

IC 35-45-5

Chapter 5. Gambling

IC 35-45-5-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

- (1) The amendments made to sections 2 and 3 of this chapter by P.L.70-2005 apply only to crimes committed after June 30, 2005.
- (2) The amendments made to sections 3 and 4 of this chapter by P.L.227-2007 apply only to crimes committed after June 30, 2007.
- (3) The addition of section 3.5 of this chapter by P.L.227-2007 applies only to crimes and infractions committed after June 30, 2007.

As added by P.L.220-2011, SEC.606.

IC 35-45-5-1

Definitions

Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Electronic gaming device" means any electromechanical device, electrical device, or machine that satisfies at least one (1) of the following requirements:

- (1) It is a contrivance which for consideration affords the player an opportunity to obtain money or other items of value, the award of which is determined by chance even if accomplished by some skill, whether or not the prize is automatically paid by the contrivance.
- (2) It is a slot machine or any simulation or variation of a slot machine.
- (3) It is a matchup or lineup game machine or device operated for consideration, in which two (2) or more numerals, symbols, letters, or icons align in a winning combination on one (1) or more lines vertically, horizontally, diagonally, or otherwise, without assistance by the player. The use of a skill stop is not considered assistance by the player.
- (4) It is a video game machine or device operated for consideration to play poker, blackjack, any other card game, keno, or any simulation or variation of these games, including any game in which numerals, numbers, pictures, representations, or symbols are used as an equivalent or substitute for the cards used in these games.

The term does not include a toy crane machine or any other device played for amusement that rewards a player exclusively with a toy, a novelty, candy, other noncash merchandise, or a ticket or coupon redeemable for a toy, a novelty, or other noncash merchandise that has a wholesale value of not more than the lesser of ten (10) times the amount charged to play the amusement device one (1) time or

twenty-five dollars (\$25).

(c) "Gain" means the direct realization of winnings.

(d) "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.

(e) "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.

(f) "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.

(g) "Interactive computer service" means an Internet service, 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 or is an intermediary to the Internet.

(2) A system operated or services offered by a library, school, state educational institution, or private postsecondary educational institution.

(h) "Operator" means a person who owns, maintains, or operates an Internet site that is used for interactive gambling.

(i) "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.

(j) "Tournament" means a contest in which:

(1) the consideration to enter the contest may take the form of a separate entry fee or the deposit of the required consideration to play in any manner accepted by the:

(A) video golf machine; or

(B) pinball machine or similar amusement device described in subsection (m)(2);
on which the entrant will compete;
(2) each player's score is recorded; and
(3) the contest winner and other prize winners are determined by objectively comparing the recorded scores of the competing players.

(k) "Toy crane machine" means a device that is used to lift prizes from an enclosed space by manipulating a mechanical claw.

(l) For purposes of this chapter:
(1) a card game; or
(2) an electronic version of a card game;
is a game of chance and may not be considered a bona fide contest of skill.

(m) In the application of the definition of gambling set forth in subsection (d), the payment of consideration to participate in a tournament conducted on:
(1) video golf games; or
(2) pinball machines and similar amusement devices that award no prizes other than to mechanically confer an immediate and unrecorded right to replay on players that is presumed to be without value under this section;
is not considered gambling even if the value of a prize awarded in the course of the tournament exceeds the amount of the player's consideration.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.80; P.L.70-2005, SEC.2; P.L.2-2007, SEC.377; P.L.227-2007, SEC.64; P.L.3-2008, SEC.252.

IC 35-45-5-2

Unlawful gambling

Sec. 2. (a) A person who knowingly or intentionally engages in gambling commits unlawful gambling.

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

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

- (1) in Indiana; or
 - (2) with a person located in Indiana;
- commits a Class D felony.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.81; P.L.70-2005, SEC.3.

IC 35-45-5-3

Professional gambling; professional gambling over the Internet

Sec. 3. (a) A person who knowingly or intentionally:

- (1) engages in pool-selling;
- (2) engages in bookmaking;
- (3) maintains, in a place accessible to the public, slot machines, one-ball machines or variants thereof, pinball machines that

award anything other than an immediate and unrecorded right of replay, roulette wheels, dice tables, or money or merchandise pushcards, punchboards, jars, or spindles;

(4) conducts lotteries or policy or numbers games or sells chances therein;

(5) conducts any banking or percentage games played with cards, dice, or counters, or accepts any fixed share of the stakes therein; or

(6) accepts, or offers to accept, for profit, money, or other property risked in gambling;

commits professional gambling, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction under this subsection.

