



February 3, 2023

SENATE BILL No. 164

DIGEST OF SB 164 (Updated February 1, 2023 2:07 pm - DI 140)

Citations Affected: IC 4-31; IC 35-31.5; IC 35-45.

Synopsis: Private card games. Defines "private low stakes card game" and provides a defense to certain gambling crimes if the gambling was a private low stakes card game. Defines "cheat" for purposes of gambling law. Makes cheating at gambling a Class A misdemeanor, and increases the penalty for the offense based on the gain obtained by cheating. Makes conforming amendments.

Effective: July 1, 2023.

Young M

January 9, 2023, read first time and referred to Committee on Public Policy.
February 2, 2023, reported favorably — Do Pass.

SB 164—LS 6604/DI 107



February 3, 2023

First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

SENATE BILL No. 164

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-31-2.1-37, AS ADDED BY P.L.105-2022,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 37. "Simulcast" means the communication by
4 electronic device of a race at a recognized meeting and information
5 related to the race, including:
6 (1) a personal computer or other device ~~which~~ **that** enables
7 communication over the Internet;
8 (2) a private network;
9 (3) an interactive video display or television;
10 (4) a wireless communication technology; or
11 (5) an interactive computer service (as defined in
12 ~~IC 35-45-5-1(g))~~. **IC 35-45-5-1**.
13 SECTION 2. IC 35-31.5-2-37.3 IS ADDED TO THE INDIANA
14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2023]: **Sec. 37.3. "Cheat", for purposes of**
16 **IC 35-45-5, has the meaning set forth in IC 35-45-5-1.**
17 SECTION 3. IC 35-31.5-2-111, AS ADDED BY P.L.114-2012,

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SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 111. "Electronic gaming device", for purposes of IC 35-45-5, has the meaning set forth in ~~IC 35-45-5-1(b)~~. **IC 35-45-5-1.**

SECTION 4. IC 35-31.5-2-140, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 140. "Gain", for purposes of IC 35-45-5, has the meaning set forth in ~~IC 35-45-5-1(c)~~. **IC 35-45-5-1.**

SECTION 5. IC 35-31.5-2-141, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 141. "Gambling", for purposes of IC 35-45-5, has the meaning set forth in ~~IC 35-45-5-1(d)~~. **IC 35-45-5-1.**

SECTION 6. IC 35-31.5-2-142, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 142. "Gambling device", for purposes of IC 35-45-5, has the meaning set forth in ~~IC 35-45-5-1(e)~~. **IC 35-45-5-1.**

SECTION 7. IC 35-31.5-2-143, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 143. "Gambling information", for purposes of IC 35-45-5, has the meaning set forth in ~~IC 35-45-5-1(f)~~. **IC 35-45-5-1.**

SECTION 8. IC 35-31.5-2-175, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 175. "Interactive computer service", for purposes of IC 35-45-5, has the meaning set forth in ~~IC 35-45-5-1(g)~~. **IC 35-45-5-1.**

SECTION 9. IC 35-31.5-2-219, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 219. "Operator", for purposes of IC 35-45-5, has the meaning set forth in ~~IC 35-45-5-1(h)~~. **IC 35-45-5-1.**

SECTION 10. IC 35-31.5-2-246.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 246.5. "Private low stakes card game", for purposes of IC 35-45-5, has the meaning set forth in IC 35-45-5-1.**

SECTION 11. IC 35-31.5-2-248.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 248.4. "Professional gambling", for purposes of IC 35-45-5, has the meaning set forth in IC 35-45-5-1.**

SECTION 12. IC 35-31.5-2-250, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 250. "Profit", for purposes of IC 35-45-5, has the meaning set forth in ~~IC 35-45-5-1(i)~~. **IC 35-45-5-1.**



SECTION 13. IC 35-31.5-2-336, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 336. "Tournament", for purposes of IC 35-45-5, has the meaning set forth in ~~IC 35-45-5-1(j)~~. **IC 35-45-5-1.**

SECTION 14. IC 35-31.5-2-337, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 337. "Toy crane machine", for purposes of IC 35-45-5, has the meaning set forth in ~~IC 35-45-5-1(k)~~. **IC 35-45-5-1.**

SECTION 15. IC 35-45-5-1, AS AMENDED BY P.L.3-2008, SECTION 252, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: 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) "Cheat" means to alter the selection of criteria that



determine:

(1) the result of gambling; or

(2) the amount or frequency of payment in gambling.

The term includes the use of playing cards that are marked or altered on the obverse side to permit a person to discern the card's rank.

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

(e) "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.

(f) "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.

(g) "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.

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

(j) "Private low stakes card game" means gambling to which all of the following apply:

(1) The gambling is in the form of a card game played with physical cards.

(2) If the card game is a banking game, each player takes turns acting as the banker.

(3) No person receives a fixed share or percentage of the stakes.

(4) The gambling does not involve the use of an electronic gaming device, an electronic version of a card game, or the Internet.

(5) The gambling occurs in a private residence and is not open to the public.

(6) Not more than twelve (12) players participate.

(7) The maximum amount of gambling losses that a player may incur is two hundred dollars (\$200) in a twenty-four (24) hour period. For purposes of this subdivision, a player's gambling gains or losses are determined by comparing the amount of money wagered by the player during the course of the gambling to the amount that the player takes from the gambling event at the end of the period.

(8) The gambling occurs at a particular residence not more than four (4) times per calendar month.

(k) "Professional gambling" does not include a private low stakes card game.

~~(i)~~ (l) "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)~~ (m) "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)~~; **(p)(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)~~ (n) "Toy crane machine" means a device that is used to lift prizes from an enclosed space by manipulating a mechanical claw.

~~(j)~~ (o) 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)~~ (p) In the application of the definition of gambling set forth in ~~subsection (d)~~, **subsection (e)**, 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.

SECTION 16. IC 35-45-5-2, AS AMENDED BY P.L.158-2013, SECTION 530, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: 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 Level 6 felony.

(d) It is a defense to a prosecution under subsection (a) that the gambling was a private low stakes card game.

SECTION 17. IC 35-45-5-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2.5. **A person who knowingly or intentionally cheats while engaging in gambling commits cheating at gambling, a Class A misdemeanor. However, the offense is:**

(1) a Level 6 felony if the gain obtained by cheating is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000); and



(2) a Level 5 felony if the gain obtained by cheating is at least fifty thousand dollars (\$50,000).

SECTION 18. IC 35-45-5-3, AS AMENDED BY P.L.158-2013, SECTION 531, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: 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 Level 6 felony. However, the offense is a Level 5 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 Level 6 felony.

(c) It is a defense to a prosecution under subsection (a)(5) that the gambling was a private low stakes card game.



COMMITTEE REPORT

Madam President: The Senate Committee on Public Policy, to which was referred Senate Bill No. 164, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 164 as introduced.)

ALTING, Chairperson

Committee Vote: Yeas 8, Nays 0

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