

Economic Impact Statement

LSA Document #09-676

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

IC 4-22-2.1-5(a) provides that an agency that intends to adopt a rule under IC 4-22-2 that will impose requirements or costs on small businesses must prepare a statement that describes the annual economic impact of the rule on small businesses after the rule is fully implemented as described in subsection (b). That statement must be submitted to the Indiana Economic Development Corporation (IEDC); the IEDC is required to review the rule and submit written comments to the agency not later than seven days before the public hearing.

The proposed rule makes the following changes that impose requirements or costs on small businesses:

- (1) Creates a \$25 fee for amendments to licenses.
- (2) Establishes conditions for a refund of a charity gaming license fee.
- (3) Requires an organization changing locations of its annual charity game night or annual bingo license to publish notice in the newspaper.
- (4) Requires an organization to maintain a ledger in which the organization must collect identifying information about winners of prizes in winner take all drawings and qualified drawings.

The proposed rule also makes several ministerial and administrative changes to the administrative rule that have no fiscal impact on small businesses.

Estimated Number of Small Businesses Affected:

The proposed rule applies to limited groups of qualified organizations that conduct charitable gaming events. IC 4-32.2 specifies the types of organizations that may become qualified and, therefore, 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, generally) 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 3,009 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, Grant-making, Civic, Professional, and Similar Organizations (85%), including:

- NAICS 8131 Religious organizations
- NAICS 8132 Grant-making and 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 (14%)

NAICS 62 Health Care and Social Assistance (1%).

Many of these organizations may not actually meet the definition of an Indiana small business, which is defined in IC 4-22-2.1-4 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, by definition, 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.

As previously stated, there are 3,009 organizations that the Commission has determined are qualified for purposes of conducting charity gaming. 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 will likely be significantly higher than the actual impact on small businesses.

Estimated Administrative Costs Imposed on Small Businesses:**License Amendment Fee**

There are no administrative costs imposed on small businesses as a result of this portion of the proposed

rule.

License Fee Refund

There are no administrative costs imposed on small businesses as a result of this portion of the proposed rule.

Ledger Requirements

The proposed rule requires all organizations conducting winner take all drawings or qualified drawings under an annual PPT (pull-tab, punchboard, and tip board) license to maintain a ledger in which the organization records the date of each drawing, the winner's name, address, telephone number, and the amount awarded to each individual. The ledger must be legibly printed and must be available upon request.

Currently, the Commission has issued 652 annual PPT licenses, the only license that allows an organization to conduct winner take all drawings and qualified drawings. The main activity authorized under an annual PPT license is the sale of pull-tabs, punchboards, and tip boards. An organization with an annual PPT license is not required to conduct a winner take all drawing or a qualified drawing, but is allowed to do so. Those who choose to do so must maintain the aforementioned information.

The sole administrative cost associated with this portion of the proposed rule results from training required to teach volunteers to maintain the ledger and collect the required information. As referenced above, the Commission provides approximately 12 free training sessions a year that are open to the public. Organizations are encouraged to send volunteers responsible for collecting this information to the seminars for any training needed for compliance with the administrative rule. Accordingly, the Commission anticipates that any administrative cost related to this portion of the proposed rule will be negligible.

Publication of Annual Charity Game Night/Annual Bingo License Application

Under [IC 4-32.2-4-5\(c\)](#) and [IC 4-32.2-4-7.5\(c\)](#), the first time a qualified organization obtains an annual bingo or annual charity game night license, the organization is required to publish notice twice in a newspaper in the county in which the organization is located and the county in which the event will be conducted. Only a fraternal or veteran's organization, having been in existence for at least 10 years, may obtain this type of license and is therefore required to post this notice. The proposed rule requires an organization changing the location of its annual bingo or charity game night license to publish this notice of the new location in the appropriate newspaper.

Currently, 440 organizations hold an annual bingo license and 177 organizations hold an annual charity game night license. The sole administrative cost associated with this portion of the proposed rule results from training required to teach volunteers to publish notice when the location of these events changes. As referenced above, the Commission provides approximately 12 free training sessions a year that are open to the public. Organizations are encouraged to send volunteers responsible for collecting this information to the seminars for any training needed for compliance with the administrative rule. Accordingly, the Commission anticipates that any administrative cost related to this portion of the proposed rule will be negligible.

Estimated Total Annual Economic Impact on Small Businesses:

License Amendment Fee

Under [IC 4-32.2-4-2](#), a qualified organization must obtain a license to conduct an allowable event. Each license must state the date, time, and location of the allowable event. Charity gaming licenses also list the name of all operators authorized to assist in conducting allowable events for the qualified organization. Each time the date, time, location, or names of operators is changed, the Commission is required to reissue a license, which normally requires additional document review and processing, and which may require additional investigation. The proposed rule requires the Commission to collect a \$25 fee for amendments made to licenses previously issued.

