



# Ohio Legislative Service Commission

## Final Analysis

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### **Am. Sub. H.B. 386** 129th General Assembly (As Passed by the General Assembly)

**Reps.** Blessing, Gerberry, Combs, Letson, Barnes, Boyd, Mallory, O'Brien, Weddington, Williams, Yuko

**Sens.** Coley, Eklund, Niehaus, Seitz

**Effective date:** Emergency, June 11, 2012; one provision effective July 1, 2015; contains item vetoes

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## ACT SUMMARY

### Casino Law

- Defines "corrupt activity" for purposes of the criminal law to include certain gaming conduct and bribery crimes under the Casino Law.
- Increases criminal penalties for bribery under the Casino Law.
- Includes the act's corrupt activity felonies in the list of "designated offenses" for which a prosecuting attorney may obtain an interception warrant to intercept wire, oral, or electronic communications.
- Requires the Inspector General to investigate employees of the Attorney General's Office who are contractually performing duties to enforce the Casino Law.
- Authorizes the Inspector General to enter into contracts necessary to complete these investigations.
- Modifies the definition of "holding company" under the Casino Law.

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\* This version corrects the effective date.

- Modifies the definition of "institutional investor" under the Casino Law to mean an entity owning 5% or more, but less than 15%, of an ownership interest in a casino facility, casino operator, management company, or holding company.
- Eliminates the requirement that securities be publicly traded in the qualifications for an institutional investor.
- Requires the Casino Control Commission to notify an institutional investor that it finds unsuitable or unqualified and the casino operator, holding company, management company, or gaming-related vendor licensee in which the investor invested, and allows a reasonable amount of time to cure the conditions.
- Requires the Casino Control Commission to adopt rules related to investors and holding companies that fall below the threshold needed to be considered an institutional investor or holding company.
- Modifies the provisions regarding payment of fees related to criminal records checks related to licensure.
- Refers to the Casino Control Commission as a law enforcement agency, and extends to its gaming agents status as law enforcement officers, as defined in the Crimes and Procedure Law.
- Modifies and consolidates the adjudication procedure applicable to Casino Law licensees, and expands the factors the Casino Control Commission may consider in disciplining a licensee.
- Permits the Casino Control Commission's Executive Director to issue an emergency order regarding certain licenses, registrations, approvals, or certificates issued, approved, granted, or otherwise authorized by the Commission.
- Modifies what information is considered confidential with regard to information submitted, collected, or gathered as part of a license application to the Casino Control Commission.
- Specifies that the \$50 million upfront license fee to obtain a casino operator license must be paid upon each casino operator's application filing.
- Permits, under certain conditions, an intracorporate license transfer without the paying of an additional license or application fee.

- Permits the increase of the casino operator, management company, or holding company license application fee to the extent that the actual review and investigation costs exceed the application fee.
- Permits a licensed casino operator to enter into one or more debt transactions with "affiliated companies," provided that the aggregate amount of all such debt transactions at any one time does not exceed \$10 million.
- Requires a key employee of a gaming-related vendor to file a notification of employment with the Casino Control Commission at least five business days before the first day worked, and to file a license application with the Commission within the first 30 days of employment.
- Requires a key employee license applicant to complete a cover sheet with the license application; the cover sheet is not confidential.
- Clarifies that skill-based amusement machines are not slot machines.
- Restricts the use of the term "casino" in advertising.
- Would have specified that penalties for the use of the term "casino" must not have been levied against and collected from a person operating a facility operating video lottery terminals that used that term in any advertisement before November 3, 2009 (VETOED).
- Clarifies that the criminal penalties under the Casino Law apply to wagers of a person at a casino facility.
- Permits the guidelines for the establishment and maintenance of the Statewide Education Management Information System to require school districts to provide a student's county of residence.
- Specifies that the Tax Commissioner must serve as an agent of the counties only for the purposes of the Gross Casino Revenue Tax and solely to make payments directly to municipal corporations and school districts on the counties' behalf.
- Requires school districts to report twice annually the student population of the district for purposes of calculating the Gross Casino Revenue Tax portion to go to the counties.
- Requires the Tax Commissioner to provide for payment of certain casino-related funds to each county, municipal corporation, and school district.
- Establishes jurisdiction for claims regarding the Casino Law.

