

Regulatory Analysis
LSA Document #24-118**I. Description of Rule**

This section should include an overview of the proposed rulemaking, background, and high-level justification. Topics to address include (as applicable):

a. History and Background of the Rule – Explain the genesis for this rulemaking, including what prompted the agency to undertake this rulemaking. For example, is this rulemaking due to an update in state or federal law, court order, audit finding, operational issue or some other factor? When was the last major update to the rule? What process did the agency follow to develop this rule, for example was there a committee, external working groups, model code, etc.?

Response: This rulemaking comes in order to comply with new state law requirements for rules regarding fees, fines, or penalties. It is meant to make current fees, fines, and penalties assessed publicly available in Administrative Code format for transparency and clarity for those regulated by Indiana Code 4-32.3.

b. Scope of the Rule – Describe at a high-level the scope of the changes in the proposed rule. For example, is the rule simplifying a process, clarifying definitions, aligning the rules with current law, or is it a repeal and replace effort to assist with regulatory compliance and implementation. If it is a repeal and replace, explain why this method was chosen rather than simply amending the existing regulations.

Response: The new rule aligns Indiana Gaming Commission ("Commission") rules regarding fines, fees, and penalties with current Indiana law. Through this new rule, the fine structures for anyone regulated under [IC 4-32.3](#) will be publicly available and transparent.

c. Statement of Need – Provide a statement explaining the need for the rule and an evaluation of the policy rationale or goal behind the proposed rule, including an explanation as to whether the rule is intended to address 1) a federal or state statutory requirement; 2) a court order; 3) an audit finding, 4) an operational issue, or 5) another factor. For required changes, indicate what are the required changes and when were the new laws enacted, court order issued, audit conducted, etc.? If changes prompted by another factor, explain how that factor creates the need for the rulemaking.

Response: This rule is a result of a state requirement. Specifically, the proposed rule is necessary to accomplish the transparency goals of newly passed [IC 4-22-2-19.6](#) regarding fees, fines, and penalties by making them publicly available in Administrative Code format.

d. Statutory Authority for the Proposed Rule – Include both the authority for the agency to generally regulate in the subject area and the specific authority for the agency to issue the proposed rule.

Response: [IC 4-32.3-3-3](#) gives the commission authority to adopt rules under [IC 4-22-2](#) regarding charity gaming in Indiana. [IC 4-33-4-8](#) and [IC 4-35-4-10](#) specifically give the Commission authority to issue civil penalties. The proposed rule is required to bring current fees, fines, and penalties into accordance with the requirements of [IC 4-22-2-19.6](#).

e. Fees, Fines, and Civil Penalties – Indicate whether the rule adds or increases any fees, fines, or civil penalties and needs to follow the additional steps in [IC 4-22-2-19.6](#).

Response: The new rule does not add any additional fees, fines, or civil penalties. The rule makes current fees, fines, and penalties publicly available in accordance with the new requirements of [IC 4-22-2-19.6](#). There is no increase to the penalty amounts assessed.

For guidance regarding charity gaming violation penalties, the authorizing statute (Ind. Code 4-32.3-8-1 and Ind. Code 4-32.3-8-2) only states a maximum penalty depending on the number of violations. In creating the new penalty rule, the Commission kept these maximums in mind, which have stayed consistent for over thirty (30) years, while also considering the factors described in Ind. Code 4-22-2-19.6(d). The Commission also wishes to stress that as a practical matter, the Charity Gaming Division typically enforces its rules via continuing education before initiating disciplinary action.

When considering what would be included in a new rule, the Commission first wanted to clarify the period during which multiple violations of the same kind would trigger a higher penalty amount. The Commission created the concept of a "rolling twelve-month period," which is 365 days from the date of a violation during which another violation of the same kind would trigger the higher penalty amount. Violations outside of this period, or of another kind, would reset back to the lowest penalty amount.

While considering the new rule, the Commission also wanted to create base penalty amounts that would set a basic level of deterrence for even a single violation, while at the same time allowing room to increase or decrease that amount based on other factors relating to the specific violation. Mitigating and aggravating factors are also described in the proposed rule that would allow the base penalty amount to be adjusted upward or downward depending on the severity of the violation and other factors.