In FY 2009, the Commission processed 703 license amendments. Assuming the number of amendments remains consistent, the estimated cost of license amendments fees is \$17,575 (703 × \$25).

License Fee Refund

[IC 4-32.2-6-2](#), [IC 4-32.2-6-3\(c\)](#), and [68 IAC 21-2-6](#) establish the license fees for initial and renewal licenses for both single and annual events. The proposed rule provides that if an organization rescinds a license application event prior to the issuance of the license, the organization will be awarded a refund of the license fee, minus a \$50 processing charge. If the qualified organization surrenders its single event license after the license has been issued but before the event date, or surrenders its annual event license after the effective date of the license, the organization shall be refunded the lesser of the applicable license fee minus a \$50 processing charge or 50% of the applicable license fee.

No statute or administrative rule previously required refunds or established parameters for the issuance of refunds; however, a total of 235 refunds totaling \$379,369 were awarded in FY 2009. Assuming the number of license cancellations remains consistent, the Commission estimates qualified organizations will receive refunds totaling \$189,684 under the proposed rule. However, the Commission does not consider the reduction of refunds to be a cost imposed on small businesses because the organization has already paid for the license it received.

Ledger Requirements

In addition to the administrative costs outlined above, the Commission estimates that the cost of the ledger

required to be maintained by a qualified organization holding an annual PPT license who engages in winner take all drawings or qualified drawings is approximately \$10 per ledger. Currently, there are 652 qualified organizations holding an annual PPT license. Assuming that all 652 organizations will also engage in winner take all drawings or qualified drawings, the estimated economic impact of this portion of the proposed rule is \$6,520 (\$10 × 652 organizations).

Publication of Annual Charity Game Night/Annual Bingo License Application

As previously referenced, [IC 4-32.2-4-5\(c\)](#) and [IC 4-32.2-4-7.5\(c\)](#) require an organization obtaining its first annual bingo or annual charity game night license to publish notice regarding that license application. The apparent purpose of this statutory obligation is to allow members of the community to voice objection to the existence of these types of allowable events, which occur on an ongoing basis, in their respective communities. The proposed rule requires an organization changing location of its event to publish notice of the new location.

Commission staff reviewed the charity gaming database and identified 237 organizations all of which obtained an Annual Charity Game Night License or an Annual Bingo License for the first time since July 1, 2007. Of these, 140 organizations submitted the cost of notice publication to the Commission. As a result of the review, the Commission has determined that the average cost of publishing notice for a new location is \$76.65 per organization. It is important to note that not all organizations currently holding an annual bingo or annual charity game night license will have to post notice; this rule applies only to those organizations that change the location of their event. The Commission has no way of determining which organizations will choose to change locations; accordingly, the Commission is unable at this time to determine the fiscal impact of this portion of the proposed rule.

Total Annual Economic Impact on Small Businesses

Based on the foregoing, the total annual increase in costs which can currently be assessed, including administrative costs, to Indiana small businesses as a result of the proposed rule, will be approximately \$24,095. As this calculation is based in part on assumptions, including the assumption that all qualified organizations are small businesses, the actual impact on small businesses may be substantially less. Note that qualified organizations who cancel events will receive refunds of their license fees estimated at \$189,684, which is not considered to be a cost to the qualified organization.

Justification of Requirements or Costs:

License Amendment Fee

Under [IC 4-32.2-4-2](#), a qualified organization must obtain a license to conduct an allowable event. Each license must state the date, time, and location of the allowable event. Charity gaming licenses also list the name of all operators authorized to assist in conducting allowable events for the qualified organization. Under [68 IAC 21-2-7\(a\)](#), a copy of the event license must be prominently displayed at the facility at which the allowable event is being held.

Because each license must accurately reflect information regarding the time, date, location, and operators, each time one of these variables change, the Commission is charged with the responsibility of generating a new license that reflects the updated information. As part of that responsibility, the Commission must verify that all new operators, dates, times, and locations meet statutory and regulatory requirements. For instance, the Commission must verify that all new operators meet membership requirement as outlined in the organizations bylaws and charter; that the operators have been members of the organization for one year and have been convicted of no felonies; and that events are not being held on more than two consecutive days. The Commission issued 3,256 licenses in FY 2009, each of which might be amended multiple times. The amendment fee allows the Commission to recoup some of the cost of processing these changes, as well as encourages organizations to carefully consider changes and information submitted to the Commission in their license applications.

License Fee Refund

Under [IC 4-32.2-6-3\(c\)](#), a qualified organization renewing its license is charged a license fee based upon the adjusted gross revenue from the preceding year or license. An initial license fee is \$50. Issuing a charity gaming license involves review and investigation of numerous documents, personnel, and verification of information.

