

INDIANA

I. Definition of Gambling

Indiana defines “gambling” as “risking money or other property for gain, contingent in whole or in part upon lot, chance, or the operation of a gambling device” IND. CODE ANN. § 35-45-5-1 (2009).

Indiana excludes the following actions from the definition of gambling:

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.
IND. CODE. ANN. § 35-45-5-1 (2009).

Case law indicates that the statutory definition of gambling has no blatant ambiguity and is clearly defined. *State v. Maillard*, 695 N.E.2d 637 (Ind. App. 1998).

Games of Chance:

IND. CODE ANN. § 4-32-1-1 – 4-32-15-8, concerning games of chance, were repealed by P.L. 91-2006, § 15, effective July 1, 2006. Similar provisions can be found in IND. CODE ANN. § 4-32.2, dealing with Charity Gaming. Article 32.2 is addressed in greater detail under Category 6 Express Exemptions, subcategory Charity Gaming.

II. Definition of Bookmaking

Indiana does not appear to have either a statutory or case law definition of bookmaking. Although the term is listed as a prohibited form of gambling in other sections of the Indiana Code, the scope of the term has not been elaborated upon. Bookmaking can be found as a prohibited form of gambling, under professional gambling in the Indiana Code § 35-45-5-3 (2009).

III. Specific Gaming Device Definitions

Under Indiana Law, the definition of a gambling device is broken down into five categories:

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. IND. CODE. ANN. 35-45-5-1 (2009).

Where any level of skill or judgment is required in order to successfully operate a device, and chance is not the sole factor for success, then it does not qualify as a gaming device under Indiana Code. *State v. Maillard*, 695 N.E.2d 637 (Ind. Ct. App. 1998). In *State v. Maillard*, the Indiana Appellate Court found that the operation of a “quarter slide” machine was not a gaming device because the player had certain level of control over the operation of the game.

Furthermore, the quarter slide machine always produced a ticket equivalent to the value of consideration required to play the game.

In *State v. Derry*, 171 Ind. 18, 89 N.E. 765 (1908), the court stated that it is the use of gaming devices for an unlawful purpose that the law condemns, but not mere articles themselves.

Therefore mere possession of a gaming device, accord to *Derry* is not sufficient to fall within the parameters of the statute; instead use of the gaming device unlawfully must be shown. The court indicated in *Derry* that gaming devices can have both lawful and unlawful uses, and that use must be determine in order to find one guilty. 89 N.E. at 767-768.

IV. Bucket Shop Laws

IND. CODE. ANN. 35-18-9-1 – 35-18-9-4, governing illegal bucket shops, was repealed by Acts 1977, P.L. 26, § 25.

V. Prohibited Games of Skill

To the extent applicable, games of skill are governed as set forth in Article 32-2 of the Indiana Code for Charity Gaming. If the game of skill does not meet the guidelines, or the organization hosting the evening is not qualified, under Article 32-2 then it remains a prohibited form of gaming in Indiana.

VI. Express Exemptions

1. Riverboat Gambling

The Indiana Gaming Commission (“Commission”) was created pursuant to a special session of the General Assembly in 1993, when riverboat casinos were accepted as a permissible gambling enterprise. *Ind. Gaming Comm’n v. Moseley*, 643 N.E.2d 296 (Ind. 1994). Pursuant to Article 33 of the Indiana Code, riverboat gambling is deemed permissible in counties contiguous to Lake Michigan, counties contiguous to the Ohio River, and in a county that contains a historic hotel district, subsequently determined to be the Patoka Lake area. IND. CODE ANN. § 4-33-1-1

(2009), *see also Ind. Gaming Comm'n*, 643 N.E.2d at 298 (indicating that Patoka Lake was the third area where riverboat gambling was permitted).

Gaming Contracts/Licensure

Shipment of Gambling Devices:

The shipment of gambling devices to a licensed riverboat or an operating agent in Indiana, which have been labeled and manufactured in accordance with 15 U.S.C. 1171 through 1178 are legal shipments of gambling devices into Indiana. IND. CODE ANN. § 4-33-1-5 (2009).