(b) An operator who knowingly or intentionally uses the Internet to:

(1) engage in pool-selling:

(A) in Indiana; or

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

(2) engage in bookmaking:

(A) in Indiana; or

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

(3) maintain, on an Internet site accessible to residents of Indiana, the equivalent of:

(A) slot machines;

(B) one-ball machines or variants of one-ball machines;

(C) pinball machines that award anything other than an immediate and unrecorded right of replay;

(D) roulette wheels;

(E) dice tables; or

(F) money or merchandise pushcards, punchboards, jars, or spindles;

(4) conduct lotteries or policy or numbers games or sell chances in lotteries or policy or numbers games:

(A) in Indiana; or

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

(5) conduct any banking or percentage games played with the computer equivalent of cards, dice, or counters, or accept any fixed share of the stakes in those games:

(A) in Indiana; or

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

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

(A) in Indiana; or

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

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

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.82; P.L.70-2005, SEC.4; P.L.227-2007, SEC.65.

IC 35-45-5-3.5

Possession of electronic gaming device; maintaining a professional gambling site; exception for antique slot machines possessed for decorative, historic, or nostalgic purposes

Sec. 3.5. (a) Except as provided in subsection (c), a person who possesses an electronic gaming device commits a Class A infraction.

(b) A person who knowingly or intentionally accepts or offers to accept for profit, money, or other property risked in gambling on an electronic gaming device possessed by the person commits maintaining a professional gambling site, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction under this subsection.

(c) Subsection (a) does not apply to a person who:

- (1) possesses an antique slot machine;
- (2) restricts display and use of the antique slot machine to the person's private residence; and
- (3) does not use the antique slot machine for profit.

(d) As used in this section, "antique slot machine" refers to a slot machine that is:

- (1) at least forty (40) years old; and
- (2) possessed and used for decorative, historic, or nostalgic purposes.

As added by P.L.227-2007, SEC.66.

IC 35-45-5-4

Promoting professional gambling; acts constituting; boat manufacturers; public utilities

Sec. 4. (a) Except as provided in subsections (b) and (d), a person who:

- (1) knowingly or intentionally owns, manufactures, possesses, buys, sells, rents, leases, repairs, or transports a gambling device, or offers or solicits an interest in a gambling device;
- (2) before a race, game, contest, or event on which gambling may be conducted, knowingly or intentionally transmits or receives gambling information by any means, or knowingly or intentionally installs or maintains equipment for the transmission or receipt of gambling information; or
- (3) having control over the use of a place, knowingly or intentionally permits another person to use the place for professional gambling;

commits promoting professional gambling, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction under this section.

(b) Subsection (a)(1) does not apply to a boat manufacturer who:

- (1) transports or possesses a gambling device solely for the purpose of installing that device in a boat that is to be sold and transported to a buyer; and

(2) does not display the gambling device to the general public or make the device available for use in Indiana.

(c) When a public utility is notified by a law enforcement agency acting within its jurisdiction that any service, facility, or equipment furnished by it is being used or will be used to violate this section, it shall discontinue or refuse to furnish that service, facility, or equipment, and no damages, penalty, or forfeiture, civil or criminal, may be found against a public utility for an act done in compliance with such a notice. This subsection does not prejudice the right of a person affected by it to secure an appropriate determination, as otherwise provided by law, that the service, facility, or equipment should not be discontinued or refused, or should be restored.

(d) Subsection (a)(1) does not apply to a person who:

- (1) possesses an antique slot machine;
- (2) restricts display and use of the antique slot machine to the person's private residence; and
- (3) does not use the antique slot machine for profit.

(e) As used in this section, "antique slot machine" refers to a slot machine that is:

- (1) at least forty (40) years old; and
- (2) possessed and used for decorative, historic, or nostalgic purposes.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.83; P.L.164-1990, SEC.1; P.L.20-1995, SEC.19; P.L.227-2007, SEC.67.