## **State Lottery Law**

### **Lotteries**

- Would have required the Permanent Joint Committee on Gaming and Wagering to review the fees each applicant pays for a lottery sales agent license, for administering and processing changes to an application, or for a license renewal (VETOED).
- Permits the Director of the State Lottery Commission to establish an alternative program or policy for establishing the financial responsibility of a lottery sales agent license applicant, with State Lottery Commission approval by rule adopted under the Administrative Procedure Act, that ensures the lottery's financial interests are adequately protected.
- Modifies the length of time a lottery sales agent license and the renewal of a license is effective to at least one year, but not more than three years.
- Sets the lottery prize award value that triggers certain reporting requirements at the reportable winnings amounts established by the Internal Revenue Code.
- Allows certain debts owed to a political subdivision to be satisfied from lottery winnings and establishes priority for satisfaction of debts.

### **Video lottery terminals**

- Requires the State Lottery Commission, in conjunction with the State Racing Commission, to include in any rules adopted concerning video lottery terminals, the required level of minimum investments.
- Requires video lottery terminals to be at facilities with a horseracing permit.
- Requires VLT sales agents to develop internal guidelines and controls for the purpose of giving minority business enterprises the ability to compete for the awarding of contracts to provide goods and services to those sales agents.
- Eliminates the Supreme Court's exclusive jurisdiction over claims arising from the State Lottery Commission's rules or actions, and instead requires such claims be brought in the Franklin County Court of Common Pleas.
- Permits licensed video lottery sales agents to provide VLT promotional gaming credits to patrons for VLT gaming.

- Authorizes the Director of the State Lottery Commission to license, and to suspend or revoke the license of, video lottery technology providers, independent testing laboratories, and gaming employees, and to promulgate related rules.
- Specifies what information submitted, collected, or gathered as part of an application for a video lottery-related license is confidential and not subject to disclosure by a state agency or political subdivision as a public record.
- Requires video lottery terminal licensees to develop guidelines and controls giving minority business enterprises the ability to compete for contracts with those licensees.
- Prohibits the Liquor Control Commission's rules from prohibiting the operation of video lottery terminal games at a commercial race track.
- Requires that each VLT sales agent receive the commission established in a State Lottery Commission rule, and permits a percentage of that commission to be paid to the State Racing Commission for the benefit of breeding and racing, according to its rules.
- Requires the State Lottery Commission to adopt a rule to require such a video lottery sales agent to disperse  $\frac{1}{2}$  of 1% of the commission for support for gambling and other related addiction services, and allows the Commission to require an additional amount up to  $\frac{1}{2}$  of 1% for that purpose.

## **Horse Racing Law**

- Authorizes a land conveyance from the state to the Lebanon Trotting Club, Inc., and Miami Valley Trotting, Inc., in certain real estate situated in Turtlecreek Township, City of Lebanon, Warren County.
- Permits the racing secretary of a permit holder, after consulting a horsemen's association, to reduce the number of live races if, during the course of a racing meeting, the racing secretary determines that there is an insufficient number of entries to have a full field of eight horses for each of nine races on a live racing program.
- Sets the minimum number of required live racing days and simulcast racing programs, and requires simulcasts to be available at the same signal rate for all permit holders.
- Allows a permit holder that is not transferring its horse racing track and is remaining at its permitted location and that is a video lottery sales agent to operate a

temporary facility at its permitted location while constructing or otherwise preparing its permanent VLT facility.

