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Bill Analysis

Legislative Service Commission

Am. Sub. S.B. 235 124th General Assembly (As Passed by the Senate)

Sens. Spada, Jacobson, Blessing, Armbruster, Carnes, Robert Gardner, Goodman, Harris, Shoemaker, Mumper, Prentiss

BILL SUMMARY

- Modifies the definition of "bingo" to include instant bingo, seal cards, and raffles, to remove schemes of chance, and to include references to bingo sheets.
- Modifies definitions applicable to, and defines terms for use in, the Charitable Gaming and Gambling Law.
- Creates licenses that authorize certain charitable organizations to conduct bingo sessions or instant bingo other than at a bingo session.
- Requires the licensing of manufacturers and distributors of bingo supplies.
- Regulates the sale of instant bingo and the conduct of raffles.
- Prohibits the playing of bingo and games of chance that a charitable organization conducts, in a premises where beer or liquor is sold for on-premises consumption.
- Defines and regulates the use of "electronic bingo aids."
- Prohibits a distributor or manufacturer of bingo supplies from participating in the conduct of bingo on behalf of a charitable organization; having any direct or indirect ownership interest in premises used for the conduct of bingo; or knowingly soliciting, offering, paying, or receiving any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for providing bingo supplies.

- Requires the Attorney General, within 30 days after receiving a timely filed application from a distributor or manufacturer of bingo supplies that has previously been issued a license that has not expired and has not been revoked or suspended, to send a temporary permit to the applicant.
- Specifies the percentage of net profits from instant bingo that must go to charity.
- Permits veteran's and fraternal organizations that are licensed to conduct bingo sessions to conduct instant bingo at other than bingo sessions, but only for nine consecutive hours per day, for up to five days per week, on the organization's premises, and to its members and invited guests.
- Specifies how the Attorney General must use the licensing fees generated from the bingo provisions of the Charitable Gaming and Gambling Law.
- Makes other changes in the Charitable Gaming and Gambling Law.

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CONTENT AND OPERATION

Definition of "bingo" and other related definitions

Bingo

The bill modifies the Charitable Gaming and Gambling Law's definition of "bingo" as follows (R.C. 2915.01(S)):

- (1) It includes instant bingo, raffles, and seal cards.
- (2) It removes the following: any scheme or game, other than a game, that meets the traditional definition of bingo, with the following characteristics:
 - (a) The participants use cards, sheets, or other devices that are divided into spaces arranged in horizontal, vertical, or diagonal rows of spaces, with each space, except free spaces, being designated by a single letter, number, or symbol; by a combination of letters, numbers, or symbols; by a combination of a letter and a number, a letter and a symbol, or a number and a symbol; or by any combination of letters, numbers, and symbols, with some or none of the spaces being designated as a free, complimentary, or similar space.
 - (b) The participants cover the spaces on the cards, sheets, or devices that correspond to letters, numbers, symbols, or combinations of such that are announced by a bingo game operator or otherwise transmitted to the participants.
 - (c) A bingo game operator announces, or otherwise transmits to the participants, letters, numbers, symbols, or any combination of such as set forth in (2)(a) above that appear on objects that a bingo game operator selects by chance that correspond to one of the possible letters, numbers, symbols, or combinations of such that can appear on the bingo cards, sheets, or devices.

(d) The winner of the bingo game is any participant who properly announces that a predetermined and preannounced pattern of spaces has been covered on a card, sheet, or device being used by the participant.

(3) It replaces all references to bingo cards with a reference to *bingo cards or sheets*.

(4) It conditions the definition by stating that bingo has the meaning specified in the definition *except as otherwise provided in the Charitable Gaming and Gambling Law*.

Other definitions

The bill also defines or modifies the definitions of the following terms for purposes of the Charitable Gaming and Gambling Law:

- "Instant bingo" means a form of bingo in which one or more prizes are won by one or more persons who have purchased folded or banded tickets with perforated break-open tabs, a face of which is covered or otherwise hidden from view to conceal a number, letter, or symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners (R.C. 2915.01(FF)).
- "Raffle" means a form of bingo in which the one or more prizes are won by one or more persons who have purchased a raffle ticket and in which one or more winners of the raffle are determined by drawing a ticket stub or other detachable section from a receptacle containing ticket stubs or detachable sections corresponding to all tickets sold for the raffle (R.C. 2915.01(GG)).
- "Seal card" means a board or placard used in conjunction with instant bingo tickets that contain one or more seals that, when removed or opened, reveal predesignated winning numbers, letters, or symbols (R.C. 2915.01(PP)).
- "Net profit from a bingo session" means gross profit minus the expenses a charitable organization may lawfully incur for conducting bingo under current law and the bill (R.C. 2915.01(KK)).
- "Net profit from the proceeds of the sale of instant bingo" means gross profit minus the ordinary, necessary, and reasonable expense expended for the purchase of instant bingo supplies (R.C. 2915.01(SS)).