Riverboat Requirements:

Under IND. CODE ANN. § 4-33-6-6 (2009), a riverboat that is intended to operate as a gambling enterprise, in any of the approved locations in Indiana, must have either a valid certificate of inspection from the United States Coast Guard allowing for the carrying of at least 500 passengers; or a valid certification of compliance with the marine structural and life safety standards as determined by the commission. Also, the riverboat must be a minimum of one hundred fifty (150) feet in length.

For any gambling riverboat that will be operational on the Ohio River, the riverboat must fairly replicate nineteenth century Indiana steamboat passenger vessels. IND. CODE ANN. § 4-33-6-6 (2009).

Licensed Owner, Operating Agent & Occupational License:

A “licensed owner” is the person who owns a riverboat licensed under Article 33 of the Indiana Code. IND. CODE ANN. § 4-33-2-13 (2009).

An “operating agent” is the individual with whom the commission has entered into a contract with for operation of the riverboat in a historical hotel district (Patoka Lake area). IND. CODE ANN. § 4-33-2-14.5 (2009).

An “occupational license” is required for all employees of an Indiana casino, whether the individual works on the riverboat or handles in the money from the casino. IND. CODE ANN. § 4-33-8 (2009).

Supplier’s License:

A “supplier’s license” is a license issued pursuant to Indiana Code § 4-33-7. IND. CODE ANN. § 4-33-2-18 (2009). The holder of a supplier’s license may sell, lease, and contract to sell or lease gambling equipment and supplies to a licensee or an operating agent in conjunction with the gambling operations. A supplier under this section must keep accurate records of all equipment, devices and supplies sold or leased in connection with riverboat gambling, and

supply, on a quarterly basis, all records to the Commission. IND. CODE ANN. § 4-33-7-5 (2009).

A person who is supplying alcoholic beverages to the riverboat gambling operation does not need a supplier's license but must hold a valid permit to deal in alcoholic beverages under Indiana Code 7.1. IND. CODE ANN. § 4-33-7-4 (2009).

Operational Requirements

Hours of Operation:

Pursuant to Section 4-33-6-21 of the Indiana Code, a licensed owner may submit a plan of **flexible scheduling** to the Commission for approval. Upon approval by the Commission, the licensed owner may implement the scheduling plan on the date designated in the approval notice by the Commission. The flexible scheduling plan can include, or be amended to include, provisions that allow for up to twenty-four (24) hours of gambling a day. Amendments to the scheduling plan must be put before the Commission and approved before they can be implemented.

Docked riverboats must follow different guidelines, unless the riverboat already has an approved and implemented flexible scheduling plan. The general rule is that a docked riverboat may not conduct gambling. However, certain conditions create an exception to this general rule. First, gambling may be permitted for thirty-minute periods when passengers are loading and unloading from the riverboat. Second, gambling may be permitted where the master of the riverboat reasonably determines and certifies in writing that: weather, water or traffic conditions present a danger to the riverboat, its crew and passengers; the vessel is undergoing mechanical or structural repair; the water traffic conditions present a danger to the riverboat, its passengers or crew, or other vessels on the water; or the master has been notified of the existence of a condition that would cause a violation of federal law if the riverboat were to cruise. IND. CODE ANN. § 4-33-9-2 (2009).

Gambling Age:

A person under the age of twenty-one (21) years of age may not be present in the areas of riverboat where gambling is being conducted. IND. CODE ANN. § 4-33-9-12 (2009). Furthermore a person under the age of twenty-one may not make a wager. IND. CODE ANN. § 4-33-9-13 (2009).

Types of Games Permitted

Definition of Gambling Game: Per the approval of the Commission the following games are permissible on riverboats:

1. Baccarat

2. Twenty-one
3. Poker
4. Craps
5. Slot machine
6. Video games of chance
7. Roulette wheel
8. Klondike table
9. Punchboard
10. Faro layout
11. Keno layout
12. Numbers ticket
13. Push card
14. Jar tick
15. Pull tab
16. Big six

Limits

Minimum and Maximum Wagers: The minimum and maximum wagers allowed on gambling games are to be determined by the person who has been issued the owner's license or is the operating agent for the riverboat. IND. CODE ANN. § 4-33-9-4 (2009).