- Creates certain funds related to racetrack relocation, establishes the purposes of the funds, and makes appropriations from the Racetrack Facility Community Economic Redevelopment Fund and the Casino Operator Settlement Fund.
- Describes what information submitted, collected, or gathered as part of an application to the State Racing Commission for a license or permit is confidential and not subject to disclosure by a state agency or political subdivision as a public record.
- Allows a permit holder to take responsibility for handling any payments and distributions required of a collection and settlement agent for any or all related permits under common ownership in lieu of making the required payments and distributions through the collection and settlement agent designated by the State Racing Commission.
- Requires fees to be paid to thoroughbred jockeys according to a certain schedule.

### **Gambling Law**

- Revises and simplifies the definition of a "charitable organization" that may conduct certain games of chance, and conduct and advertise bingo, instant bingo at a bingo session, and instant bingo other than at a bingo session.
- Changes the existence requirement for some charitable organizations by applying a two-year continuous existence requirement to all charitable organizations.
- Expands by two hours the time period during which a charitable organization may conduct a bingo session.
- Permits payments of allowable expenses incurred in conducting a bingo session or game to be made by electronic fund transfer.
- Decreases the allowable age at which participants may participate in a bingo game at a senior center.
- Revises the definition of "instant bingo."
- Eliminates a requirement that a charitable organization may conduct instant bingo other than at a bingo session at not more than five separate locations.

- Requires a charitable instant bingo organization to pay 6% of the total gross receipts of any deal of instant bingo tickets for the purpose of reimbursing the owner or lessor of the location for expenses.
- Allows a veteran's, fraternal, or sporting organization to deduct from gross profit the payment by that organization of real property taxes and assessments levied on a premises at which instant bingo is conducted when determining "net profit from the proceeds of the sale of instant bingo."
- Increases from one to three per calendar week the maximum number of charitable organizations to which a charitable organization may lease or sublease premises it owns or leases for conducting bingo sessions on the premises.
- Mandates that a charitable organization is not required to pay property taxes or assessments on premises that it leases from another person to conduct bingo sessions.
- Revises the number of days games of chance may be held at a festival.
- Changes a reference in the definition of "sporting organization" to reflect the correct title of an organization.

### **Income tax withholding**

- Requires lottery sales agents to withhold income taxes from VLT prize awards that exceed \$3,000.
- Provides that lottery sales agents must comply with requirements for remitting withheld taxes and filing returns similar to those imposed on casino operators that withhold taxes from casino winnings.
- Lowers the percentage of a person's lottery prize award and casino winnings that must be withheld for income tax purposes from 6% to 4%, and specifies that this lower percentage also applies to the withholding of taxes from VLT awards.
- Allows the Department of Taxation to release certain information about a lottery sales agent to the State Lottery Commission when necessary to ensure the agent's compliance with tax withholding requirements.
- Makes changes to the type of information a casino operator must provide when filing tax withholding returns and to the manner in which casino operators must retain or provide records relating to casino patrons who are subject to tax withholding.

- Provides that, when the Tax Commissioner applies an income tax refund to satisfy taxpayer debts, any debt arising out of the taxpayer's failure to pay the withholding tax on casino winnings or VLT awards must be satisfied first.
- Allows a municipal corporation to require a casino facility or a casino operator, or a lottery sales agent conducting VLTs, on behalf of the state to withhold and remit tax with respect to amounts other than qualifying wages.

## Miscellaneous

- Requires the Director of Alcohol and Drug Addiction Services to complete a study to identify the current status of gaming addiction problems within Ohio.
- Establishes a moratorium on sweepstakes establishments.
- Requires the Attorney General to issue a report about usage of the Ohio Law Enforcement Training Fund.
- Requires a report on the processes and procedures necessary to allow the state to establish a data match and prize and winnings intercept program to identify obligors who are subject to a final and enforceable determination of default for child support in relation to lottery and casino prizes and winnings.
- States that the items of law contained in the act, and their applications, are severable.