- "Gross profit" means gross receipts minus the amount actually expended for the payment of prize awards (R.C. 2915.01(JJ)).
- "Expenses" means the ordinary, necessary, and reasonable amount of gross profit actually expended for the conduct of bingo sessions or the conduct of instant bingo at other than a bingo session (R.C. 2915.01(LL)).
- "Gross receipts" also include money or assets received during the conduct of instant bingo other than at a bingo session, or a raffle, without the deduction of prize amounts or associated expenses. Bingo sessions are covered by current law. (R.C. 2915.01(X).)
- "Premises," unless the context requires a different meaning, means a building in which a bingo session is conducted or in which instant bingo is conducted other than at a bingo session. It does not include any area of land surrounding the building unless the area is used by a charitable organization that is tax-exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and is used by the charitable organization in conjunction with games of chance authorized to be conducted at the organization's festivals (R.C. 2915.01(MM)).
- "Distributor" means any person who purchases or obtains bingo supplies and who sells, offers for sale, or otherwise provides or offers to provide the bingo supplies to another person for use in this state (R.C. 2915.01(HH)).
- "Manufacturer" means any person who assembles completed bingo supplies from raw materials, other items, or subparts or who modifies, converts, adds to, or removes parts from bingo supplies to further their promotion or sale (R.C. 2915.01(II)).
- "Revoke" means to void permanently all rights and privileges of the holder of an operator's, distributor's, or manufacturer's license issued under the Charitable Gambling Law or a charitable gaming license issued by another jurisdiction (R.C. 2915.01(NN)).
- "Suspend" means to interrupt temporarily all rights and privileges of the holder of an operator's, distributor's, or manufacturer's license issued under the Charitable Gambling Law or a charitable gaming license issued by another jurisdiction (R.C. 2915.01(OO)).

- A "gambling offense" also includes the criminal offenses the bill creates, a violation of an existing or former municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to any of those new offenses, and a conspiracy to commit, attempt to commit, or complicity in committing, any of those new offenses (R.C. 2915.01(G)).
- A "game of chance" does not include bingo (added by the bill) or "punch boards," which are removed from current law (R.C. 2915.01(D)).
- A "scheme of chance" also includes a slot machine and a punch board, and does not include bingo (R.C. 2915.01(C)).
- A "scheme or game of chance conducted for profit" does not include "bingo" rather than "charitable bingo games" as under current law (R.C. 2915.01(E)).
- A "gambling device" includes bingo supplies sold or used in violation of the Charitable Gaming and Gambling Law (R.C. 2915.01(F)).
- "Slot machine" means either of the following: (1) any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player who gives the thing of value in the hope of gain, the outcome of which is determined largely or wholly by chance or (2) any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct or dispense bingo or a scheme or game of chance (R.C. 2915.01(QQ)).
- "Charitable bingo" means any bingo described in the expanded definition of bingo, except a raffle, that is conducted by a charitable organization that has obtained a license to conduct bingo sessions or instant bingo other than at a bingo session and the proceeds of which are used for a charitable purpose. The word "game" is removed from the currently defined term. (R.C. 2915.01(R).)
- "Conduct" means to back, promote, organize, manage, carry on, or prepare for the operation of *bingo* (added by the bill) or a scheme or game of chance. The bill also repeals current law's provision stating that the term does not include any act performed by a bingo game operator. (R.C. 2915.01(T).)

- A "bingo game operator" means any person, except security personnel, who performs work or labor at the site of a bingo session *or at the site of instant bingo conducted other than at a bingo session*, including, but not limited to, collecting money from participants, handing out bingo cards *or sheets* or objects to cover spaces on the bingo cards *or sheets*, *selling bingo cards or sheets*, selecting from a receptacle the objects that contain the combination of letters and numbers that appear on the bingo cards *or sheets*, calling out the combinations of *those* letters and numbers, *identifying winners*, distributing prizes, *selling instant bingo tickets or raffle tickets*, *selecting raffle tickets from a receptacle and announcing the winning numbers in a raffle*, *cleaning up the premises*, and preparing, selling, and serving food or beverages (italicized language added by the bill) (R.C. 2915.01(U)).

- A "participant" means any person who plays bingo (R.C. 2915.01(V)).

- A "bingo session" means a period that includes both of the following (R.C. 2915.01(W)):
 - (1) Not to exceed five continuous hours *for the conduct of one or more games of regular bingo, instant bingo, and seal cards*;

 - (2) *A period for the conduct of instant bingo and seal cards for not more than two hours before and not more than two hours after the period described in item (1) above.*

- "Bingo supplies" means bingo cards or sheets, electronic bingo aids, devices for selecting the objects that contain the combination of bingo letters and numbers, instant bingo tickets, raffle tickets, and seal cards. Items that are bingo supplies are not gambling devices if sold and used in accordance with the Charitable Gaming and Gambling Law. (R.C. 2915.01(EE).)

- "Electronic bingo aid" means an electronic device that a bingo player uses to monitor bingo paper sheets purchased at the time and place of a bingo session and to which all of the following apply: it provides a means for bingo players to input numbers announced by a bingo operator, it compares the numbers entered by the bingo player to the bingo faces previously stored in the memory of the device, and it identifies a winning bingo pattern. The term does not include any device into which coins, currency, tokens, or any other monetary equivalent are inserted to activate play. (R.C. 2915.01(RR).)