Taxes & Fees

Sales on Riverboats: "All state excise taxes, use taxes, and gross retail taxes apply to sales on a riverboat." IND. CODE ANN. § 4-33-6-14 (2009).

Admissions Tax Rates:

Tax rates apply differently depending on whether the riverboat has implemented a flexible scheduling plan under Indiana Code § 4-33-6-21.

For riverboats that do not have in effect a flexible scheduling plan, a tax is imposed on admissions to gambling excursions at a rate of three dollars (\$3) per person. A gambling

excursion is defined in the Indiana Code § 4-33-2-8 as the time during which gambling may take place on a riverboat that does not have a flexible scheduling plan. The admissions tax is imposed upon the license owner conducting the gambling excursions. IND. CODE ANN. § 4-33-12-1 (2009).

For riverboats that have implemented a flexible scheduling plan there are two different rates of tax depending on where the riverboat is operated. If the riverboat operates on Patoka Lake then the tax is four dollars (\$4) per person and the tax is imposed on the operating agent of the riverboat. If the riverboat docks any place other than Patoka Lake then three dollars (\$3) per person is the tax imposed. IND. CODE ANN. § 4-33-12-1 (2009).

Taxes on Wagers:

Riverboats operating without a flexible scheduling plan: “. . . a tax is imposed on the adjusted gross receipts received from gambling games . . . at a rate of twenty-two and five-tenths percent (22.5%) of the amount of the adjusted gross receipts.” IND. CODE ANN. § 4-33-13-1 (2009).

Riverboats operating under a flexible scheduling plan: “A graduated tax is imposed on the adjusted gross receipts received from gambling games authorized under this article as follows:”

q. The first \$25,000,000 of adjusted gross receipts received during the period starting July 1 and ending June 30 the following year is taxed at fifteen percent (15%).

r. The adjusted gross receipts in excess of \$25,000,000 but not exceeding \$50,000,000 received during the period starting July 1 and ending June 30 the following year is taxed at twenty percent (20%).

s. The adjusted gross receipts in excess of \$50,000,000 but not exceeding \$50,000,000 received during the period starting July 1 and ending June 30 the following year is taxed at twenty-five percent (25%).

t. The adjusted gross receipts in excess of \$75,000,000 but not exceeding \$150,000,000 received during the period starting July 1 and ending June 30 the following year is taxed at thirty percent (30%).

u. The adjusted gross receipts in excess of \$150,000,000 are taxed at thirty-five percent (35%).

IND. CODE ANN. § 4-33-13-1.5 (2009).

2. Indiana State Lottery

Indiana has a lottery commission that governs the operation of the state lottery. The Lottery Commission manages almost all aspects of the lottery including what types of games may be conducted, the sale price of tickets, number and size of prizes, number and size of prizes,

payment of prizes to winning ticket holders, frequency of drawings of winning tickets, number and type of locations where tickets can be purchased, method of selling tickets, and the amount and manner of compensation to retailers of tickets. IND. CODE ANN. § 4-30-3-7 (2009).

Charity Gaming

Article 32.2 of the Indiana Code governs Charity Gaming, and the governing body of this article is the Indiana Gaming Commission. The provisions of this article govern and apply to the following activities: bingo events, charity game nights, door prize events, raffle events, festivals and to the sale of pull tabs, punchboards and tip boards at such events. IND. CODE § 4-32.2-1-1 (2009) *see* IND. CODE. § 4-32.2-4-1 (2009).

“Bingo” is defined by Article 32.2 as a game where each participant receives a board with five vertical rows of five spaces, each row being designated with a letter and each box containing a number from one to seventy five, and the center box is always marked “free”. The winner of a game of bingo is the first person to cover the board in a predetermined and announced pattern. IND. CODE. § 4-32.2-2-4 (2006).