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## CONTENT AND OPERATION

### Overview

The act makes changes to the following bodies of law that regulate gambling and gaming in their broadest sense: the Casino Law (R.C. Chapter 3772.), the State Lottery Law (R.C. Chapter 3770.), which encompasses both lotteries and video lottery terminal gaming, the Horse Racing Law (R.C. Chapter 3769.), and in the areas of bingo and instant bingo, the Gambling Law (R.C. Chapter 2915.). The act also makes an appropriation for repurposing or demolishing abandoned horse racetracks.

Many of the changes to the Casino Law flesh-out the powers and duties of the Ohio Casino Control Commission in regulating casinos. In regard to the State Lottery Law, the act addresses lottery sales agents' licensing and the regulation of video lottery terminal gaming. The changes to the Horse Racing Law cover a wide range of topics, as do the changes to the Gambling Law.

### Casino Law

#### Corrupt activity

The act defines the crime of "corrupt activity" to include certain casino gaming conduct. "Corrupt activity" is engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the crimes listed in continuing law.<sup>1</sup> Under ongoing law, a person who engages in a pattern of corrupt activity may be subject to criminal penalties and fines, property forfeiture, a civil proceeding from a person seeking relief, and a corrupt activity lien.<sup>2</sup> The types of activities in the Casino Law that the act defines as a "corrupt activity" are when a person knowingly or intentionally does any of the following:

(1) Uses, or possesses with the intent to use, a device to assist in projecting the outcome of a "casino game" (any slot machine or table game as defined in the Casino Law), keeping track of the cards played, analyzing the probability of the occurrence of

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<sup>1</sup> R.C. 2923.31.

<sup>2</sup> R.C. 2923.32, 2923.34, and 2923.36 (not in the act).

an event relating to the casino game, or analyzing the strategy for playing or betting to be used in a casino game, except as permitted by the Ohio Casino Control Commission (the Commission);

(2) "Cheats" at a casino game, which means to alter the result of a casino game, the element of chance, the operation of a machine used in a casino game, or the method of selection of criteria that determines the result of a casino game, the amount or frequency of payment in a casino game, the value of a wagering instrument, or the value of a wagering credit. "Cheat" does not include an individual who, without the assistance of another individual or without the use of a physical aid or device of any kind, uses the individual's own ability to keep track of the value of cards played and uses predictions formed as a result of the tracking information in the individual's playing and betting strategy;

(3) Manufactures, sells, or distributes any cards, chips, dice, game, or device that is intended to be used to violate the Casino Law;

(4) Alters or misrepresents the outcome of a casino game on which wagers have been made after the outcome is made sure, but before the outcome is revealed to the players;

(5) Places, increases, or decreases a wager on the outcome of a casino game after acquiring knowledge that is not available to all players and concerns the outcome of the casino game that is the subject of the wager;

(6) Aids a person in acquiring the knowledge described in (5), above, for the purpose of placing, increasing, or decreasing a wager contingent on the outcome of a casino game;

(7) Claims, collects, takes, or attempts to claim, collect, or take, money or anything of value in or from a casino game with the intent to defraud or without having made a wager contingent on winning a casino game;

(8) Claims, collects, or takes an amount of money or thing of value that is of greater value than the amount won in a casino game;

(9) Uses or possesses counterfeit chips, tokens, or cashless wagering instruments in or for use in a casino game;

(10) Possesses a key or device designed for opening, entering, or affecting the operation of a casino game, drop box, or electronic or mechanical device connected with the casino game, or for removing coins, tokens, chips, or other contents of a casino game;

(11) Possesses materials used to manufacture a slug or device intended to be used in a manner that violates the Casino Law; or

(12) Operates a casino gaming operation in which wagering is conducted or is to be conducted in a manner other than the manner required under the Casino Law.

In the list of corrupt activities, paragraph (10), above, does not apply to a casino operator, management company, or gaming-related vendor or their agents and employees in the course of agency or employment.