- A "charitable organization" has the same general meaning as in current law, but the bill repeals the requirement that, to qualify as a charitable organization, an organization, except a volunteer rescue service or volunteer fire fighter's organization, must have been in continuous existence as such in Ohio for a period of two years immediately preceding either the making of an application for a bingo license or the conducting of any scheme of chance or game of chance. The new definition applies except as otherwise provided in the Charitable Gaming and Gambling Law. (R.C. 2915.01(H).)
- A "volunteer firefighter's organization" (one type of charitable organization) means an organization of volunteer firefighters that is organized and operated to provide financial support for a volunteer fire department or volunteer fire company (current law) and that is recognized or ratified by the county, municipal corporation, or township in which the department or company is located (added by the bill) (R.C. 2915.01(L)).
- An "educational organization" (one type of charitable organization) means any nonprofit organization in Ohio the *exclusive* purpose (replacing "primary" purpose in current law) of which is to educate and develop individuals' capabilities through instruction, which operates or contributes to the support of a school, academy, college, or university (R.C. 2915.01(J)).
- A "service organization" no longer includes a nonprofit organization that is organized and operated exclusively "to contribute to the support of organizations or institutions organized and operated exclusively to provide" specified medical and therapeutic services (R.C. 2915.01(O)).
- "Security personnel" and "youth athletic organizations" continue to have the same meanings as under current law, but with coverage of instant bingo conducted other than at bingo sessions (R.C. 2915.01(Y) and (CC)).

The conduct of bingo: in general

Elimination of the scheme of chance exemption

Current law prohibits any person from establishing, promoting, operating, or knowingly engaging in conduct that facilitates *any scheme or game of chance*

conducted for profit (R.C. 2915.02(A)(2)).¹ This prohibition, however, does not apply to a scheme of chance conducted for profit by a *charitable organization*, as this term is defined in the Charitable Gaming and Gambling Law (see **COMMENT 1**), if the organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code (see **COMMENT 1**) and if all of the money or assets received from the scheme of chance after the deduction only of prizes paid out during the conduct of the scheme of chance are used by, or are given, donated, or otherwise transferred to, any organization that is described in subsection 509(a)(1), (a)(2), or (a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax-exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code. Also, the scheme of chance cannot be conducted during, or within ten hours of, a bingo game conducted for amusement purposes only. (R.C. 2915.02(D)(1).) Although certain charitable organizations, such as veteran's organizations and fraternal organizations, qualify as charitable organizations under the Charitable Gaming and Gambling Law and can receive a bingo license, they cannot conduct schemes of chance under the exemption described above since they are not described in subsection 501(c)(3) of the Internal Revenue Code.

The bill removes the exemption for schemes of chance described in the preceding paragraph but authorizes the Attorney General to issue licenses that allow *any charitable organization* to conduct regular bingo, instant bingo, and seal cards. (R.C. 2915.01(R) and (S)(1) and (2), 2915.02(D)(1), and 2915.08.)

License to conduct bingo or instant bingo

The bill authorizes a charitable organization to apply for and the Attorney General to issue (1) a license that would allow the organization to conduct bingo sessions and (2) a license that would allow the organization to conduct instant bingo other than at a bingo session. The fee for an annual license to conduct *bingo sessions* is \$200 under the bill. The annual license fee under the bill to conduct instant *bingo other than at a bingo session* is based upon the total of all money or assets received by any person or the charitable organization from the operation of instant bingo other than at a bingo session, during the one-year period ending on October 31 of the year immediately preceding the year for which the license is sought. The latter fee generally is determined under the bill as follows: if the total is less than \$250,000, a fee of \$500; if the total is \$250,000 or more but less than \$500,000, a fee of \$1,000; if the total is \$500,000 or more but less than \$750,000,

¹ A violation of this prohibition constitutes the offense of gambling, which is either a misdemeanor of the first degree or a felony of the fifth degree (R.C. 2915.02(F)).

a fee of \$1,500; if the total is \$750,000 or more but less than \$1 million, a fee of \$2,000; if the total is \$1 million or more but less than \$1.5 million, a fee of \$3,500; and if the total is \$1.5 million or more, a fee of \$5,000. The bill requires the Attorney General, however, to establish *reduced license fees* for charitable organizations desiring to *conduct instant bingo other than at a bingo session* during fewer than 26 weeks in a calendar year, and the bill establishes a \$250 fee for an *amended license* of type (1) or (2) above. Under current law, the annual fee for a charitable bingo license generally is \$100, and an amended charitable bingo license may be applied for "without charge." (R.C. 2915.08(A), (I), and (J).)

The bill requires the Attorney General to deposit all license fees received for regular bingo licenses, licenses to conduct instant bingo other than at a bingo session, and amended licenses into the state treasury to the credit of the Charitable Law Fund (R.C. 109.32 and 2915.08(B)). It also modifies the information that a license application must contain to include the address of the principal place of business of the applicant, the premises of bingo sessions and instant bingo at other than a bingo session, and information regarding whether the applicant has been refused a license, or had a license revoked or suspended, in another state (R.C. 2915.08(C)).

The bill authorizes, instead of requires as under current law, the Attorney General to adopt rules to *enforce* the Charitable Gaming and Gambling Law and expands the purposes of those rules to include (1) ensuring that instant bingo is conducted in accordance with the Law and (2) the *implementation* of the Law. It also prohibits the Attorney General from granting more than one license to a particular charitable organization, although, as under current law, the Attorney General may grant branches, lodges, or chapters of national organizations separate licenses. Finally, the bill modifies the licensing provisions of the Law to include references to conducting instant bingo other than at a bingo session. (R.C. 2915.08(E) to (I).)