The Commission additionally sought input from various industry stakeholders while preparing this proposed penalty rule. These stakeholders were generally supportive of the proposed rule. The Commission believes that the proposed rule provides a good framework allowing the Commission to appropriately enforce its rules transparently to regulated organizations, while considering the various factors as required by state law.

II. Fiscal Impact Analysis

This section should include a discussion of the impact of the proposed rulemaking on State and local government expenditures and revenues. Topics to address include (as applicable):

a. Anticipated Effective Date of the Rule - June 1, 2024, subject to meeting all necessary requirements of rule promulgation and the Commission's quarterly business meeting schedule.

b. Estimated Fiscal Impact on State and Local Government – The rule should not have any significant impact on state or local government, as the fees, fines, and penalties had previously existed. They are now being codified in the Indiana Administrative Code as required by [IC 4-22-2-19.6](#).

c. Sources of Expenditures or Revenues Affected by the Rule – Any funds resulting from penalties collected under this rule would go to the charity gaming enforcement fund pursuant to [IC 4-32.3-8-5](#).

III. Impacted Parties

This section should identify all parties that may be impacted from the proposed rule. This will serve as the multiplier for costs and benefits. Consider the impact of the rule on all persons affected by the rule, not just regulated persons. Impacted parties can be determined by a variety of sources including, but not limited to, agency records, calculation, research, estimates, and surveys. Agencies can exclude parties already in compliance from the cost-benefit analysis.

Response: Licensees under [IC 4-32.3](#) would be subject to the proposed rule. The underlying rules in which the fines, fees, and penalties are assessed have already been in place, so the affected parties already know the compliance requirements. It should also be noted that the Commission has conducted an informal comment period with stakeholders in creating the initial draft. The comments received and Commission responses are included in this submission.

IV. Changes in Proposed Rule

This section should identify all changes from existing regulation. This can be done by creating a list of changes or showing the changes in a table format. Failure to identify all changes in the proposed rule is the biggest reason for delays in the OMB review of a proposed rule. Be sure to check legal authority for each provision.

As part of this process, identify all requirements that are being included as part of the proposed rulemaking but are imposed by another source of law. For example, these requirements could be in statute, other regulations, federal regulations, court orders, or compacts. These sources should be included in a list, table, or annotation on the proposed rule language. Requirements that are imposed by another source of law should be excluded from the cost-benefit analysis.

Also, as part of this process, identify all requirements that are being included as part of the proposed rulemaking that incorporate an existing agency standard that is contained in a non-rule document. For example, these standards can be contained in a policy, manual, handbook, contract, form, application, etc. These sources should be included in a list, table, or annotation along with an estimate of the current

compliance rate by regulated parties with the standard.

Response: The purpose of the proposed rule is to make current fees, fines, and penalties publicly available as required by [IC 4-22-2-19.6](#). There will be no increase of those fees, fines, and penalties.

The penalties outlined have been effective since 2006, when [IC 4-32.2-8-2](#) was enacted.

IC 4-32.2-8-2 Civil penalty amounts

Sec. 2. A civil penalty imposed by the commission upon a qualified organization or an individual under section 1 of this chapter may not exceed the following amounts:

- (1) One thousand dollars (\$1,000) for the first violation.
- (2) Two thousand five hundred dollars (\$2,500) for the second violation.
- (3) Five thousand dollars (\$5,000) for each additional violation.

A summary of the charity gaming division's settlements is publicly available on its website at: <https://www.in.gov/igc/charity-gaming/disciplinary-actions/>.

V. Benefit Analysis

This section should include a discussion of the benefits of the changes made in the proposed rule compared to existing requirements. For each new requirement in the proposed rule, consider the benefits to the general public, regulated community, businesses and other regulated entities, your agency, other state agencies, local partners, individuals, families, and small businesses.

When considering possible direct and indirect benefits, consider questions such as the following: Will the regulation save time or money for your agency or another agency? Does the regulation decrease compliance costs? Does the regulation increase business profitability by reducing costs? Does the regulation make the market more competitive? Does the regulation decrease the price of goods or services? Does the regulation create benefits for public health or safety?

If benefits cannot be monetized or quantified, the agency should explain why and include a thorough description of the non-quantifiable benefits as well as a determination whether such benefits will be significant.