In addition to the penalties under the criminal code described above, under the Casino Law, a person who knowingly or intentionally does any of the above commits a fifth degree felony for a first offense and a fourth degree felony for a subsequent offense. If the person is a Casino Law licensee, the Commission must revoke the person's license after the first offense.<sup>3</sup>

The act also defines the following bribery crimes as "corrupt activity" when a person knowingly or intentionally does either of the following:

- Offers, promises, or gives anything of value or benefit to a person who is connected with a casino operator, management company, holding company, or gaming-related vendor, including their officers and employees, under an agreement to influence, or with the intent to influence, the actions of the person to whom the offer, promise, or gift was made in order to affect or attempt to affect the outcome of a casino game or an official action of a Commission member, agent, or employee; or
- Solicits, accepts, or receives a promise of anything of value or benefit while the person is connected with a casino, including an officer or employee of a casino operator, management company, or gaming-related vendor, under an agreement to influence, or with the intent to influence, the actions of the person to affect or attempt to affect the outcome of a casino game or an official action of a Commission member, agent, or employee.

The act increases from a fifth degree felony to a third degree felony the penalty for a person who knowingly or intentionally commits either of these bribery crimes. If the person is a Casino Law licensee, the Commission must revoke the person's license after the first offense. A public servant or party official who is convicted of either

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<sup>3</sup> R.C. 3772.01(D) and (I) and 3772.99(E).

bribery offense is forever disqualified from holding any public office, employment, or position of trust in Ohio.<sup>4</sup>

### **Wiretapping warrant felonies**

The act adds all of the corrupt activity felonies discussed above to the list of "designated felonies" for which a prosecuting attorney may apply for an interception warrant. Under continuing law, a prosecuting attorney may authorize an application for an interception warrant to be filed with a judge of the court of common pleas of the county in which the interception is to take place or in which the interception device is to be installed. The interception warrant authorizes the use of an electronic, mechanical, or other device or apparatus to intercept wire, oral, or electronic communications. The application must contain details regarding the designated offense that has been, is being, or is about to be committed.<sup>5</sup>

### **Inspector General's investigatory authority**

The act requires the Inspector General to do the following to determine whether wrongful acts or omissions have been committed, or are being committed, by present or former employees, notwithstanding the Inspector General's duty to investigate "state agencies," the definition of which excludes the Attorney General's Office: investigate employees of the Office of the Attorney General who are contractually vested with duties to enforce the Casino Law, including any designated Bureau of Criminal Identification and Investigation support staff that are necessary to fulfill the investigatory and law enforcement functions of the Commission.

The Inspector General and each Deputy Inspector General may administer oaths, examine witnesses under oath, and issue subpoenas and subpoenas duces tecum to employees of the Office of the Attorney General to compel the attendance of witnesses and the production of all kinds of books, records, papers, and tangible things deemed necessary in the course of any such investigation.

The Inspector General may enter into any contracts that are necessary to complete an investigation. The contracts may include contracts for the services of persons who are experts in a particular field and whose expertise is necessary for successful completion of the investigation.

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<sup>4</sup> R.C. 3772.99(G).

<sup>5</sup> R.C. 2933.51(I), 2933.53 (not in the act), and 3772.99(E) and (G).

If the authority of the Attorney General terminates or expires, the authority vested in the Inspector General by this section terminates upon the conclusion of ongoing investigations or upon issuance of the final report of the investigations.<sup>6</sup>

### **Holding company**

For purposes of the Casino Law, the act defines a "holding company" as any corporation, firm, partnership, limited partnership, limited liability company, trust, or other form of business organization not a natural person that directly or indirectly does any of the following:

(1) Has the power or right to control a casino operator, management company, or gaming-related vendor license applicant or licensee;

(2) Holds an ownership interest of 5% or more, as the Commission determines, in a casino operator, management company, or gaming-related vendor license applicant or licensee;

(3) Holds voting rights with the power to vote 5% or more of the outstanding voting rights of a casino operator, management company, or gaming-related vendor applicant or licensee.