Frequency of issuance of amended bingo licenses

Current law allows a charitable organization to apply for an amended bingo license if it cannot conduct *regular bingo sessions* at the location, or on the day of the week or at the time, specified on its license due to "circumstances beyond its control" making it "impossible" to so conduct the sessions. Current law apparently also allows a charitable organization that wants to conduct bingo sessions on a day or at a time other than that specified on its license to apply for an amended license. However, current law specifies that a charitable organization may apply *only once in each calendar year* for an amended license to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its bingo license. (R.C. 2915.08(F) and 2915.09(C)(6).)

The bill modifies one ground upon which an amended license may be sought--"the circumstances make it impracticable" for a charitable organization to conduct *bingo sessions*, as redefined by the bill, or instant bingo other than at a bingo session at the *premises*, or on the day of the week or at the time, specified on its license. It requires that any application for an amended bingo license be accompanied by an application fee of \$250 (see above) and be made at least 30 days prior to the requested change in location, day, or time. Finally, the bill allows a charitable organization to apply *twice in each calendar year* for an amended license to conduct *regular bingo sessions* on another day or at another time than that specified in its license. (R.C. 2915.08(F) and 2915.09(C)(6).)²

Licensing of distributors of bingo supplies

The bill generally prohibits any person from selling, offering to sell, or otherwise providing or offering to provide bingo supplies for use in Ohio without having obtained a distributor license from the Attorney General. A violator of this prohibition is guilty of "illegally operating as a distributor," a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense. (R.C. 2915.081(A) and (H).) The bill defines a "distributor" as any person who purchases or obtains bingo supplies and who sells, offers for sale, or otherwise provides or offers to provide bingo supplies to another person for use in Ohio, and "bingo supplies" as bingo cards or sheets, electronic bingo aids, devices for selecting the objects that contain the combination of bingo letters and numbers, instant bingo tickets, raffle tickets, and seal cards (R.C. 2915.01(EE) and (HH)).

The bill authorizes the Attorney General to issue a distributor license to any person that meets the bill's requirements for being issued such a license. The application for a distributor license must be on a form that the Attorney General prescribes and accompanied by the annual fee. The license is valid for a period of one year, and the annual fee for the license is \$2,500. (R.C. 2915.081(B).)

The bill authorizes the Attorney General to *refuse to issue* a distributor license to any person to which any of the following applies, or to any person that has an officer, partner, or other person with an ownership interest of 10% or more and to whom any of the following applies: (1) the person, officer, or partner has been convicted of a felony under the laws of Ohio, another state, or the United States, (2) the person, officer, or partner has been convicted of any gambling offense, (3) the person, officer, or partner has made a material incorrect or false statement to the Attorney General in a license application submitted for a

² In line 1712 of the "As Passed by the Senate" version of the bill, this change is not clear because the word "once" is not stricken-through and the word "twice" is not underlined as new language.

distributor license or in a similar application submitted to a gambling licensing authority in another jurisdiction if the statement resulted in license revocation through administrative action in that jurisdiction, (4) the person, officer, or partner has submitted any incorrect or false information relating to the application if the information is material to the granting of the license, (5) the person, officer, or partner has maintained any incorrect or false information material to the granting of the license in the records the bill requires a distributor to maintain, or (6) the person, officer, or partner has had a license related to gambling revoked or suspended in Ohio or another jurisdiction (R.C. 2915.081(C)). The Attorney General *must not issue* a distributor license to any person that is involved in the conduct or operation of bingo on behalf of a charitable organization or that is a lessor of premises used for the conduct or operation of bingo. And, the Attorney General may *suspend or revoke* a distributor license for any of the reasons for which the Attorney General may refuse to issue a distributor license or if the distributor holding the license violates any provision of the Charitable Gaming and Gambling Law or any rule adopted under it. The refusal to issue, the suspension of, and the revocation of a distributor license are subject to the Administrative Procedure Act. (R.C. 2915.081(D) and (F).)

The bill prohibits a distributor from (1) selling, offering to sell, or otherwise providing or offering to provide bingo supplies to any person in Ohio except a charitable organization licensed to conduct bingo or to conduct instant bingo other than at a bingo session or to another licensed distributor, or (2) purchasing bingo supplies for use in Ohio except from a manufacturer licensed to sell bingo supplies or from another licensed distributor. It also prohibits a distributor from accepting payment for the sale of bingo supplies other than by check and from paying a manufacturer for purchases of bingo supplies other than by check. Finally, the bill prohibits a distributor from participating in the conduct of bingo on behalf of a charitable organization; having any direct or indirect ownership interest in premises used for the conduct of bingo; or knowingly soliciting, offering, paying, or receiving any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for providing bingo supplies to any person in this state. A violator of any of these prohibitions is also guilty of "illegally operating as a distributor," a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense. (R.C. 2915.081(E) and (H).)³

The bill requires the Attorney General, within 30 days after receiving a timely filed application from a distributor that has previously been issued a license that has not expired and has not been revoked or suspended, to send a temporary

³ Under the bill, the offense of "gambling" also is committed if any person purchases bingo supplies for any consideration other than payment by check (R.C. 2915.02(A)(5)).

permit to the applicant specifying the date on which the application was filed with the Attorney General and stating that the applicant may continue business until a new license is granted or, if the application is rejected, until 15 days after notice of the rejection is mailed to the applicant. The temporary permit does not affect the validity of the applicant's application and does not grant any special rights to the applicant. The issuance of a temporary permit does not prohibit the Attorney General from rejecting the applicant's application because of acts that the applicant committed, or actions that the applicant failed to take, before or after the issuance of the permit. (R.C. 2915.081(G).)

