

Proposed Rule
LSA Document #09-472

DIGEST

Adds [905 IAC 1-53](#) concerning the operation and conduct of type II gaming by retailers, manufacturers, and distributors licensed by the Alcohol and Tobacco Commission. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[905 IAC 1-53](#)

SECTION 1. [905 IAC 1-53](#) IS ADDED TO READ AS FOLLOWS:

Rule 53. Type II Gaming

[905 IAC 1-53-1](#) Definitions

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-36-2](#)

Sec. 1. (a) The definitions in [IC 4-36-2](#) and this section apply throughout this article.

(b) Unless otherwise provided, the definitions in [68 IAC 21-1](#) apply throughout this article.

(c) "Gaming manager" means a person responsible for operating and controlling the type II gambling operation with the authority to make decisions regarding the type II gaming activities.

(d) "House rule" means requirements established by the retailer for the purposes of conducting a type II gambling operation.

(e) "Licensed supply" means any supplies, devices, or equipment:

- (1) critical to the conduct of the type II gambling operation; and
- (2) approved by the commission.

(f) "Type II endorsement" means a license to conduct a type II gambling operation at the retailer's tavern.

(g) Copies of the document incorporated by reference are available by contacting the commission as follows:

Alcohol and Tobacco Commission
302 West Washington Street, Room E114
Indianapolis, Indiana 46204

(Alcohol and Tobacco Commission; [905 IAC 1-53-1](#))

[905 IAC 1-53-2](#) Application by a manufacturer or distributor

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-32.2-3-4](#); [IC 4-36](#)

Sec. 2. (a) A manufacturer or distributor shall submit a written application on a form prescribed by the commission.

(b) A manufacturer or distributor shall submit a written application for renewal on a form prescribed by the commission not later than seventy-five (75) days before expiration.

(c) A distributor shall purchase all licensed supplies to be distributed to a retailer from a manufacturer or another distributor.

(d) An entity that is both a manufacturer and distributor must possess a:

- (1) manufacturer's license; and
- (2) distributor's license.

(Alcohol and Tobacco Commission; [905 IAC 1-53-2](#))

[905 IAC 1-53-3](#) Type II game construction standards

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-32.2](#); [IC 4-36](#)

Sec. 3. All pull tabs manufactured or distributed for sale in Indiana must meet the "Standards on Pull Tabs" adopted by the North American Gaming Regulators Association, October 12, 1991, as amended October 20, 1998, and amended December 12, 2005, which is incorporated by reference. Copies are available from the North American Gaming Regulators Association, 26 East Exchange Street, Suite 500, St. Paul, MN 55101 or at <http://www.nagra.org>

(Alcohol and Tobacco Commission; [905 IAC 1-53-3](#))

[905 IAC 1-53-4](#) Scope of type II endorsement

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-36](#)

Sec. 4. (a) a retailer shall submit a written application for renewal on a form prescribed by the commission not later than seventy-five (75) days before expiration.

(b) Type II gambling games shall only be sold on the premises of the retailer's tavern. Type II gambling games may not be sold in any area outside the retailer's tavern even if the retailer's licensed premises extends outside the building or the walls.

(c) The type II endorsement must be displayed prominently in the retailer's tavern.

(d) The retailer shall submit a written application on a form prescribed by the commission.

(e) The retailer shall submit a written application for renewal on a form prescribed by the commission not later than seventy-five (75) days before expiration.

(f) The retailer shall notify the commission in writing if any information filed with the application changes in any way within thirty (30) days of the change.

(Alcohol and Tobacco Commission; [905 IAC 1-53-4](#))

[905 IAC 1-53-5](#) Retailer gaming operations

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-36-2-7](#); [IC 4-36-5-6](#)

Sec. 5. (a) No retailer or its employees shall provide any information or engage in any conduct that alters or is intended to alter the outcome of any type II gambling game.

(b) No retailer shall conduct any type II gambling game or winner take all drawing in which the winner of a prize is determined, in whole or in part, on a sporting event.

(c) All licensed supplies shall originally be obtained from an entity that is licensed by the commission as a manufacturer or distributor.

(d) Retailers shall post a flare for each deal in the vicinity of the deal and in view of the players while the deal is in play.

(e) If more than one (1) flare is posted, retailers must mark each flare and the container from which the corresponding deal is sold to clearly indicate which flare corresponds with each deal.

(f) A retailer must thoroughly mix pull tabs prior to offering them for sale to the public.

