



Jeff Grim

Bill Analysis

Legislative Service Commission

S.B. 313

124th General Assembly
(As Introduced)

Sen. Blessing

BILL SUMMARY

- Requires the State Lottery Commission to conduct lotteries using electronic gaming devices at horse racing tracks, and requires the Commission to fully implement such lotteries by June 30, 2003, based on the willingness and ability of each electronic lottery sales agent to cooperate in that implementation.
- Requires the Director of the Commission to license holders of permits issued under the Horse Racing Law as electronic lottery sales agents, establishes licensure requirements, and provides for license renewal every five years.
- Requires the Commission to execute renewable agreements with such agents that provide for the distribution of the gross proceeds of such lotteries in accordance with statutory specifications and that contain other specified provisions.
- Requires the Commission to perform specified actions in conducting lotteries using electronic gaming devices, including the operation of all electronic gaming devices and of an on-line central communications system that provides security, auditing, and data and information retrieval.
- Establishes the responsibilities of electronic lottery sales agents.
- Requires the Commission to adopt rules addressing specified topics that are necessary to implement the bill's provisions.

- Precludes the Commission from conducting specified live casino table games, but authorizes it to conduct lotteries replicating them by electronic gaming devices.
- Prohibits the assessment on or collection from an agent of a license or excise tax or fee by any political subdivision by reason of the conduct of lotteries using electronic gaming devices at tracks.
- Declares an emergency.

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CONTENT AND OPERATION

Definitions

The bill defines the following terms:

(1) "Associated equipment" means any hardware or software that is connected to an electronic gaming device or the central communications system (see below) for the purpose of performing communications to, or validation, auditing, or data and information retrieval by, the State Lottery Commission. "Associated equipment" does not include telecommunications facilities and equipment of a public utility or electronic gaming devices (see below). (Sec. 3770.21(A).)

(2) "Central communications system" means the computer system operated and controlled by the Commission to which electronic gaming devices and their associated equipment communicate for security, auditing, data and information retrieval, and other purposes authorized under the bill (sec. 3770.21(B)).

(3) "Electronic gaming device" means a device approved by the Commission for the purpose of conducting at tracks lotteries that provide immediate prize determinations for individual participants (sec. 3770.21(C)).

(4) "Electronic lottery sales agent" means a person who is a permit holder (see below) and who holds a current license issued under the bill to assist the Commission in conducting lotteries through the use of electronic gaming devices at a track (sec. 3770.21(D)).

(5) "Gross proceeds" means the amount of wagers by participants in lotteries minus payments to winning participants (sec. 3770.21(E)).

(6) "Key gaming employee" means any individual employed by or under contract with an electronic lottery sales agent or an employee of a contractor that provides management or employee-related services to the agent, including gaming operator managers or assistant managers; facilities operator managers; electronic games managers; accounting department personnel; count room employees; cage department employees, including cashiers and main bank employees; vault department employees; surveillance and security department employees; floor managers; maintenance and security personnel, including custodians of electronic gaming devices and associated equipment and persons with access to cash and accounting records within such devices or equipment; and internal auditors of the agent (sec. 3770.21(F)).

(7) "Permit holder" means a corporation, trust, partnership, limited partnership, association, person, or group of persons issued a permit under the Horse Racing Law to conduct a racing meeting other than the holder of a permit issued for a racing meeting at a county fair or an independent fair (sec. 3770.21(G)).

(8) "Track" means any place, track, or enclosure where a permit holder conducts live horse racing for profit at a race meeting. "Track" includes facilities on premises contiguous or adjacent to tracks. (Sec. 3770.21(H).)

Establishment of lotteries using electronic gaming devices

The bill requires the State Lottery Commission to conduct lotteries that provide immediate prize determinations for individual participants through the use of electronic gaming devices. The Commission must conduct these lotteries only

through electronic lottery sales agents (agents) that have conducted live horse-racing meetings during each of the past seven calendar years preceding their licensing as agents and only at tracks. If, on the bill's effective date, more than one permit holder conducted horse-racing meetings at a track during the previous calendar year, the permit holders must designate, by a written agreement, one permit holder, or a person or entity owning or owned by one or more permit holders, as the agent for that track. The agreement must be filed with the Commission prior to the issuance of an agent license and cannot be modified without the consent of the Commission. (Sec. 3770.22.)

Not later than June 30, 2003, the Commission must fully implement lotteries using electronic gaming devices based on the willingness and ability of each agent to cooperate in the implementation of such lotteries (Section 3).

