

TITLE 68 INDIANA GAMING COMMISSION

Proposed Rule¹

LSA DOCUMENT # 24-

DIGEST

Adds 68 IAC 21-8-16.5 and 68 IAC 21-13-5 regarding charity gaming. Effective 30 days after filing with the Publisher. Statutory authority: IC 4-32.3-3-3.

SECTION 1. 68 IAC 21-8-16.5 IS ADDED TO READ AS FOLLOWS

Rule 21-8-16.5 “Rolling Twelve-Month Period” Defined

68 IAC 21-8-16.5 “Rolling Twelve-Month Period” Defined

Authority: IC 4-32.3-3-3

Affected: IC 4-32.3

Sec. 16.5. “Rolling twelve-month period” means the three hundred and sixty-five (365) days following the date a violation of IC 4-32.3 or 68 IAC 21.

(Indiana Gaming Commission; 68 IAC 21-8-16.5)

SECTION 2. 68 IAC 21-13.5 IS ADDED TO READ AS FOLLOWS:

Rule 13.5. Civil Penalties

68 IAC 21-13.5-1 Imposition

Authority: IC 4-32.3-3-3; IC 4-32.3-8-2

Affected: IC 4-32.3

Sec. 1. (a) A civil penalty imposed by the commission upon a qualified organization, a manufacturer, a distributor, or an individual under IC 4-32.3 or 68 IAC 21 shall be assessed in the following amounts:

- (1) Seven hundred and fifty dollars (\$750) for the first statutory or regulatory violation in a rolling twelve-month period.**
- (2) One thousand eight hundred and seventy-five dollars (\$1,875) for the second statutory or regulatory violation in a rolling twelve-month period.**
- (3) Three thousand seven hundred and fifty dollars (\$3,750) for each additional statutory or regulatory violation in a rolling twelve-month period.**

(b) Pursuant to IC 4-32.3-8-1, if a violation is of a continuing nature, the commission may impose a civil penalty for each day the violation continues.

(Indiana Gaming Commission; 68 IAC 21-13.5-1)

68 IAC 21-13.5-2 Assessment of Civil Penalty

Authority: IC 4-32.3-3-3; IC 4-32.3-8-2

Affected: IC 4-32.3

¹ DRAFT Rule posted in compliance with IC 4-22-2-19.6(f). DRAFT Rule subject to change pursuant to promulgation process outlined under IC art. 4-22.

Sec. 2. For purposes of assessing civil penalties, the commission shall comply with the following when determining the violation number and the count of violations:

(1) Only violations committed within a rolling twelve months of the date of the base violation being addressed shall be considered for determining whether subsequent statutory or regulatory violations have occurred for purposes of Section 1.

(2) The ordinal number of a violation shall accumulate as first, second, third, etc., independently for each statutory or regulatory violation in a rolling twelve-month period.

(3) When multiple separate, but substantially similar or related violations are committed by a single distinguishable act or failure to act, only one (1) of those violations may be subject to a civil penalty for that act. This subdivision is intended to avoid duplicating civil penalty assessment for violation of multiple provisions of the statute or rule that may be essentially the same or closely related. This subdivision is not intended to limit in any way civil penalty assessment for violations that are the result of more than one (1) distinguishable unrelated act or failure to act or a reoccurring violation.

(4) When civil penalty assessment procedures outlined in subdivision (3) are being followed, the commission shall utilize the appropriate violation with the highest penalty listed on the schedule.

(Indiana Gaming Commission; 68 IAC 21-13.5-2)

68 IAC 21-13.5-3 Mitigating Factors

Authority: IC 4-32.3-3-3; IC 4-32.3-8-2

Affected: IC 4-32.3

Sec. 3. (a) The amount of a civil penalty may be adjusted downward to reflect particular mitigating factors. Some factors that may be considered are the following:

(1) Good faith efforts of the qualified organization, a manufacturer, a distributor, or an individual to comply or prevent the violation.

(2) Existence of written policies, training materials, and records or internal controls governing the conduct of workers and operators of a qualified organization.

(3) Cooperation by the qualified organization, manufacturer, distributor, or individual with the commission during the investigation process.

(4) The history of compliance of the qualified organization, manufacturer, distributor, or individual.

(5) Remedial or corrective action taken by the qualified organization, manufacturer, distributor, or individual.

(6) Any other factor raised by the qualified organization, manufacturer, distributor, or individual for commission consideration as a mitigating to the violation.

(Indiana Gaming Commission; 68 IAC 21-13.5-3)

68 IAC 21-13.5-4 Aggravating Factors

Authority: IC 4-32.3-3-3; IC 4-32.3-8-2

Affected: IC 4-32.3

Sec. 4. (a) The amount of a civil penalty may be adjusted upward to reflect particular aggravating factors. Some factors that may be considered are the following:

(1) Willful or intentional misconduct.

(2) Violation of the same statute or rule within any of the prior two (2) rolling twelve-month periods.

(3) Obstruction or failure to comply with the commission's investigation.

(4) Fraudulent conduct.

(5) Whether the violation resulted in financial harm to a particular individual.

(6) Failure to pay the full amount of any previously mitigated, agreed upon civil penalty.

(7) Any other factor determined by the commission to be an aggravating factor.

(b) Should an aggravating factor be identified, the corresponding fine outlined under Section 1 may be increased by the commission. The commission may assess a fine in any amount, up to and including the maximum amount identified in Indiana Code § 4-32.3-8-2.

(c) The commission shall outline applicable aggravating factors in the notice described in Section 6.

(Indiana Gaming Commission; 68 IAC 21-13.5-4)

68 IAC 21-13.5-5 Assessment of Civil Penalty Not Required

Authority: IC 4-32.3-3-3; IC 4-32.3-8-2

Affected: IC 4-32.3

Sec. 5. (a) Nothing in this article shall require the commission to impose a civil penalty for a violation.

(b) The commission may initiate any of the following enforcement actions for a violation instead of or in addition to a civil penalty:

(1) A disciplinary letter.

(2) A license, permit, registration, or certification:

(A) denial;

(B) modification;

(C) suspension; or

(D) revocation.

(4) Referral for criminal prosecution.

(5) Referral to another appropriate agency.

(Indiana Gaming Commission; 68 IAC 21-13.5-5)

68 IAC 21-13.5-6 Notification of Legal Recourse

Authority: IC 4-32.3-3-3

Affected: IC 4-32.3

Sec. 6. (a) The commission shall notify in writing each qualified organization, a manufacturer, a distributor, or an individual on whom a civil penalty is being assessed. This notification shall include the date and nature of the violation, including legal citation.

(b) In response, the licensee may provide any mitigating factors for commission consideration. Pursuant to IC 4-22-2-19.6(b) and 68 IAC 13-1-18, the parties may enter into a settlement to resolve an alleged violation.

(Indiana Gaming Commission; 68 IAC 21-13.5-6)