“Charity Gaming Night” is a night where the wagers are placed on the following games of chance through the use of imitation money:

22. Card game
23. Dice game
24. Roulette wheel
25. Spindle

Charity Gaming Nights do not allow wagers to be placed upon a slot machine, one-ball machine, pinball machine that awards anything other than an immediate and unrecorded right of replay, policy or numbers game, a banking or percentage game, or bookmaking. IND. CODE. § 4-32.2-2-12 (2009).

Licensing:

In order to conduct a game under Article 32.2, the qualified organization must obtain a license for the event. IND. CODE. § 4-32.2-4-2 (2009). A qualified organization is defined as “a bona fide religious, educational, senior citizens, veterans, or civic organization operating in Indiana . . .” IND. CODE. § 4-32.2-2-24 (2009). Furthermore, the organization must operate without profit to its members, must be tax exempt, and must be established in Indiana for a minimum of five years or is affiliated with a parent organization in existence in Indiana for at least five years. In addition, a qualified organization can also include a licensed, hospital, health facility, psychiatric facility, or a bona fide political organization operating in Indiana and producing exempt function income. IND. CODE § 4-32.2.2-24 (2009).

A license is not required where the total value of all prizes awarded at the event is not more than \$1,000 per event and not more than \$3,000 for all events during a calendar year, as long as the organization registers at least four weeks prior to the event. IND. CODE § 4-32.2-4-3 (2009).

In *Baseball, Inc. v. Indiana Dep't of State Revenue*, the revocation of a license to operate bingo games for charity was permissible and did not violate due process rights, where the revocation was on an emergency basis. 672 N.E.2d 1368 (Ind. Ct. App. 1996). Under Indiana Code 4-22-2, the Internal Department of Revenue has the authority to determine when an emergency exists sufficient to revoke, even temporarily, a license to operate charity games.

Prize Limits:

Prize limits are set forth for each event allowed under Article 32.2. At a bingo event the total prizes for the event may not exceed \$6,000 and the prize for an individual game cannot exceed \$1,000. IND. CODE § 4-32.2-5-17 (2009). Door prize and raffle event awards are the same; the prize limits cannot exceed a value of more than \$5,000. IND. CODE § 4-32.2-5-18, 19 (2009). For pull tab, punchboard and tip board games the total prize awarded cannot exceed \$5,000 and the single prize awarded for a winner for each of those games cannot exceed \$599. IND. CODE § 4-32.2-5-20 (2009).

Pari-mutuel Wagering on Horse Races

Under Article 31 of the Indiana Code, the Indiana Horse Racing Commission was established to govern pari-mutuel wagering on horse races in Indiana. IND. CODE § 4-31-2-4 (2009) *see* IND. CODE § 4-31-3-1 (2009).

In order to conduct pari-mutual wagering on horse races under Article 31, the county fiscal body of the county where the races will be held must adopt an ordinance, and the person conducting the horse racing meeting must secure a permit. IND. CODE § 4-31-4-1 (2009). The permit sets forth some of the guidelines for the wagering, including what races may be bet on and on what days. IND. CODE § 4-31-5-12 (2009).

In order to place a wager on a horse race, the person must be eighteen (18) years of age or older. IND. CODE § 4-31-7-2

Pari-mutuel Wagering

IND. CODE ANN. § 4-25-1-1 – 4-25-6-15, governing pari-mutuel wagering, was repealed by Acts 1979, P.L. 17 § 55 and Acts 1982, P.L. 3, § 1.

Specific Internet Prohibition

Internet Gambling in Indiana is governed by IND. CODE ANN. § 35-45-5-2 (2009). In Indiana, Internet gambling is defined as knowingly or intentionally using the Internet to engage in unlawful gambling within the State or with a person located in Indiana. Unlawful gambling

occurs when an individual engages, knowingly or intentionally in gambling. IND. CODE ANN. § 35-45-5-2 (2009), *See also* IND. CODE ANN. § 35-45-5-1 (2009) (setting forth the definition of gambling).