Licensing of manufacturers of bingo supplies

The bill prohibits any manufacturer from selling, offering to sell, or otherwise providing or offering to provide bingo supplies for use in Ohio without having obtained a manufacturer license from the Attorney General. A violator of this prohibition is guilty of "illegally operating as a manufacturer," a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense. (R.C. 2915.082(A) and (G).) The bill defines a "manufacturer" as any person who assembles completed bingo supplies from raw materials, other items, or subparts or who modifies, converts, adds to, or removes parts from bingo supplies to further their promotion or sale (R.C. 2915.01(II)).

The bill authorizes the Attorney General to issue a manufacturer license to any person who meets the bill's requirements for being issued such a license. The application for a manufacturer license must be on a form that the Attorney General prescribes and be accompanied by the annual fee. The license is valid for a period of one year, and the annual fee for the license is \$2,500. (R.C. 2915.082(B).)

The bill authorizes the Attorney General to *refuse to issue* a manufacturer license to any person to which any of the following applies, or to any person that has an officer, partner, or other person with an ownership interest of 10% or more and to whom the following applies: (1) the person, officer, or partner has been convicted of a felony under the laws of Ohio, another state, or the United States, (2) the person, officer, or partner has been convicted of any gambling offense, (3) the person, officer, or partner has made a material incorrect or false statement to the Attorney General in a license application submitted for a manufacturer license or in a similar application submitted to a gambling licensing authority in another jurisdiction if the statement resulted in license revocation through administrative action in the other jurisdiction, (4) the person, officer, or partner has submitted any incorrect or false information relating to an application if the information is material to the granting of the license, (5) the person, officer, or partner has maintained any incorrect or false information material to the granting of the license in records the bill requires a manufacturer to maintain, or (6) the person, officer, or partner has had a license related to gambling revoked in Ohio or another



jurisdiction. The Attorney General may *suspend or revoke* a manufacturer license for any of the reasons for which the Attorney General may refuse to issue a manufacturer license or if the manufacturer holding the license violates any provision of the Charitable Gaming and Gambling Law or any rule adopted under it. The refusal to issue, the suspension of, or the revocation of a manufacturer license is subject to the Administrative Procedure Act. (R.C. 2915.082(C) and (E).)

The bill prohibits a manufacturer from selling, offering to sell, or otherwise providing or offering to provide bingo supplies to any person in Ohio except a licensed distributor. It also prohibits a manufacturer from accepting payment for the sale of bingo supplies other than by check. Finally, the bill prohibits a manufacturer from participating in the conduct of bingo on behalf of a charitable organization; having any direct or indirect ownership interest in premises used for the conduct of bingo; or knowingly soliciting, offering, paying, or receiving any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for providing bingo supplies to any person in Ohio. (R.C. 2915.082(D).) A violator of this prohibition is also guilty of "illegally operating as a manufacturer," a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense (R.C. 2915.082(G)).⁴

The bill requires the Attorney General, within 30 days after receiving a timely filed application from a manufacturer that has previously been issued a license that has not expired and has not been revoked or suspended, to send a temporary permit to the applicant specifying the date on which the application was filed with the Attorney General and stating that the applicant may continue business until a new license is granted or, if the application is rejected, until 15 days after notice of the rejection is mailed to the applicant. The temporary permit does not affect the validity of the applicant's application and does not grant any special rights to the applicant. The issuance of a temporary permit does not prohibit the Attorney General from rejecting the applicant's application because of acts that the applicant committed, or actions that the applicant failed to take, before or after the issuance of the permit. (R.C. 2915.081(F).)

Maintenance of records

Gross receipts, prizes awarded, expenses

Under current law, a charitable organization that conducts a bingo session or a scheme or game of chance is required to maintain for at least three years thereafter itemized lists of the *gross receipts* of, and all *prizes awarded* at, the

⁴ See Footnote 2 with respect to check payments.

bingo session or scheme or game of chance. A charitable organization also must so maintain an itemized list of all *expenses*, other than prizes incurred in conducting a bingo session. Under the bill, these same gross receipts and prizes awarded records must be maintained for each raffle and instant bingo at other than a bingo session that a charitable organization conducts. And, the same expense records must be maintained under the bill for each raffle, game of chance, and instant bingo at other than a bingo session that a charitable organization conducts. Further, a list must be maintained under the bill of (1) the *total prizes awarded from each game* of chance, each regular bingo game, each raffle, and each instant bingo game that a charitable organization conducts, and (2) the name and address of all persons who are winners of prizes of \$600 or more in value (a change from \$100 or more under existing law). (R.C. 2915.10(A)(1), (2), and (3).)

Inventory

The bill requires each charitable organization to conduct and record an inventory of all bingo supplies as of November 1 of each year (R.C. 2915.10(C)).

Net profit

Current law requires that charitable organizations maintain for at least three years thereafter an itemized list of the charitable recipients of the *proceeds* of a bingo session or scheme or game of chance, including the name and address of each recipient to whom the money is distributed and, if the organization uses the proceeds of a bingo session, or the money or assets received from a scheme or game of chance, for a charitable purpose, a list of each purpose and an itemized list of each expenditure for each purpose. The bill requires charitable organizations to instead maintain an itemized list of the charitable recipients of the *net profit* of each bingo session, raffle, instant bingo at other than a bingo session, or game of chance, and, if the organization uses the net profit of a bingo session or instant bingo at other than a bingo session, or a raffle's or game of chance's money or assets, for a charitable purpose, a list showing each purpose and an itemized list showing each expenditure for each purpose. (R.C. 2915.10(A)(4).)