Licensure of electronic gaming sales agents

Under the bill, the Director of the State Lottery Commission must license a permit holder as an electronic gaming sales agent. Each applicant for a license must do all of the following:

- (1) Pay to the Commission a fee of \$1,000;
- (2) Present proof, in the form required by the Director, that the applicant is a permit holder;
- (3) Prior to the approval of the application, obtain a letter of credit, or a surety or, if required by the Director, a fidelity bond, in an amount to be determined by the Director, but not to exceed \$100,000. The bond may be with any company that complies with the bonding and surety laws of Ohio and requirements established by rules of the Commission adopted under the bill (see "**Rules**," below). The Director must certify to the Commission that the applicant has the required permit and letter of credit or bond. (Sec. 3770.24(A).)

The bill specifies that an agent's license is effective for five years. An agent, on or before the date established by the Director, must renew the agent's license and the agreement required by the bill (see "**Agreement between the Commission and electronic lottery sales agents**," below) and provide evidence that the agent is a current permit holder and has renewed the letter of credit or bond required by the bill. The Director must certify to the Commission that the applicant for the renewal has the required permit and letter of credit or bond. (Sec. 3770.24(B).)

The bill specifies that any violation of the State Lottery Law, including the bill's provisions, or of any rule adopted under that Law or the bill, is sufficient

reason for the Commission to refuse to issue a license or for the Commission to suspend or revoke any license issued under the bill. With respect to the issuance, refusal, suspension, or revocation of a license, the action of the Commission is subject to the Administrative Procedure Act. (Sec. 3770.24(C).)

Relationship between the Commission and electronic lottery sales agents

The bill states that the relationship between the Commission and an agent is one of trust. An agent collects funds on behalf of the Commission through the sale of rights to participate in lotteries for which the agent receives a commission. An agent may not accept any thing of value from, or enter into an agreement with, a manufacturer, distributor, or vendor of electronic gaming devices and associated equipment before filing with the Commission a copy of the agreement or a document memorializing the offer of the thing of value. (Sec. 3770.25.)

Agreement between the Commission and electronic lottery sales agents

Under the bill, the Commission must execute an agreement with each agent. Each agreement and renewed agreement must provide all of the following:

(1) That 37.5% of the gross proceeds of the lotteries using electronic gaming devices must be paid as a commission to the agent for services and personnel provided under the bill by the agent for the lotteries (see "**Responsibilities of an agent**," below); for the provision, maintenance, and repair of the buildings and grounds at the track where the electronic gaming devices are located; and for injury to the existing business of the agent as the result of the conduct of lotteries by the Commission at the track;

(2) That 10.5% of the gross proceeds of the lotteries using electronic gaming devices must be credited to the agent for reimbursement of costs and damages pursuant to the bill (see below) as a result of the operation by the Commission of electronic gaming devices at the track;

(3) That from the above 10.5% of the gross proceeds, an amount equal to 10% of the gross proceeds of lotteries conducted at a track during the previous month must be added by the agent to the purse money for live horse racing conducted at that track except as discussed below;

(4) That from the above 10.5% of the gross proceeds, an amount equal to .25% of the gross proceeds of lotteries conducted at a track during the previous month must be paid by the agent to the county in which the track is located, and .25% of such gross proceeds must be paid to the municipal corporation in which the track is located or, if the track is not located within a municipal corporation, to the township in which the track is located. If the track is located in more than one

county, and municipal corporation or township, the amounts payable must be divided equally among the counties, and municipal corporations or townships;

(5) That the agent must give to the Commission a written schedule that lists the installed cost of all fixtures and equipment supplied by the agent to assist the Commission in conducting lotteries using electronic gaming devices, and, if the Commission discontinues conducting the lotteries for any reason other than breach of the agreement by the agent or suspension or revocation of the agent's license issued under the bill or permit issued under the Horse Racing Law, that the Commission must reimburse the agent for the unamortized cost of the fixtures and equipment listed in the schedule;

(6) That the agent must conduct live horse-racing meetings and simulcast racing programs each calendar year on not less than the number of days required by the Horse Racing Law pursuant to the permit issued by the State Racing Commission for that track;

(7) That not less than 1,800 nor more than 2,000 electronic gaming devices must be placed at a track without a determination by the Director of the State Lottery Commission or by that Commission that the number of devices is consistent with the bill's purposes and has been requested by the agent; and

(8) That lotteries using electronic gaming devices may not be conducted between the hours of 5:00 a.m. and 8:00 a.m. on any day. (Sec. 3770.26(A).)