Under prior law, a "holding company" was any corporation, firm, partnership, limited partnership, limited liability company, trust, or other form of business organization not a natural person that directly or indirectly owned, had the power or right to control, or held with power to vote, any part of an applicant, casino operator, management company, or gaming-related vendor license.<sup>7</sup>

### **Institutional investor**

The act modifies the definition of "institutional investor" to mean an entity owning 5% or more, but less than 15%, of an ownership interest in a casino facility, casino operator, management company, or holding company, as opposed to 1% or less or a percentage between 1% and 10% as approved by the Commission through a waiver on a case-by-case basis, under former law. The act also includes, in the types of entities that may be institutional investors, any association engaged, as a substantial part of its business or operations, in purchasing or holding securities, including a hedge fund, mutual fund, or private equity fund. An institutional investor must not exercise control

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<sup>6</sup> R.C. 121.421.

<sup>7</sup> R.C. 3772.01(M).

over the affairs of a licensee, and its ownership interest in a licensee must be for investment purposes only as set forth in continuing law.<sup>8</sup>

In the law that establishes qualifications for an institutional investor, the act eliminates references to *publicly traded* securities issued by a licensee or by a licensee's holding, intermediate, or parent company as the types of securities an institutional investor must own, hold, or control to be presumed suitable or qualified. Rather, the act simply refers to securities, without the publicly traded designation.

Under the act, in addition to the ability to investigate the suitability or qualifications of an institutional investor if the Commission becomes aware of facts or information that may result in the institutional investor being found unsuitable or disqualified, the Commission may request information from or investigate the institutional investor if the Commission has any other reason to seek information from the institutional investor to determine whether it qualifies as an institutional investor.

If the Commission finds an institutional investor to be unsuitable or unqualified, the Commission must notify the institutional investor and the casino operator, holding company, management company, or gaming-related vendor licensee in which the institutional investor invested. The Commission must allow the institutional investor and the licensee a reasonable amount of time, as specified by the Commission on a case-by-case basis, to cure the conditions that caused the Commission to find the institutional investor unsuitable or unqualified. If, during the specified time-period, the institutional investor or licensee does not or cannot cure the conditions, the Commission may allow more time or may begin proceedings to deny, suspend, or revoke, or deny the renewal of, the applicable license.

The act requires a private licensee or holding company to provide the same information to the Commission as a public company provides to the Securities and Exchange Commission in a form 13d or form 13g filing.<sup>9</sup>

### **Rules regarding investors or holding companies below threshold**

The act requires the Commission to adopt rules prescribing, for institutional investors in or holding companies of a casino operator, management company, holding company, or gaming-related vendor that fall below the threshold needed to be considered an institutional investor or a holding company, standards regarding what any employees, members, or owners of those investors or holding companies can do and must not do in relation to casino facilities and casino gaming in Ohio, which

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<sup>8</sup> R.C. 3772.01(O).

<sup>9</sup> R.C. 3772.10(E).

standards must rationally relate to the need to proscribe conduct that is inconsistent with passive institutional investment status.<sup>10</sup>

### **Criminal records checks**

The act specifies that for all criminal records checks, the applicant for a casino operator, management company, holding company, gaming-related vendor, key employee, or casino gaming employee license must pay the fee charged by the Bureau of Criminal Identification and Investigation or by a vendor approved by the Bureau to conduct a criminal records check based on the applicant's fingerprints. If the applicant for a key employee or casino gaming employee license is applying at the request of a casino operator or management company, holding company, or gaming-related vendor, the casino operator, management company, holding company, or gaming-related vendor must pay the fee.