Checking account--gross profit

Under the bill, the gross profit from each bingo session must be deposited into a checking account devoted exclusively to the bingo session. Payments for allowable expenses and to charitable recipients must be made only by checks from the bingo session account. (R.C. 2915.10(B).)

Participants

Current law requires a charitable organization to maintain for at least three years thereafter the number of persons who participate in a bingo session or scheme or game of chance. The bill extends the number maintenance requirement to participants in raffles and instant bingo at other than a bingo session. (R.C. 2915.10(A)(5).)

Distributor special records

A distributor is required by the bill to maintain, for a period of three years after the date of sale or other provision, a record of each instance of its selling or otherwise providing bingo supplies for use in Ohio. The record must include all of the following for each instance: (1) the name of the manufacturer from which the distributor purchased the bingo supplies and the date of the purchase, (2) the name and address of the charitable organization or other distributor to which the bingo supplies were sold or otherwise provided, (3) a description that clearly identifies the bingo supplies, and (4) invoices provided to a purchasing charitable organization that include its name and license number, the name of the manufacturer of the game, the name of the game, the serial number and form number of the instant bingo ticket including the price per ticket, the number of tickets in a game, the total amount to be paid out to winners when all of the tickets are sold, the gross profit per game, and the number and value of top prizes. (R.C. 2915.10(E).)

Manufacturer special records

A manufacturer is required by the bill to maintain, for a period of three years after the date of sale or other provision, a record of each instance of its selling or otherwise providing bingo supplies for use in Ohio. The record must include all of the following for each instance: (1) the name and address of the distributor to whom the bingo supplies were sold or otherwise provided, (2) a description that clearly identifies the bingo supplies, and (3) invoices provided to a purchasing distributor that include its name and license number, the name of the manufacturer of the game, the name of the game, the serial number and form number of the instant bingo ticket including the price per ticket, the number of tickets in a game, the total amount to be paid out to winners when all of the tickets are sold, the gross profit per game, and the number and value of top prizes. (R.C. 2915.10(F).)

Attorney General rules

The bill authorizes the Attorney General, in accordance with the Administrative Procedure Act, to adopt rules establishing standards of accounting,

record-keeping, and reporting to ensure that charitable receipts from bingo sessions, instant bingo at other than a bingo session, raffles, and games of chance are properly accounted for (R.C. 2915.10(D)).

Investigatory authority

The bill authorizes the Attorney General or any law enforcement agency to inspect, during normal business hours, the books, records, inventory, and business premises of a licensed distributor or manufacturer and to take other reasonable action to determine whether there has been a violation of the Charitable Gaming and Gambling Law by such a licensee (R.C. 2915.10(H)).

Current law also allows the Attorney General or any local law enforcement agency to investigate any charitable organization or any officer, agent, trustee, member, or employee of the organization, to examine the accounts and records of the organization, and to conduct inspections, audits, and observations of bingo games or schemes or games of chance while they are in session. The bill instead permits such investigations and other activities to be carried out with regard to bingo sessions as redefined by the bill, raffles, bingo conducted other than at a bingo session, and games of chance. Under existing law unchanged by the bill, the Attorney General or any other local law enforcement authority, may take additional other necessary and reasonable action to determine if there has been a violation of the Charitable Gaming and Gambling Law, and any local law enforcement agency may proceed to enforce the Law after giving written notice to the Attorney General when commencing an action. (R.C. 2915.10(G) and (I).)

Penalty

Whoever fails to comply with any of the bill's or existing law's requirements related to the maintenance of records, or with any of the bill's or existing law's Attorney General or law enforcement agency investigatory authority provisions, as described above, is guilty of a felony of the fourth degree rather than a misdemeanor of the first degree as under current law (R.C. 2915.10(J)).

Conduct of bingo sessions

Use of electronic bingo aids

The bill requires a charitable organization that conducts a bingo session to use or permit the use of electronic bingo aids only under the following circumstances: (1) the number of bingo faces that can be played by a single bingo player using an electronic bingo aid must be limited to 54 bingo faces, (2) the organization must require that an electronic bingo aid be used with corresponding bingo paper sheets, and (3) the price of a bingo face played with an electronic

bingo aid cannot be less than the price of a face played with a bingo paper sheet sold at the same session (R.C. 2915.09(A)(6)).

The bill permits the Attorney General to adopt rules in accordance with the Administrative Procedure Act that govern the use of electronic bingo aids. The rules may include a requirement that an electronic bingo aid be approved by the Attorney General prior to its use in this state. (R.C. 2915.09(F).)

Other modifications

The bill prohibits a charitable organization from permitting any person the charitable organization knows, or should have known, to be under 18 years of age to play regular bingo or to play in a raffle, except at a festival or civic celebration, and from purchasing bingo supplies from any person except a licensed distributor (R.C. 2915.09(B)(10) and (11)). A violator of either of these prohibitions is guilty of illegally conducting a bingo session, which is either a misdemeanor of the first degree or a felony of the fourth degree (R.C. 2915.09(E)).