(g) A retailer may not purchase and a distributor may not sell a box of type II gambling games if the manufacturer's:

- (1) shrink-wrap is removed; or**
- (2) seal is broken.**

(h) A retailer may not sell type II gambling games from the original packing box or container.

(i) Multiple games may not be commingled within a single dispensing device.

(j) If multiple dispensing devices are used, retailers must mark each device so that players can identify the flare that corresponds to the game being sold from the device.

(k) A retailer may remove a type II gambling game from play at the retailer's discretion, provided that the game meets the minimum payout percentages set forth in [IC 4-36-5-6](#). Once a type II gambling game is removed from play, the type II gambling game is deemed dead and the retailer shall never commence play on that game again.

(l) A person who owns, manages, or is employed by a retailer shall not play or participate in any manner in a type II gambling game at the retailer's tavern.

(m) A retailer shall not sell a type II gambling game for more than one dollar (\$1).

(n) A retailer shall not permit a person less than twenty-one (21) years of age to play a type II game.

(o) A retailer shall not permit type II gaming in the presence of minors.

(p) A retailer may not conduct type II gaming on or through the Internet.

(q) A retailer may:

- (1) accept only United States currency and coin from players when conducting type II gaming; and**
- (2) not extend credit to any player.**

(Alcohol and Tobacco Commission; [905 IAC 1-53-5](#))

[905 IAC 1-53-6](#) House rules

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-36](#)

Sec. 6. (a) The retailer must establish its house rules governing its type II gambling operation. At a minimum, the house rules shall contain all of the following information:

- (1) The retailer's name.
- (2) The Indiana alcoholic beverage permit number.
- (3) The time limit for the redemption of the type II gambling game, which shall be not less than seven (7) days, but not more than fourteen (14) days from the date the deal is closed.
- (4) The effective date of the house rules.

(b) The retailer shall post the house rules in a prominent place of the retailer's tavern.

(c) The house rules shall not conflict with Indiana alcoholic beverage laws and rules.

(Alcohol and Tobacco Commission; [905 IAC 1-53-6](#))

[905 IAC 1-53-7](#) Redemption of winning ticket

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-36](#)

Sec. 7. (a) A type II gambling game shall be redeemed only by the retailer that sold the winning game.

(b) A type II gambling game must be redeemed:

- (1) not more than fourteen (14) days from the date the last ticket of the deal is sold; or
- (2) within the time limit posted for redeeming winning tickets in accordance with the retailer's house rules.

(c) A retailer shall permanently deface each winning type II gambling game immediately after the ticket is presented for payment.

(d) When a player wins a prize with a value of two hundred fifty dollars (\$250) or more, the gaming manager must make a record by:

- (1) having the winner print his or her name and date of birth, in ink, on the side of the winning punch or tab opposite the winning symbol;
- (2) verifying the winner's identity and recording the current date and initialing the winning punch or tab; or
- (3) recording the required information on a sheet of paper at least three (3) inches by five (5) inches and stapling the winning tab or punch to the paper if the pull tab or punch is constructed or printed so that recording the information required in a legible manner is not possible.

(e) When a player wins a prize with a value of two hundred fifty dollars (\$250) or more, a type II gambling game winner must provide his or her name and date of birth and proof of identification to redeem a prize.

(f) At the time a game is closed, a retailer shall conspicuously post the date by which all winning tickets shall be redeemed.

(Alcohol and Tobacco Commission; [905 IAC 1-53-7](#))

[905 IAC 1-53-8](#) Winner take all drawings; display of information

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-36](#)

Sec. 8. A retailer must conspicuously display the following information concerning each winner take all drawing:

- (1) The price of a ticket.
- (2) The number of tickets for sale.
- (3) The time of the drawing.
- (4) The description and value of the prizes awarded in the drawing.
- (5) The manner in which a prize may be claimed.

(Alcohol and Tobacco Commission; [905 IAC 1-53-8](#))

[905 IAC 1-53-9](#) Advertisement of type II games

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-36](#); [IC 7.1-5-7-11](#)

Sec. 9. (a) A retailer may place, display, or maintain, or cause to be placed, displayed, or maintained:

- (1) a sign;
- (2) banners; or
- (3) pennants;

advertising a type II game or related activities only inside the retailer's tavern.