The Commission has determined that a refund of license fees is appropriate where a license has been issued but the allowable event is cancelled before the scheduled date or dates.

The proposed rule provides that if an organization rescinds a license application prior to the issuance of the license, the organization will be awarded a refund of the license fee, minus a \$50 processing charge. If the qualified organization surrenders its single event license after the license has been issued but before the event date, or surrenders its annual event license after the effective date of the license, the organization shall be refunded the lesser of the applicable license fee minus a \$50 processing charge or 50% of the applicable license fee.

Ledger Requirements

House Enrolled Act 1153 amended the annual PPT license to allow those organizations holding such a license to conduct a "winner take all drawing". House Enrolled Act 1286 amended this license to allow organizations to conduct a "qualified drawing". Although money received by a qualified organization is not

considered income for purposes of determining license renewal fees, it is important for the Commission to have access to records regarding these drawings, as the prizes awarded are statutorily limited to \$300 per drawing. The Commission is charged with enforcing this statutory limitation. See [IC 4-32.2-8](#). Requiring qualified organizations to maintain information regarding these drawings in a ledger allows the Commission to easily determine if qualified organizations are abiding by these statutory limits. Additionally, requiring qualified organizations to maintain this information in a separate ledger allows the Commission to verify that no fraud or misrepresentation occurs with respect to these drawings and their winners.

Publication of Annual Charity Game Night/Annual Bingo License Application

Before the transfer of charity gaming from the Department of State Revenue to the Indiana Gaming Commission, statute and administrative rules prohibited an organization from conducting an allowable event outside of the county in which the organization was headquartered. This prohibition has since been removed, and qualified organizations may now conduct allowable events at the location of their choosing. [IC 4-32.2-4-5\(c\)](#) and [IC 4-32.2-4-7.5\(c\)](#) require an organization obtaining its first annual bingo or annual charity game night license to publish notice regarding that license application. The apparent purpose of this statutory obligation is to allow members of the community to voice objection to the existence of these types of allowable events, which occur on an ongoing basis. The purpose of the proposed rule is to be consistent with that statute insofar as it gives members of the community to which the allowable event is being relocated the ability to protest the allowable event. Protests are then considered by the Commission when determining if issuing the license is appropriate.

Regulatory Flexibility Analysis:

The Commission considered alternative methods of achieving the purpose of the proposed rule that are less intrusive or less costly. Specifically, the Commission has considered the following for each of the changes in the proposed rule:

1. The establishment of less stringent compliance or reporting requirements for small businesses.
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
3. The consolidation or simplification of compliance or reporting requirements for small businesses.
4. The establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities.
5. The exemption of small businesses from part or all of the requirements or costs imposed by the rule.

License Amendment Fee

This portion of the proposed rule does not set or change compliance or reporting requirements for small businesses. The proposed rule does not set or change schedules or deadlines for compliance or reporting requirements. There are no less intrusive or costly ways to consolidate or simplify compliance or reporting standards. The proposed rule does not set or change design or operational standards. Exemption of qualified organizations from this portion of the proposed rule would result in inefficient use of Commission staff resources, which the rules seek to promote.

License Fee Refund

This portion of the proposed rule does not set or change compliance or reporting requirements. The alternative option of requiring less stringent deadlines with respect to cancellation of the allowable event defeats the purpose of the rule, which is to reduce Commission resources spent issuing a license for an event that will not take place. There are no less intrusive or costly ways to consolidate or simplify compliance or reporting standards. The proposed rule does not set or change design or operational standards. Exemption of qualified organizations from this portion of the proposed rule would result in inefficient use of Commission staff resources, which the rules seek to promote.

Ledger Requirements

This portion of the proposed rule establishes reporting deadlines for identification of winners in certain allowable events. The alternative option of requiring less information identifying these winners and the amounts won prohibits the Commission from determining that a qualified organization conducts these events as required by statute and administrative rules. The proposed rule does not set or change schedules or deadlines for compliance or reporting requirements. There are no less intrusive or costly ways to consolidate or simplify compliance or reporting standards. The proposed rule does not set or change design or operational standards. Exemption of qualified organizations from this portion of the proposed rule would hinder the Commission's regulation of this type of allowable event, which the rule seeks to promote, and would prohibit the Commission from adequately monitoring the gaming activities of qualified organizations.

Publication of Annual Charity Game Night/Annual Bingo License Application

This portion of the proposed rule does not set or change compliance or reporting requirements for small businesses. The proposed rule does not set or change schedules or deadlines for compliance or reporting requirements. There are no ways to consolidate or simplify compliance or reporting standards. The proposed rule does not set or change design or operational standards. Exemption of qualified organizations from this portion of

the rule undermines the public's ability to protest gaming in their community, which the rules seek to promote.

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