



Ohio Legislative Service Commission

Final Analysis

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Sub. H.B. 277

129th General Assembly
(As Passed by the General Assembly)

Reps. Blessing and Gerberry, Boyd, Buchy, Driehaus, Hackett, R. Hagan, Henne, Letson, Mallory, Mecklenborg, O'Brien, Ruhl, Sykes, Uecker, Winburn, Yuko

Sens. Beagle, Hite, Niehaus, Schiavoni, Seitz

Effective date: October 17, 2011

ACT SUMMARY

- Permits a horse-racing permit holder who is eligible to become a video lottery sales agent to apply to the State Racing Commission to move its track to another location.
- Changes the disclosure threshold that a casino operator, management company, or holding company license application must contain regarding the identity of persons having a direct or indirect interest in the applicant.
- Specifies that the Ohio Casino Control Commission can assess a renewal fee for casino-related licenses in the amount necessary to cover the Commission's costs in reviewing renewal applications.
- Permits a casino facility to be opened in phases.
- Prohibits the Commission from requiring the use of a central system by casino operators if the casino operator is in compliance with the Casino Law.
- Creates the Casino Operator Settlement Fund.
- Specifies that casino operators and management companies may provide promotional gaming credits to their patrons.
- Treats casino gaming receipts of casino operators the same under the commercial activity tax as they are treated under the gross casino revenue tax.
- Establishes that a card for the purchase of gasoline is a redeemable voucher for a skill-based amusement machine.

- Contains a severability clause.

CONTENT AND OPERATION

Racetrack relocation procedure

For a period of two years after the act's effective date, the act permits a racetrack permit holder who is eligible to become a video lottery sales agent to apply to the State Racing Commission to move its track to another location using the following approval procedure:

(1) The permit holder must submit, for the consideration of the State Racing Commission in its determination on whether to approve the transfer, its proposal to the State Racing Commission and must specify the location of the new track and the incremental economic benefits the permit holder is willing to provide to the state.

(2) The State Racing Commission must approve or deny the transfer.

(3) The permit holder can apply to the State Lottery Commission for a video lottery sales agent license at the new track location.

The act requires the State Racing Commission to give preference to transfer proposals involving moves to locations in which neither horse-racing meetings nor casino gaming have been authorized before July 1, 2011.

However, under the act, a permit holder who is located on property owned by a political subdivision can move its track to a new location within 20 miles of its current location. That permit holder must not be charged any fee by the state in exchange for applying for a move, for having its move approved, or for moving its existing track as specified in this paragraph. The State Racing Commission must give a preference greater than the preference described in the preceding paragraph to such a permit holder as part of the approval procedure.

A permit holder that is authorized to transfer its track and that is a video lottery sales agent can operate at a temporary facility at its new location while constructing or otherwise preparing its new track at that location. A temporary facility must meet any minimal capital investment and structure requirements established by the State Racing Commission.

The act allows the state to discuss and negotiate with parties regarding the transferring of racing permits to new track locations and may, in its discretion, enter into agreements regarding the transfer of permits to new locations in advance of the process set forth above.

Notwithstanding any other provision of Ohio law, the act states that for a period of two years after its effective date, any person holding a permit under the Horse Racing Law to conduct live horse-racing meetings at a facility owned by a political subdivision can apply for, and the State Racing Commission can grant, a permit to conduct horse-racing meetings at a location at which such meetings have not previously been conducted. The Commission may only grant such an application if the proposed location is in the same or a contiguous county and is within 50 miles of the current location associated with the permit, but is not in the same county as another location at which live horse-racing meetings are conducted.

The act specifies that the Gambling Law¹ does not apply to, affect, or prohibit lotteries or video lotteries conducted under the act and the Lottery Law.

The act permits the State Racing Commission to adopt rules under the Administrative Procedure Act to effectuate the act and to establish fees to relocate tracks for applicants. The Commission cannot adopt rules regarding the operation of lotteries or video lotteries.²

The act specifies that the procedure described above "notwithstands" certain sections of continuing law. One of these provisions allows for a track relocation of up to 56 racing days for tracks damaged by fire or other cause under certain conditions.³ Those continuing law sections also set out the procedure, required information, and fees for a person who desires to hold or conduct a horse-racing meeting, wherein the pari-mutuel system of wagering is allowed, to apply to the State Racing Commission for a permit to do so. Also, this provision requires, if the application requests a permit for a horse-racing meeting at a location at which such a meeting has not previously been conducted by permission of the Commission to include a petition signed by at least 51% of the qualified electors voting for Governor at the most recent general election in the townships in which the racing meeting is proposed to be conducted, together with a certificate of the board of elections of the counties in which the townships are situated that the signatures on the petition are valid and in compliance.⁴ Apparently, this petition procedure would not need to be followed under a relocation allowed under the act.

¹ R.C. Chapter 2915.

² Sections 3 and 4.

³ R.C. 3772.13, not in the act.

⁴ R.C. 3769.04, not in the act.

Definitions

The act defines the following terms:

- "Permit holder" means a person that has been authorized by the State Racing Commission to conduct one or more horse-racing meetings under the Horse Racing Law.
- "Track" means any place, track, or enclosure where a permit holder conducts live horse racing for profit at a racing meeting. "Track" includes facilities or premises contiguous or adjacent to those places, tracks, or enclosures.
- "Video lottery sales agent" means a person who is a permit holder and holds a current license issued by the State Lottery Commission to assist the Commission in conducting video lotteries through the use of video lottery terminals at a track.