(b) A retailer may not directly or indirectly place, display, or maintain, or cause to be placed, displayed, or maintained, a sign, banners, or pennants advertising a type II game or related activities in the following places:

- (1) The public places of the licensed premises in which a minor may be present.
- (2) The exterior parts of the permit premises, including, but not limited to, the wall or the roof of a building and parking facility.

(Alcohol and Tobacco Commission; [905 IAC 1-53-9](#))

[905 IAC 1-53-10](#) Destruction and loss of type II gambling games

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-36](#)

Sec. 10. (a) The licensee may dispose of unused type II gambling games and other licensed supplies specified by the commission by shredding, burning, or otherwise destroying them. The licensee must notify the commission that the items are to be destroyed thirty (30) days in advance of the destruction and must provide the following information:

- (1) The date the items were destroyed.
- (2) The manner of destruction.
- (3) A description of the items destroyed.
- (4) The quantity of items destroyed.
- (5) The serial numbers of the items destroyed.
- (6) The trade name of the items.
- (7) The reason for destruction.

Destruction of any unused licensed supplies must be certified by the licensee.

(b) If a licensee has lost any licensed supplies through theft, fire, flood, or other disaster, the licensee must notify the commission in writing of the loss and provide the following information within ten (10) days of discovering the loss:

- (1) The date the items were lost.
- (2) The manner of loss and a description of the items lost.
- (3) The serial numbers of the items lost.
- (4) The trade name of the items.
- (5) Copies of all insurance forms submitted for the loss.

- (6) Any police department or fire department reports created in connection with the loss.
- (7) Any other information required by the commission.

(Alcohol and Tobacco Commission; [905 IAC 1-53-10](#))

[905 IAC 1-53-11](#) Records of retailer

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-36](#)

Sec. 11. (a) A retailer must maintain adequate records of all financial aspects of type II gaming for the commission to conduct oversight as authorized by [IC 4-36](#) and to report the information to the commission on forms prescribed by the commission.

(b) A retailer must set up a separate and segregated bank account to account for all proceeds and expenditures of the type II gambling operation.

(c) A retailer shall retain the following records for a minimum of four (4) years from the date each game is removed from play or each document is generated, as applicable:

- (1) All type II gambling games removed from play, including the following:
 - (A) Prize flares.
 - (B) Unplayed tabs.
 - (C) Winning punches or tabs.
 - (D) Winning and unplayed winner take all game tickets.
- (2) All documents associated with type II gaming.
- (3) All other documents kept in the regular course of a type II gambling operation.

(d) Retailers shall make their type II gambling operation records available on the licensed premises for the commission to inspect. The commission shall be granted unrestricted access to all records related to a type II gambling operation. If stored off premises, a retailer must produce the type II gambling operation record for inspection at the licensed premises on demand within forty-eight (48) hours.

(e) The retailer shall submit financial reports to the commission on forms prescribed by the commission.

(f) A retailer must prepare a detailed quarterly income summary for type II gambling games and winner take all games removed from play in the format required by the commission. The quarterly income statement must be:

- (1) completed not later than January 15, April 15, July 15, and October 15; and
- (2) available within three (3) days of a request by:
 - (A) the commission;
 - (B) law enforcement; or
 - (C) the department.

(Alcohol and Tobacco Commission; [905 IAC 1-53-11](#))

[905 IAC 1-53-12](#) Records of manufacturer or distributor

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-36](#)

Sec. 12. (a) A manufacturer or a distributor must keep records adequate for the commission to conduct oversight as authorized by [IC 4-36](#) and to report the information to the commission on forms prescribed by the commission. The records required must include, but are not limited to, the following:

- (1) A general sales invoice that:
 - (A) is:

- (i) numbered consecutively; and
- (ii) prepared in at least two (2) parts, one (1) being issued to the customer and the other retained in an invoice file; and

(B) sets out:

- (i) the date of the sale;
- (ii) the customer name and business address;
- (iii) a full description of each licensed supply sold, including the serial numbers of the licensed supply sold;
- (iv) the quantity and sales price of each licensed supply;
- (v) the manufacturer's or distributor's license number;
- (vi) the customer's license number; and
- (vii) the gaming card excise tax due on the sale.

(2) Credit memoranda prepared in the same manner as sales invoices.

(3) A sales journal containing at least the following, by calendar month:

- (A) The date of the sale.
- (B) The invoice number of the sale.
- (C) The customer name or account number.
- (D) The total amount of the invoice.
- (E) The total amount of the gaming card excise tax due on the sale.