A person found guilty of Internet Gambling in Indiana is charged with committing a Class D felony. IND. CODE ANN. § 35-45-5-2 (2009).

In an Attorney General opinion it was determined that when a person physically present in Indiana places bets over the Internet, both the persons making and taking the bet violate Indiana law. No. 98-8 (1988)

Penalties for Unlawful Gambling and Gaming Crimes

1. Unlawful Gambling

. A person who knowingly or intentionally engages in gambling commits unlawful gambling and will be found guilty of a Class B misdemeanor. IND. CODE ANN. § 35-45-5-2 (2009).

2. Professional Gambling

- a. Under IND. CODE ANN. § 35-45-5-3 professional gambling is a Class D felony.
- b. Professional Gambling is defined by the statute as follows:

A person who knowingly or intentionally engages in:

1. Pool-selling or bookmaking;
2. Maintains in a public place, slot machines, one-ball machines, pinball machines that award anything other than an immediate and unrecorded right of replay, roulette wheels, dice tables, or money, merchandise pushcards, punchboards, jars or spindles; conducts lotteries or policy or numbers games or sells chances therein;
3. Conducts any banking or percentage games played with cards, dice, or counters, or accepts any fixed share of the states therein; or
4. Accepts or offers to accept for profit, money or other property risking in gambling, will be found guilty of committing professional gambling. IND. CODE ANN. § 35-45-5-3 (2009).

Professional Gambling is also defined as an operator who knowingly or intentionally uses the Internet to engage, in any of the following transactions, in Indiana or with a person located in Indiana:

1. Pool selling or bookmaking
2. Maintains an Internet site that makes available the equivalent of slot machines, one-ball machines, pinball machines that award anything other than an immediate and unrecorded right to replay, roulette wheels, dice tables, money or merchandise pushcards, punchboards, jars or spindles, and the site is accessible to Indiana residents
3. Maintains lotteries or policy or number games or sell chances in lotteries or policy or number games
4. Conducts banking or percentage games played with the computer equivalent of cards, dice, or counters, or accept any fixed share of the stakes of those games
5. Accept, or offer to accept, for profit, money or other property risked in gambling. IND. CODE ANN. § 35-45-5-3 (2009).

The terms “knowing and intentionally” in this statutory section have been interpreted by the Southern District of Indiana to be applicable to the operation of a gambling device and does not mean a knowing and intentional violation of the statute. *United States v. Cross*, 113 F. Supp. 2d 1253 (S.D. Ind. 2000).

3. Promoting Professional Gambling

An individual who engages in the following activities, in Indiana, is guilty of Promoting Professional Gambling, a Class D felony:

1. a. Gambling Device: Knowingly or intentionally owns, manufactures, possess, buys, sells, rents, leases, repairs, or transports a gambling device, or offers or solicits and interest in a gambling device;
2. b. Gambling Information: 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 transmission or receipt of gambling information;
3. Providing a place: Having control over the use of a place, knowingly or intentionally permits another person to use the place for professional gambling. IND. CODE ANN. § 35-45-5-4 (2009).

4. The following activities are excluded from the definition of promoting professional gambling:
5. A boat manufacturer who 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 does not display the gambling device to the general public or make the device available for use in Indiana. IND. CODE ANN. § 35-45-5-4 (2009).

IX. Statute of Anne/Recovery of Debts

Under Indiana Law, it appears the recovery of debts is unenforceable. In *State v. Morgan*, 160 Ind. 474 (1903), the court held that gambling debts were not a contract because contracts involving gambling are void pursuant to Ind. Stat. Ann. § 6675 (1901). Furthermore, any contract where the consideration is for money or something of value won as the result of a wager is void. *Id.* citing Ind. Stat. Ann. § 6675 (1901). Therefore, attempts to achieve a judgment for a debt, that arose out of a wager, will not be enforceable in a court of law in the State of Indiana, as Indiana statute will not recognize a gambling wager as a valid and enforceable contract, either express or implied.