Under the bill, the term of the agreement cannot exceed five years and cannot be terminated by the parties during its term, except for breach of a provision of the agreement or suspension or revocation of an agent's license issued under the bill or of a permit issued under the Horse Racing Law. If the Commission intends to terminate or not renew an agreement, it must provide the agent with an opportunity for an adjudication under the Administrative Procedure Act. (Sec. 3770.26(B).)

Special distribution of money

The bill allows an electronic lottery sales agent and the Thoroughbred Horsemen's Association or Ohio Harness Horsemen's Association, prior to December 31, 2008, to agree in writing that an amount equal to 1% of the gross proceeds of the lotteries conducted under the bill be paid by the agent to one or more specified funds designated by the appropriate horsemen's organization. The written agreement must be filed with the State Lottery Commission and the State Racing Commission. The funds that may be designated are the Ohio Fairs Fund, the Ohio Thoroughbred Race Fund, the Ohio Standardbred Development Fund, and the Ohio Quarter Horse Development Fund. If an agreement is entered into,

the amount required to be added to the purse money by the electronic lottery sales agent under the bill (see above) must be reduced by 1%. (Section 4.)

Responsibilities of the Commission

The bill requires the Commission to do all of the following in conducting lotteries using electronic gaming devices:

(1) Approve, qualify, certify, procure, install, maintain, repair, replace, and operate all electronic gaming devices, associated equipment, and intellectual property necessary for the conduct of the lotteries;

(2) Procure, install, establish, maintain, repair, replace, and operate the central communications system that provides security, auditing, and data and information retrieval as determined necessary by the Commission and that does not limit participation to only one electronic gaming device manufacturer, distributor, supplier, or provider. The central communications system must be on-line and in continuous communication with computers, electronic gaming devices, and associated equipment located at the tracks of agents;

(3) Select, qualify, certify, retain, pay, and terminate all contractors, suppliers, service companies, and vendors of the Commission necessary for the conduct of lotteries using electronic gaming devices, including those persons that provide electronic gaming devices, associated equipment, and the central communications system; and

(4) Establish standards for the daily payment, by an agent through electronic transfer or other system mandated by the Director, of the gross proceeds of lotteries using electronic gaming devices, less the commission paid, and the reimbursement credited, to the agent under the bill (see above) (sec. 3770.27(D)).

Responsibilities of an electronic lottery sales agent

The bill requires an agent to do all of the following in assisting the Commission with the conduct of lotteries using electronic gaming devices:

(1) Select the number, type, denomination, and location of and refill the electronic gaming devices that have been placed by the Commission at the track, and promptly report to the electronic gaming device manufacturer and the Commission any malfunctions of the devices or failures of the manufacturers or service technicians to promptly service and repair the devices or associated equipment;

(2) Provide, maintain, and repair necessary capital improvements for the facilities at the track at which electronic gaming devices are located;

(3) Hire adequate personnel to ensure compliance with the bill, including sufficient security personnel to protect and secure the devices and associated equipment and the track at which the devices are located;

(4) Hire, and be responsible for the performance of the duties of, key gaming employees, ensuring that those employees have been and remain during the course of their employment duly licensed by the Commission;

(5) By electronic transfer or other system mandated by the Director, transfer or deliver daily to the Commission the gross proceeds of lotteries using electronic gaming devices, less the commission paid, and the reimbursement credited, to the agent under the bill (see above); and

(6) Deliver payment to winning participants of prizes awarded by lotteries conducted by the Commission through electronic gaming devices at tracks (sec. 3770.28(F)).

Rules

Current law requires the State Lottery Commission to promulgate rules in accordance with the Administrative Procedure Act under which a statewide lottery may be conducted. The bill instead requires the Commission to promulgate rules in accordance with that Act under which lotteries, including, but not limited to, games providing immediate prize determinations for individual participants through the use of electronic gaming devices, must be conducted. (Sec. 3770.03(A).) It then slightly modifies the topics to be addressed by those rules to include language encompassing lotteries using electronic gaming devices.

In addition, current law requires the Commission to promulgate rules in accordance with the Administrative Procedure Act under which a statewide lottery and statewide joint lottery games may be conducted. The bill, however, requires the Commission to promulgate rules in accordance with that Act under which statewide joint lottery games may, and lotteries, including, but not limited to, games providing immediate prize determinations for individual participants through the use of electronic gaming devices must, be conducted. (Sec. 3770.03(B).) Current law requires the rules to include specified subjects. The bill modifies certain of those topics and adds others as discussed below.