(4) A complete list of the persons representing the buyer and seller of licensed supplies.

(5) Purchase records documenting that all:

- (A) type II gambling games; and
- (B) licensed supplies;

were purchased from a licensed manufacturer or distributor.

(6) Invoices may not display "Cash Sale". Invoices shall display the customer's name and address on all sales invoices.

(b) The serial number printed on licensed supply sold must be identifiable with the sales invoice reflecting the sale of the specific licensed supply.

(c) Records are required to be maintained until the later of the following:

- (1) Six (6) years after the year in which they are created.
- (2) The end of the audit if the records are under audit.

(d) Marketing sheets that show the expected gross income, payout, net income, and number of deals in the pull tab game that have been sold to the qualified licensee. "Payout" does not include the cost of the game itself.

(e) If a licensed manufacturer or distributor destroys, discontinues, or otherwise renders unusable licensed supplies sold in Indiana, then the manufacturer or distributor must provide the commission with a written list of the licensed supplies destroyed, including the following:

- (1) The quantity.
- (2) A description of the items.
- (3) The serial numbers.
- (4) The date on which the items were destroyed.

(f) A licensed manufacturer or distributor must keep the commission informed of the following:

- (1) Its location.
- (2) The location of all facilities where licensed supplies are manufactured or distributed.
- (3) Where the records will be stored if the manufacturer or distributor ceases business.

(g) The records referenced in subsections (a) through (f) must be produced upon request by the commission.

(Alcohol and Tobacco Commission; [905 IAC 1-53-12](#))

[905 IAC 1-53-13](#) Administrative proceedings

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-36](#)

Sec. 13. The adjudication proceeding concerning violations of [IC 4-36](#) and this rule shall be governed by [905 IAC 1-37](#).

(Alcohol and Tobacco Commission; [905 IAC 1-53-13](#))

[905 IAC 1-53-14](#) Deviation from provisions

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-36](#)

Sec. 14. The commission may approve deviations from the provisions of this article upon written request if the commission determines that:

- (1) the requirement or procedure is impractical or burdensome; and
- (2) the alternative means of satisfying the requirement or procedure:
 - (A) fulfills the purpose of the article;
 - (B) is in the best interest of the public and type II gaming in Indiana; and
 - (C) does not violate [IC 4-36](#).

(Alcohol and Tobacco Commission; [905 IAC 1-53-14](#))

[905 IAC 1-53-15](#) Restrictions

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-46](#)

Sec. 15. (a) A manufacturer, distributor or their officers, employees, or agents shall not affiliate with the gaming operation of a retailer in any manner other than the sale or lease of licensed supplies.

(b) Manufacturers, distributors, and manufacturer and distributor representatives may sell or distribute type II gambling games or licensed supplies only to other licensed distributors, distributor representatives, or retailers unless the:

- (1) sale of type II gambling games or licensed supplies are not for the purpose of conducting a type II gambling operation; and
- (2) manufacturer, distributor, and manufacturer or distributor representatives have obtained written authorization from the commission.

(Alcohol and Tobacco Commission; [905 IAC 1-53-15](#))

[905 IAC 1-53-16](#) Petition for review

Authority: [IC 4-36-3-3](#)

Affected: [IC 4-46](#)

Sec. 16. (a) An applicant whose application for a license has been denied or has not been renewed under this article may petition for review.

(b) As used in this rule, "petitioner" refers to the person whose:

- (1) application has been denied by the commission; or
- (2) license has not been renewed.

(c) A petition for review shall meet the following requirements:

- (1) Be in writing.

(2) State the name, current address, and current telephone number of the petitioner.

(3) State in detail the reasons why and the facts upon which the petitioner will rely to show the:

(A) petitioner's application for a license should not have been denied; or

(B) license should have been renewed;

including specific responses to any facts enumerated in the commission's notice of denial or notice of nonrenewal.

(4) Be submitted within the time frame set by [905 IAC 1-36-2\(b\)](#).

(d) The applicant shall submit an original and one (1) copy of any request, pleading, or other written document submitted to the commission.

(e) Once an applicant has filed a petition for review, a certificate of service must be attached to each pleading filed. The certificate of service shall indicate that the pleading has been served on each attorney or party of record.

(f) An action involving a denial or nonrenewal must also comply with [905 IAC 1-36](#).

(*Alcohol and Tobacco Commission; [905 IAC 1-53-16](#)*)

[Notice of Public Hearing](#)

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