Casino application – ownership disclosure

The act changes the disclosure threshold that a casino operator, management company, or holding company license application must contain regarding the identity of persons having a direct or indirect interest in the applicant for which the license is sought to greater than 5% for all companies, as opposed to 5% for publicly traded companies and 3% for privately held companies under prior law.⁵

Casino-related license renewal

The act specifies that the Ohio Casino Control Commission can assess a renewal fee for casino-related licenses in the amount necessary to cover the Commission's costs associated with the review of the license renewal application. Also, the act clarifies that a license must be renewed for three years. Under former law, a license could be renewed for not more than three years.⁶

Casino opening in phases

The act permits a casino facility to be opened in phases and to have gaming areas in one or more buildings, facilities, rooms, or areas that together constitute a single casino facility within the boundaries of one or more of the properties described in the

⁵ R.C. 3772.11.

⁶ R.C. 3772.15.

Ohio Constitution,⁷ and, if located on more than one of those properties, is connected by one or more of the following:

- (1) Property owned by the casino operator or any of its affiliates;
- (2) Property leased by the casino operator or any of its affiliates;
- (3) Access over property under the right of the casino operator or any of its affiliates, whether it be by skyways, walkways, roadways, easements, or rights of way;
- (4) Nongaming amenities.

The act removes a former law provision that stated that if a casino operator who had opened an initial location was making substantial progress, as determined by the Ohio Casino Control Commission, on a substitute casino facility on constitutionally approved parcels within the same city, the Commission must have included amounts spent by the casino operator to develop those parcels, and must have granted an additional 36-month extension to the casino operator who was developing on those parcels. The act also removes a prior law provision that stated that the Commission, upon the request of the casino operator, may have also approved up to 24 months of transitional operations by the casino operator on multiple noncontiguous constitutionally approved parcels while transitioning from the initial location to the new facility, provided the facilities are connected by property and structures, owned, leased, or under the exclusive control of the casino operator.⁸

Central system

Under the act, the Ohio Casino Control Commission must not require the use of a central system by a casino operator if the casino operator is in compliance with the Casino Law. If the Commission determines, after written notice to the casino operator and a hearing under continuing law provisions regarding casino-related licensing hearings, that a casino operator is not in compliance with the Casino Law, the Commission can determine it to be necessary to require the casino operator to install and implement a central system under conditions the Commission may require. Before such a hearing, the Commission must provide the casino operator with written notice that the casino operator is not in compliance with a specific requirement of the Casino Law, describe the requirement, and provide the casino operator at least 30 days to cure the noncompliance or, if the cure cannot be reasonably rectified within that time,

⁷ Art. XV, Section 6(C)(9).

⁸ R.C. 3772.27.

require the casino operator to demonstrate to the Commission's satisfaction that the casino operator is diligently pursuing the required cure.

Under former law, the Commission could determine it to be necessary and adopt rules to authorize use of a central system.⁹

Casino Operator Settlement Fund

The act creates the Casino Operator Settlement Fund in the state treasury. The Fund must receive any money paid to the state by casino operators in excess of any licenses or fees provided by the Casino Law or by the Ohio Constitution,¹⁰ and in excess of any taxes levied by Ohio law. Moneys in the Fund may be used for activities related to workforce development, economic development, job creation, training, education, food banks, and expenses.¹¹

Promotional gaming credits

Under the act, "promotional gaming credit" means a slot machine or table game credit, discount, or other similar item issued to a patron to enable the placement of, or increase in, a wager at a slot machine or table game. The act specifies that casino operators and management companies may provide promotional gaming credits to their patrons, but states that the credits are subject to the Commission's oversight. Further, the act clarifies, for purposes of the gross casino revenue tax, that gross casino revenue does not include promotional gaming credits except to the extent that a casino patron using a credit pays money to match the credit in order to use it.¹²

Commercial activity tax

Under the act, casino gaming receipts of casino operators are treated the same under the commercial activity tax as they are treated under the gross casino revenue tax. Continuing law imposes the commercial activity tax on the basis of "gross receipts," which is defined to mean "the total amount realized by a person, without deduction for the cost of goods sold or other expenses incurred, that contributes to the production of gross income of the person, including the fair market value of any property and any services received, and any debt transferred or forgiven as consideration."¹³

⁹ R.C. 3772.31.

¹⁰ Art. XV, Section 6(C).

¹¹ R.C. 3772.34.

¹² R.C. 3772.01, 3772.23, and 5753.01.

¹³ R.C. 5751.01.

Award of a gasoline purchase card for playing a skill-based amusement machine

The act establishes that a card for the purchase of gasoline is a redeemable voucher for purposes of the statutory definition of a "skill-based amusement machine" even if the skill-based amusement machine, for the play of which the card is awarded, is located at a place where gasoline may not be legally distributed to the public or the card is not redeemable at the location of, or at the time of playing, the skill-based amusement machine. The value of such a card cannot exceed \$10.

Continuing law specifies requirements for skill-based amusement machines, and requires that winning players be rewarded with only merchandise prizes or with redeemable vouchers for only merchandise prizes. Neither a merchandise prize nor a redeemable voucher can have a value of more than \$10, and must be distributed at the site of the skill-based amusement machine at the time of play.¹⁴

Severability

The act states that the items of law contained in it, and their applications, are severable. If any item of law contained in the act, or if any application of any item of law contained in it, is held invalid, the invalidity does not affect other items of law contained in it and their applications that can be given effect without the invalid item of law or application.¹⁵

HISTORY

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Reported, H. State Government and Elections	06-23-11
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Reported, S. Finance	06-28-11
Passed Senate (27-6)	06-28-11
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¹⁴ R.C. 2915.01.

¹⁵ Section 5.