Currently, the rules must address the manner in which lottery sales revenues are to be collected, including authorization for the Director to impose penalties for failure by lottery sales agents to transfer revenues to the Commission in a timely manner. The bill adds electronic lottery sales agents to these rules. (Sec. 3770.03(B)(2).)

Under current law, the rules must establish the amount of compensation to be paid licensed lottery sales agents. The bill retains the requirement, but creates an exception to it regarding the compensation to be provided to electronic lottery sales agents in accordance with their agreements with the Commission that are required under the bill (see above). (Sec. 3770.03(B)(3).)

Additionally, under current law, the rules must establish the substantive criteria for the licensing of lottery sales agents and procedures for revoking or suspending their license. The bill requires those procedures to apply to the licenses of electronic lottery sales agents. (Sec. 3770.03(B)(4).)

The bill requires the following new topics to be included in the Commission's rules:

(1) The manner in which lotteries that use electronic gaming devices under the bill must be conducted and the security, licensing, and enforcement procedures necessary to ensure the integrity of those lotteries (sec. 3770.03(B)(6));

(2) Licensing requirements for key gaming employees of electronic lottery sales agents or agents' contractors that employ key gaming employees, provided that the maximum initial or yearly fee for a license issued by the Commission cannot exceed the Commission's cost and expenses of investigation and licensing (sec. 3770.03(B)(7)); and

(3) Any other subjects the Commission determines are necessary for the conduct of lotteries using electronic gaming devices (sec. 3770.03(B)(8)).

Prohibitions

The bill states that the Commission may not conduct, directly or in conjunction with any lottery sales agent or electronic lottery sales agent, the following live casino table games:

(1) Card games, including poker, blackjack, twenty-one, casino war, or baccarat, played with persons dealing cards and participants wagering on outcomes determined by the dealt cards;

(2) Roulette, wheel of fortune, or any other game played with persons spinning wheels and participants wagering on outcomes determined by a spinning wheel;

(3) Craps, mah jong, sic bo, or any other game played with persons casting or dealing dice, tiles, or similar objects, and participants wagering on outcomes determined by the location or appearance of the objects cast (sec. 3770.03(D)(1)).

However, the bill allows the Commission to conduct lotteries replicating card games, spinning-wheel games, or cast-object games by electronic gaming devices (sec. 3770.03(D)(2)).

Current law prohibits any person other than a licensed lottery sales agent to sell lottery tickets, but that prohibition or the others discussed below cannot be construed to prevent any person from giving lottery tickets to another as a gift. A transfer of lottery tickets by any person that is made in connection with a marketing, promotional, or advertising program must be deemed to be a gift for the purposes of the State Lottery Law. For purposes of this prohibition and its related provision, the bill replaces "lottery tickets" with "rights to participate in lotteries" and expands the language to include electronic lottery sales agents in addition to lottery sales agents. (Sec. 3770.08(B).)

In addition, the bill prohibits any person from selling rights to participate in lotteries using electronic gaming devices to any person under 21 years of age. Additionally, no person under that age can attempt to purchase such rights. (Sec. 3770.08(C).)

Finally, current law prohibits anyone from inviting, soliciting, demanding, offering, or accepting any payment, contribution, favor, or other consideration to influence the award, renewal, or retention of a lottery sales agent license. The bill adds electronic lottery sales agent licenses to this prohibition. (Sec. 3770.08(D).)

Lottery money

Current law requires that all gross revenues received from sales of lottery tickets, fines, fees, and related proceeds in connection with the statewide lottery and all gross proceeds from statewide joint lottery games be deposited into the State Lottery Gross Revenue Fund, which is in the custody of the Treasurer of State, but is not part of the State Treasury. The bill replaces "lottery tickets" with "rights to participate in lotteries" for purposes of revenues received from lotteries that are to be deposited into the Fund. In addition, the bill requires the Director of the Commission to order the Treasurer of State each month to disburse to the Department of Alcohol and Drug Addiction Services money from the Fund in an amount equal to ½% of the gross proceeds attributed to lotteries conducted under the bill using electronic gaming devices during the preceding month. The Department must use the money for the treatment and prevention of problem gambling. (Sec. 3770.06(A).)