IC 35-45-5-4.5

Notice of illegal gambling to operator

Sec. 4.5. (a) A prosecuting attorney may send written notice to an operator described in section 2(c) or 3(b) of this chapter. The notice must:

- (1) specify the illegal gambling activity;
- (2) state that the operator has not more than thirty (30) days after the date the notice is received to remove the illegal gambling activity; and
- (3) state that failure to remove the illegal gambling activity not more than thirty (30) days after receiving the notice may result in the filing of criminal charges against the operator.

A prosecuting attorney who sends a notice under this section shall forward a copy of the notice to the attorney general. The attorney general shall maintain a depository to collect, maintain, and retain each notice sent under this section.

(b) The manner of service of a notice under subsection (a) must be:

- (1) in compliance with Rule 4.1, 4.4, 4.6, or 4.7 of the Indiana Rules of Trial Procedure; or
- (2) by publication in compliance with Rule 4.13 of the Indiana Rules of Trial Procedure if service cannot be made under subdivision (1) after a diligent search for the operator.

(c) A notice served under subsection (a):

(1) is admissible in a criminal proceeding under this chapter;
and

(2) constitutes prima facie evidence that the operator had knowledge that illegal gambling was occurring on the operator's Internet site.

(d) A person outside Indiana who transmits information on a computer network (as defined in IC 35-43-2-3) and who knows or should know that the information is broadcast in Indiana submits to the jurisdiction of Indiana courts for prosecution under this section.
As added by P.L.70-2005, SEC.5.

IC 35-45-5-4.6

Blocking certain electronic mail messages

Sec. 4.6. (a) An interactive computer service may, on 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 such action.
As added by P.L.70-2005, SEC.6.

IC 35-45-5-4.7

Right of action by interactive computer service; defenses; remedies

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 the 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;
- (3) a CMRS provider (as defined in IC 36-8-16.5-6);
- (4) a cable operator (as defined in 47 U.S.C. 522(5)); or
- (5) any other entity that primarily provides connectivity to an operator;

if the entity's equipment is used only to transport, handle, or retransmit information that violates this chapter and is not capable of blocking the retransmission of information that violates this chapter.

(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 violating 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.

As added by P.L.70-2005, SEC.7. Amended by P.L.27-2006, SEC.60.

IC 35-45-5-5

Pari-mutuel wagering; application of chapter

Sec. 5. The provisions of this chapter do not apply to pari-mutuel wagering conducted at racetrack locations or satellite facilities licensed for pari-mutuel wagering under IC 4-31.

As added by Acts 1977, P.L.47, SEC.3. Amended by P.L.341-1989(ss), SEC.13; P.L.24-1992, SEC.61.

IC 35-45-5-6

Sale of lottery tickets; application of chapter

Sec. 6. This chapter does not apply to the sale of lottery tickets authorized by IC 4-30.

As added by P.L.341-1989(ss), SEC.14.

IC 35-45-5-7

Advertisements; wagering; application of chapter

Sec. 7. This chapter does not apply to the publication or broadcast of an advertisement, a list of prizes, or other information concerning:

(1) pari-mutuel wagering on horse races or a lottery authorized by the law of any state;

(2) a game of chance operated in accordance with IC 4-32.2; or

(3) a gambling game operated in accordance with IC 4-35.

As added by P.L.217-1991, SEC.1. Amended by P.L.91-2006, SEC.13; P.L.233-2007, SEC.33.

IC 35-45-5-8

Sale and use of gambling devices; application of chapter

Sec. 8. This chapter does not apply to the sale or use of gambling devices authorized under IC 4-32.2.

As added by P.L.24-1992, SEC.62. Amended by P.L.91-2006, SEC.14.

IC 35-45-5-10

Riverboat gambling

Sec. 10. This chapter does not apply to riverboat gambling authorized by IC 4-33.

As added by P.L.277-1993(ss), SEC.132.

IC 35-45-5-11

Slot machines at racetracks

Sec. 11. This chapter does not apply to a gambling game authorized by IC 4-35.

As added by P.L.233-2007, SEC.34.

IC 35-45-5-12

Authorized gaming in taverns

Sec. 12. This chapter does not apply to the following gambling games licensed or authorized under IC 4-36:

(1) Raffles and winner take all drawings conducted under IC 4-36-5-1.

(2) Type II gambling games.

As added by P.L.95-2008, SEC.16. Amended by P.L.108-2009, SEC.23.