifications:

- NAICS 722110 Full-service Restaurants
- NAICS 722410 Drinking Places (alcoholic beverages)

Estimate of Compliance Costs for Individual Businesses

The proposed rule imposes minimal costs on small businesses. The portions of the rule pertaining to the manufacture of type II games are based on well accepted industry practices that are already in use. The portions of the rule pertaining to the conduct of type II games by retailers require the retailer to incur negligible costs to post notices pertaining to the games for sale and the corresponding odds of winning the games. The rule's record keeping requirements impose little additional cost than that already imposed by the Act itself, which requires retailers to maintain records of type II games in a manner that is convenient to the ATC. The rule requires retailers to maintain type II gaming records from the previous six months on their premises. Older records may be stored off-site if it is more convenient to the retailer. The Act requires retailers to maintain type II gaming revenue separately from other business revenue. To help effectuate this requirement, the rule requires retailers to maintain a separate bank account for type II gaming revenue. This will require retailers to incur fees that may be imposed by a financial institution; however, it will not cause the retailer to incur significant additional costs. The ATC estimates the cost of compliance to vary depending on the size of businesses.

Retailers may incur increased labor, training, and supervisory costs in connection with type II gaming. Because type II gaming has not previously been permissible in Indiana, retailers will likely incur training and supervisory costs in connection with introducing type II gaming in their own establishments. In addition, the Act itself will impose labor, training, and supervision costs in connection with its record keeping requirements. Any additional labor, training, or supervision costs imposed by the rule will be minimal.

Similarly, the Act may impose legal, consulting, or accounting costs upon retailers, who must account for all type II gaming proceeds, maintain gaming revenues separately from other business revenues, and retain records of all type II games conducted by the retailer. The rule does not impose any additional accounting or record keeping requirements. It merely requires retailers to set up a separate bank account for type II gaming proceeds.

Examination of Alternatives

The Act leaves little room for alternative approaches to the regulations set forth in the proposed rule. In setting forth basic rules governing the operation of type II games, the ATC adopted industry standards that are already accepted and in use in the gaming industry. Likewise, the record keeping requirements of the rule primarily clarify the record keeping requirements of the statute.

The goal of fair and honest conduct of type II games is more difficult to attain with a market-oriented regulatory approach, since there is a natural economic incentive to game operators to alter the outcome of games to their advantage in such a manner that the public is not aware the game is not being conducted properly. Because the conduct the rule attempts to prevent tends to occur outside the public eye, it is less likely that market pressure would induce retailers to refrain from unethical gaming practices.

Conclusion

The benefits of the proposed rule outweigh the costs imposed on small businesses by the rule, most of which are required by the language of the Act itself. The slight cost to the retailer of maintaining accurate records will be outweighed by the direct benefit to Indiana taxpayers in the form of tax revenue and license fees that are collected in connection with type II gaming. Additionally, the benefit to consumers of participating in fair, honest games outweighs the slight cost imposed on businesses to manufacture, distribute, and conduct type II games according to industry practices designed to prevent fraud and unscrupulous game operators.

Posted: 11/05/2008 by Legislative Services Agency
An [html](#) version of this document.