Topics to address include (as applicable):

a. Estimate of Primary and Direct Benefits of the Rule – A direct benefit is one that occurs as an immediate result of the stated goals of the regulation without any intervening steps or actions and can include things such as the impact on consumer protection, worker safety, the environment, or business competitiveness. For example, the amount of time an employee saves by not having to complete a certain form and the amount of time the agency saves by not having to review the form.

Response: The penalty structure will now be publicly available for everyone. It also provides detail on the process that disciplinary matters are handled under, including the opportunity to provide mitigating factors for Commission consideration. It would also create efficiencies in staff time spent on reviewing disciplinary matters and assessing penalties.

b. Estimate of Secondary or Indirect Benefits of the Rule - An indirect benefit is one that occurs because of the regulation but is unrelated to its stated goals. Continuing from the direct benefit example, an indirect benefit of getting rid of a form would be using money saved to upgrade a certain technology in the agency. The rule change was not made with the goal of updating technology, but that is an added benefit of the change.

Response: The Commission does not believe there is an indirect benefit, as defined, to this rulemaking.

c. Estimate of Any Cost Savings to Regulated Industries – Indicate if the proposed rule will provide cost savings individuals and/or businesses. Please note if the savings are from a change in an existing requirement or the imposition of a new requirement.

Response: None

VI. Cost Analysis

This section should include a comprehensive enumeration of the cost imposed by the changes made in the proposed rule compared to existing requirements, including tangible and intangible costs. For each new requirement in the proposed rule, consider the costs to the general public, regulated community, businesses and other regulated entities, your agency, other state agencies, local partners, individuals, families, and small businesses.

When considering possible direct and indirect costs, consider questions such as the following: Does the regulation increase compliance costs? Will the regulation require individuals or businesses to change their behavior or procedures to comply? Will the regulation require regulated parties to buy new equipment or software, take more time to complete tasks, hire new workers, take new training, develop new procedures, provide additional information, or take additional actions to comply? Will the regulation require more time or money for your agency or another agency? Does the regulation decrease business profitability by increasing costs? Does the regulation make it more difficult to enter the market? Does the regulation increase the price of goods or services?

If costs cannot be monetized or quantified, the agency should explain why and include a thorough description of the non-quantifiable costs as well as a determination whether such costs will be significant.

Topics to address include (as applicable):

a. Estimate of Compliance Costs for Regulated Entities – Costs are the burden of complying with the rule and can include the costs of fees, new equipment or supplies, increased labor and training, education, supervisory costs, and any other compliance cost imposed by the requirements of the rule. Consider both direct and indirect costs. Direct costs are an immediate result of the regulation without any intervening steps or actions. Indirect costs occur because of the regulation but are unrelated to its stated goals. If possible, agencies should monetize the costs by expressing them in numbers.

Response: For the penalty portion of this rulemaking, costs vary from year to year. The penalties outlined have been effective since 2006, when [IC 4-32.2-8-2](#) was enacted.

[IC 4-32.2-8-2](#) Civil penalty amounts

Sec. 2. A civil penalty imposed by the commission upon a qualified organization or an individual under section 1 of this chapter may not exceed the following amounts:

- (1) One thousand dollars (\$1,000) for the first violation.
- (2) Two thousand five hundred dollars (\$2,500) for the second violation.
- (3) Five thousand dollars (\$5,000) for each additional violation.

A summary of the charity gaming division's settlements is publicly available on its website at: <https://www.in.gov/igc/charity-gaming/disciplinary-actions/>.

b. Estimate of Administrative Expenses Imposed by the Rules – To the extent possible, quantify any legal, consulting, reporting, accounting or other administrative expenses imposed by the requirements of the rule. This includes any additional time regulated parties will need to spend to understand the requirements and comply with them through new processes or procedures.

Response: N/A. This will actually decrease costs as defined as now the penalties for violations will be known in advance for those regulated under IC art. 4-32.3.

c. The fees, fines, and civil penalties analysis required by [IC 4-22-2-19.6](#) – If the rule adds or increases a fee, fine, or civil penalty, the agency must define what the fee, fine, or civil penalty is doing / seeking to punish; the circumstances for which the agency will assess a fee, fine, or civil penalty; and provide a calculation of how the agency decided the specific dollar amount (or formula). For a fee, discuss how the amount of a fee is reasonably based on the amount necessary to carry out the purposes for which the fee is imposed. For a fine or civil penalty, discuss how the amount of the fine or civil penalty was determined based on the following considerations as applicable: Whether the violation has a major or minor impact on the health, safety, or welfare of a person or animal; whether the number of previous violations committed by the offender of laws, rules, or programs administered by the agency; the need for deterrence of future violations; and whether the conduct, if proved beyond a reasonable doubt, would constitute a criminal offense, and the level of penalty set by law for the criminal offense.