Regulation of the sale of instant bingo

The bill prohibits a charitable organization from conducting instant bingo or using seal cards unless that organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code (see **COMMENT 1 and 2**). It also prohibits a charitable organization from conducting instant bingo on any day, at any time, or at any premises not specified on the organization's license. And, the bill further prohibits a charitable organization that conducts instant bingo *other than at a bingo session* from failing to comply with the requirements of the Charitable Gaming and Gambling Law that govern (1) the conduct of instant bingo at a bingo session, (2) the use of gross receipts from instant bingo conducted at a bingo session, and (3) the keeping of instant bingo records relative to a bingo session. (R.C. 2915.091(A).)

Under the bill, *any* charitable organization that conducts instant bingo is additionally prohibited from doing any of the following: (1) selling or providing any instant bingo ticket for a price different from the price printed on the ticket by the manufacturer, (2) using any instant bingo ticket as a prize or award, (3) selling an instant bingo ticket to a person under 18 years of age, or (4) failing to keep unsold instant bingo tickets for less than three years (R.C. 2915.091(B)).

Whoever violates any of the above prohibitions is guilty of illegal instant bingo conduct, which either is a misdemeanor of the first degree or a felony of the

fourth or fifth degree depending on the nature of the violation. (R.C. 2915.091(D).)

Finally, the Attorney General may adopt rules, in accordance with the Administrative Procedure Act, governing the sale of instant bingo tickets by charitable organizations and establishing standards for those tickets (R.C. 2915.091(C)).

The conduct of raffles

The bill authorizes a charitable organization to conduct a raffle without a license to conduct bingo. However, a charitable organization may not conduct a raffle unless that organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code (see **COMMENT 1**). And, a charitable organization may not conduct more than 36 raffles during a calendar year. A raffle drawing may be conducted only on the premises that a charitable organization uses for its charitable programs, and no person may be compensated directly or indirectly for assisting in the conduct or operation of a raffle. (R.C. 2915.092(A), (B), and (C).)

Whoever violates any of the above prohibitions is guilty of illegal conduct of a raffle, which either is a misdemeanor of the first degree or a felony of the fifth degree (R.C. 2915.092(D)).

The bill also implies in its definition of a "charitable purpose" that the net profit of a raffle conducted by a subsection 501(c)(3) charitable organization must be used by the organization or be given, donated, or otherwise transferred to a specified type of charitable organization (R.C. 2915.01(Z)). And, the bill excludes a subsection 501(c)(3) charitable organization that has *not obtained* a bingo-related license from the Attorney General from the prohibition against conducting or advertising any form of bingo without such a license, which constitutes the offense of "conducting illegal bingo" (R.C. 2915.07(A)(2)).⁵

Prohibitions against the playing of bingo or games of chance in a premises where beer or liquor is sold for on-premises consumption

The bill exempts from the *prohibition against gambling* those games of chance conducted by certain charitable organizations which meet certain existing

⁵ The bill continues existing law's penalty for this offense (a felony of the fourth degree), but specifies that that penalty is for an initial conviction and that a subsequent conviction of the offense will be a felony of the second degree (R.C. 2915.07(B)).

criteria (e.g., festivals) and which are not conducted during, or within ten hours of, a bingo game conducted for amusement purposes only *and are not conducted on any premises for which a permit, other than a D-4, D-5, F, or F-2 permit, for the sale of beer or intoxicating liquor has been issued* (italicized language added by the bill) (R.C. 2915.02(D)(1)(e)).

The bill also expands the *offense of public gaming* by prohibiting the following: (1) any person, while at a tavern or other establishment at which beer or intoxicating liquor is sold for consumption on the premises, from playing bingo, any game of chance, or any scheme of chance, whether or not a charitable organization conducts the bingo, game, or scheme, and (2) any person who is the owner or lessee, or who has custody, control, or supervision, of such a tavern or other establishment from recklessly permitting the premises to be used or occupied for a purpose described in (1) above. Under current law and the bill, public gaming is a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on a subsequent offense, and premises used or occupied in violation of the bill's proposed public gaming prohibitions or existing law's public gaming prohibitions constitute a nuisance subject to abatement. (R.C. 2915.04(C), (E), and (F).)

Inclusion of bingo in the offense of cheating

The bill modifies the offense of cheating to include bingo. It thus prohibits any person, with purpose to defraud or knowing that the person is facilitating a fraud, from engaging in conduct designed to corrupt the outcome of bingo. Under current law and the bill, cheating is either a misdemeanor of the first degree or a felony of the fifth degree. (R.C. 2915.05.)

Distribution of the net profit from the sale of instant bingo

The bill provides that a charitable organization that conducts instant bingo generally must distribute the net profit from the proceeds of the sale of instant bingo as follows (R.C. 2915.101):

- If a veteran's organization or a fraternal organization conducted the instant bingo (see **COMMENT 2**), it must distribute 50% to a permissible charitable organization for a charitable purpose as defined in the bill (see R.C. 2915.01(Z)) or to a department or agency of the federal government, the state, or any political subdivision, may distribute 20% for its own charitable purposes, and may deduct and retain 30% for its expenses in conducting the instant bingo game. If a veteran's organization or a fraternal organization does not distribute or retain the full 20% and 30% amounts for the specified purposes, the balance of the net profit not distributed or

retained for those purposes must be distributed to a permissible charitable organization for a charitable purpose.