Current law provides that except for gross proceeds from statewide joint lottery games, all revenues of the State Lottery Gross Revenue Fund that are not paid to holders of winning lottery tickets, that are not required to meet short-term prize liabilities, that are not credited to lottery sales agents in the form of bonuses,

commissions, or reimbursements, that are not paid to financial institutions to reimburse those institutions for sales agent nonsufficient funds, and that are collected from sales agents for remittance to insurers under contract to provide sales agent bonding services must be transferred to the State Lottery Fund that is created in the State Treasury. The bill expands this requirement by providing that except for gross proceeds from statewide joint lottery games, all revenues of the State Lottery Gross Revenue Fund that are not paid to winning participants, that are not required to meet short-term prize liabilities, that are not credited to lottery sales agents or electronic lottery sales agents in the form of bonuses, commissions, or reimbursements, that are not necessary for procuring, installing, maintaining, servicing, operating, repairing, and replacing electronic gaming devices, associated equipment, and the central communications system under the bill, that are not paid to financial institutions to reimburse those institutions for sales agent nonsufficient funds, that are not disbursed to the Department of Alcohol and Drug Addiction Services as discussed above, and that are not collected from sales agents for remittance to insurers under contract to provide sales agent bonding services must be transferred to the State Lottery Fund. (Sec. 3770.06(A).)

Miscellaneous provisions

The bill states that the conduct of lotteries and the operation of electronic gaming devices at tracks under the bill cannot be deemed to change the character of the use of the tracks under any county, municipal, or township land use regulation, ordinance, or agreement (sec. 3770.29(A)).

The bill prohibits any license or excise tax or fee from being assessed on or collected from an electronic lottery sales agent by any county, township, municipal corporation, school district, or other political subdivision of the state that has the authority to assess or collect a tax or fee by reason of the conduct of lotteries using electronic gaming devices at tracks (sec. 3770.29(B)).

The bill also states that its provisions relating to the conduct of lotteries using electronic gaming devices do not modify the authority of the State Racing Commission to regulate horse racing in accordance with the Horse Racing Law or, except as provided in the bill, the rights and responsibilities of permit holders under that Law (sec. 3770.30).

The bill requires an electronic gaming device to be connected to the central communications system and authorizes it to be linked with other electronic gaming devices for the purpose of lotteries providing prizes based in whole or part on the outcomes of other electronic gaming devices electronically connected and located at the same or other tracks. The Commission must evaluate and approve both the hardware of an electronic gaming device and the software that is used to operate it. The Commission cannot approve an electronic gaming device unless

the software that is used to operate it will provide to participants a projected average return of more than 85%. (Sec. 3770.23.)

Under the bill, except as provided in the agreements required by the bill between the Commission and electronic lottery sales agents (see above), the number, type, denomination, and location of electronic gaming devices at a track must be within the judgment of the agent. During the first six months of conducting lotteries, not more than 40% of the electronic gaming devices operated by the Commission at an agent's track must be manufactured by the same entity. (Sec. 3770.23.)

Current law requires the Auditor of State to conduct annual audits of all lottery funds and any other audits that the Auditor or the General Assembly considers necessary. The Auditor may examine all records, files, and other documents of the Commission, and the records of lottery sales agents that pertain to their activities as agents, for purposes of conducting authorized audits. The bill includes the records of electronic lottery sales agents that are licensed under the bill. (Sec. 3770.06(D).)

The bill states that the Gambling Law does not apply to, affect, or prohibit lotteries conducted under the State Lottery Law (sec. 3770.03(C)).

Finally, the bill makes necessary conforming changes in statutes that contain references to the existing lottery program (secs. 1711.09, 1711.11, 3770.02, 3770.05, 3770.07, and 4301.03).

Severability clause

The bill includes a severability clause that provides that if any item of law or its application, constituting either the whole or part of a codified or uncodified section of law in the bill, is held invalid, the invalidity does not affect other provisions of the bill that can be given effect without the invalid item of law or application. The bill states that items of law contained in the bill and their applications are independent and severable. (Section 5.) The bill's severability clause is in addition to the existing, general severability clause that is applicable to all provisions of the Revised Code (sec. 1.50, not in the bill).

Emergency clause

Stating that profits from lotteries conducted by the State Lottery Commission must be increased at once through the operation of electronic gaming devices at horse racing tracks to help pay for increased state support for elementary, secondary, vocational, and special education programs, the bill declares an emergency.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-19-02	p. 2134

S0313-I.124/jc