Response: For guidance regarding charity gaming violation penalties, the authorizing statute (Ind. Code

4-32.3-8-1 and Ind. Code 4-32.3-8-2) only states a maximum penalty depending on the number of violations. In creating the new penalty rule, the Commission kept these maximums in mind, which have stayed consistent for over thirty (30) years, while also considering the factors described in Ind. Code 4-22-2-19.6(d). The Commission also wishes to stress that as a practical matter, the Charity Gaming Division typically enforces its rules via continuing education before initiating disciplinary action.

When considering what would be included in a new rule, the Commission first wanted to clarify the period during which multiple violations of the same kind would trigger a higher penalty amount. The Commission created the concept of a "rolling twelve-month period," which is 365 days from the date of a violation during which another violation of the same kind would trigger the higher penalty amount. Violations outside of this period, or of another kind, would reset back to the lowest penalty amount.

While considering the new rule, the Commission also wanted to create base penalty amounts that would set a basic level of deterrence for even a single violation, while at the same time allowing room to increase or decrease that amount based on other factors relating to the specific violation. Mitigating and aggravating factors are also described in the proposed rule that would allow the base penalty amount to be adjusted upward or downward depending on the severity of the violation and other factors.

The Commission additionally sought input from various industry stakeholders while preparing this proposed penalty rule. These stakeholders were generally supportive of the proposed rule. The Commission believes that the proposed rule provides a good framework allowing the Commission to appropriately enforce its rules transparently to regulated organizations, while considering the various factors as required by state law.

VII. Sources of Information

This section should include a discussion of the sources of outside information utilized to calculate the cost and benefits for the rule. Topics to address include (as applicable):

a. Independent Verifications or Studies - Were there any studies that were relied upon in the cost-benefit analysis? Potential sources include the following: official government reports (e.g., federal, state, or local); academic, technical, or professional articles; commercial literature; businesses' websites; survey data; and word of mouth (e.g., inquiring among business owners). If any source listed above was relied upon in the cost benefit analysis, provide citations to where the studies can be located or indicate how a person can obtain copies from the agency to review.

Response: The Commission conducted an informal comment period with stakeholders in creating an initial draft of the proposed rule. The comments received and Commission responses are included in this submission. The Commission also has experience assessing fines and fees relating to charity gaming since 2006.

b. Sources Relied Upon in Determining and Calculating Costs and Benefits – Did the agency use any outside sources to calculate costs and benefits? For example, the consumer price index database, bureau of labor statistics, IRS data, or any internal, industry specific databases. If these were used, provide a citation to view the source or indicate how a person can obtain copies from the agency to review. Did the agency consult with industry groups or associations or conduct a survey of regulated parties to help determine the costs and benefits? If so, please provide a description of what was done and the information obtained.

Response: The amounts of fines, fees, and penalties will not be changing. Additionally, the Commission conducted an informal comment period with stakeholders in creating an initial draft of the proposed rule. The comments received and Commission responses are included in this submission.

VIII. Regulatory Analysis

Conclude with an aggregated tally of the costs and benefits for each new requirement along with the agency's determination whether the benefits are likely to exceed the costs.

Response: The proposed rule is not expected to have a significant impact on costs and is expected to have the benefit of accomplishing the transparency goals of [IC 4-22-2-19.6](#) regarding fees, fines, and civil penalties. The proposed rule establishes a penalty schedule for violations of statute or regulations that already exist. The rule further outlines the procedure to be used for bringing a disciplinary action, including the ability for a licensee to identify and provide the Commission with mitigating factors for consideration. All

those regulated under [IC 4-32.3](#) would now have the ability to see what the potential penalties will be in advance of any violation.

*Notice of First Public Comment Period with Proposed Rule: [20240410-IR-068240118FNA](#)
Notice of Determination Received: March 13, 2024*

*Posted: 04/10/2024 by Legislative Services Agency
An [html](#) version of this document.*