- If a charitable organization other than a veteran's organization or a fraternal organization conducted the instant bingo (see **COMMENT 2**), it must distribute 70% to a permissible charitable organization for a charitable purpose as defined in the bill or to a department or agency of the federal government, the state, of any political subdivision, and may deduct and retain 30% for its expenses in conducting the instant bingo game. If such a charitable organization does not retain the full 30% amount for the specified purpose, the balance of the net profit not retained for that purpose must be distributed to a permissible charitable organization for a charitable purpose. (R.C. 2915.101(B).)

Veteran's or fraternal organization conduct of instant bingo

The bill permits a veteran's organization or a fraternal organization authorized to conduct a bingo session under the Charitable Gaming and Gambling Law to conduct instant bingo (see **COMMENT 2**) *at sessions other than the bingo sessions* if the organization limits the sale of instant bingo to nine consecutive hours per day for up to five days per week, and to its own premises and to its own members and invited guests (R.C. 2915.13(A)).

If a veteran's organization or a fraternal organization authorized to conduct instant bingo under the bill is raising money for another charitable organization, it must execute a written contract with that charitable organization in order to conduct instant bingo. That contract must include a statement of the percentage of the net proceeds that the veteran's or fraternal organization will be distributing to that charitable organization. (R.C. 2915.13(B).) Also, if a veteran's organization or a fraternal organization authorized to conduct instant bingo under the bill has been issued a liquor permit under the Liquor Control Law, that permit may be subject to suspension, revocation, or cancellation if the organization violates the Charitable Gaming and Gambling Law (R.C. 2915.13(C)). The bill relatedly allows the Liquor Control Commission to adopt rules governing the procedure of the Division of Liquor Control in the suspension, revocation, and cancellation of permits because of these violations (R.C. 4301.03(K)).

Miscellaneous changes

Deposit of licensing fees

The bill requires the Attorney General to pay all fees received for the licensing of bingo and instant bingo operators, distributors of bingo supplies, and

manufacturers of bingo supplies into the state treasury to the credit of the Charitable Law Fund (R.C. 109.32(A) and 2915.08(B) and (J)).

The bill further requires the Attorney General to use those license fees for the following purposes: (1) investigating any charitable organization that conducts bingo or instant bingo or any officer, agent, trustee, member, or employee of a charitable organization that conducts bingo, instant bingo, or raffles, (2) examining the accounts and records of a charitable organization that conducts bingo, instant bingo, or raffles, (3) conducting inspections, audits, and observations of bingo sessions, instant bingo conducted other than at a bingo session, and raffles, (4) conducting inspections of the premises where bingo sessions, instant bingo conducted other than at a bingo session, and raffles are conducted, and (5) taking any other necessary and reasonable action to determine if a violation of the Charitable Gaming and Gambling Law has occurred (R.C. 109.32).

Automatic termination of order issued by a court of common pleas

The bill provides that any order issued by a court of common pleas suspending the effect of an order of the Attorney General that revokes or suspends any bingo-related license must terminate not more than 15 months after the date of the filing of a notice of appeal in the court, even if the matter has not been finally adjudicated within that time (R.C. 119.12).

Conforming changes

The bill amends several Revised Code sections to make conforming changes that reflect substantive changes made in other parts of the bill (R.C. 173.121(B), 1531.01(TT), 1711.09, 2915.01(F), (H), (R), (S), (X), and (Y), 2915.02, 2915.07, 2915.11, 2915.12, 3763.01, 4301.03, and 4303.17).

COMMENT

1.(a) Under the Charitable Gaming and Gambling Law, "charitable organization" means any tax-exempt religious, educational, veteran's, fraternal, service, nonprofit medical, volunteer rescue service, volunteer firefighter's, senior citizen's, amateur athletic, youth athletic, or youth athletic park organization (R.C. 2915.01(H)).

(b) The following are descriptions of subsections of the Internal Revenue Code referred to by the bill:

Subsection 501(c)(3) concerns corporations, and any community chest, fund, or foundation, that are organized and operated exclusively for religious,

charitable, scientific, testing for public safety, literary, or educational purposes or for the prevention of cruelty to children or animals.

Subsection 501(c)(4) describes civic leagues composed of employees of a municipality that devote their net earnings exclusively to charitable, recreational, or educational purposes.

Subsection 501(c)(8) describes fraternal organizations that provide payment of life, sick, accident, or other benefits to their members, and subsection 501(c)(10) describes domestic fraternal organizations that devote earnings exclusively to religious, charitable, scientific, educational, and fraternal purposes other than the payment of life, sick, accident, or other benefits to their members.

Subsection 501(c)(19) describes certain war veteran organizations and their auxiliaries.

Subsections 509(a)(1), (a)(2), and (a)(3) generally refer to political subdivisions, subsection 501(c)(3) organizations that are not private foundations, and organizations to which a contribution is tax-deductible on an individual's federal income tax return.

2. Although one provision of the bill authorizes only charitable organizations described in subsection 501(c)(3) of the Internal Revenue Code to conduct instant bingo, other provisions apparently allow organizations not described in subsection 501(c)(3) (such as veteran's organizations and fraternal organizations) to conduct instant bingo.

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|--|----------|---------------|
| Introduced | 02-14-02 | p. 1469 |
| Reported, S. Judiciary on Civil Justice | 05-30-02 | pp. 1869-1870 |
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