Under prior law, the applicant for a casino operator, management company, holding company, or gaming-related vendor, key employee, or casino gaming employee license reimbursed the Commission for the amount of the fee paid on the applicant's behalf.<sup>11</sup>

### **Commission as a law enforcement agency**

The act refers to the Commission as a "law enforcement agency," and extends to its gaming agents status as "law enforcement officers," as defined in the Crimes and Procedure Law. These definitions apply throughout the Revised Code. Under continuing law, the Commission and its gaming agents are authorized to detect and investigate, seize evidence relating to, and apprehend and arrest persons allegedly committing gaming offenses.<sup>12</sup>

### **Adjudications**

The act makes modifications to and consolidates the adjudication procedure applicable to Casino Law licensees. Under the act, the Commission may, and if so requested by a licensee or applicant, must, conduct a hearing in an adjudication under the Administrative Procedure Act.<sup>13</sup> After notice and opportunity for a hearing, the Commission may limit, condition, restrict, suspend, revoke, deny, or not renew a

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<sup>10</sup> R.C. 3772.03.

<sup>11</sup> R.C. 3772.07.

<sup>12</sup> R.C. 2901.01 (not in the act) and 3772.03(F).

<sup>13</sup> R.C. Chapter 119.

license under rules adopted by the Commission. The Commission may reopen a licensing adjudication at any time. Under former law, if, as the result of an investigation, the Commission concluded that a license or finding should be limited, conditioned, or restricted, or suspended or revoked, the Commission was required to conduct an adjudication under the Administrative Procedure Act.

The Commission may require testimony and issue subpoenas, along with exercising other powers, in the discharge of its duties. The act extends these powers to the Commission for the purpose of conducting a hearing in the adjudication. The Commission may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of any papers, books, and accounts, directed to the sheriffs of the counties where witnesses or such papers, books, or accounts are found. The subpoenas are to be served and returned in the same manner as subpoenas in criminal cases are served and returned. The fees of sheriffs must be the same as those allowed by the court of common pleas in criminal cases.

The act requires that witnesses be paid the fees and mileage provided for in the Administrative Procedure Act. That Act requires that each witness subpoenaed to an adjudication hearing receive \$12 for each full day's attendance and \$6 for each half day's attendance, with mileage of 50½¢ for each mile necessarily traveled to and from the witness's place of residence to the site of the adjudication hearing. The act further requires all fees and mileage expenses incurred at the request of a party to be paid in advance by the party.<sup>14</sup>

The act also expands the findings on the basis of which the Commission may issue an order to include a finding that a person fails, or has failed, to meet any requirement of, or violates, the Casino Law or rules adopted under it. In addition to limiting, conditioning, restricting, suspending, or revoking a license, the act permits the Commission to deny or not renew a license. The act eliminates a provision that authorized the Commission to issue an order that limits, conditions, restricts, suspends, or revokes a finding made under the Casino Law. The act also eliminates a provision that permitted a Commission-appointed administrative law judge to conduct a hearing under the Casino Law and recommend findings of fact and decisions to the Commission.<sup>15</sup>

The act consolidates into the adjudication statute the Commission's ongoing authority to take certain factors into consideration when imposing discipline on a licensee, for example, whether the licensee has previously been disciplined by the

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<sup>14</sup> R.C. 119.094 (not in the act) and 3772.04(A) and (D).

<sup>15</sup> R.C. 3772.04(A).

Commission or whether the licensee realized a pecuniary gain from a violation. The act moves that authority and the list of factors that may be considered into the Commission's adjudication statute and repeals the statute that addressed this authority.<sup>16</sup>

### **Emergency order**

Notwithstanding anything to the contrary in the Casino Law, and except with respect to a casino operator, management company, or holding company, the act permits the Executive Director of the Commission to issue an emergency order for the suspension, limitation, or conditioning of any license, registration, approval, or certificate issued, approved, granted, or otherwise authorized by the Commission under the Casino Law or the rules adopted thereunder, requiring the inclusion of persons on the Commission's exclusion list, and requiring a casino facility not to pay a licensee, registrant, or approved or certified person any remuneration for services or any share of profits, income, or accruals on that person's investment in the casino facility.

The act permits an emergency order to be issued when the Executive Director finds either of the following:

(1) A licensee, registrant, or approved or certified person has been charged with a violation of any of the criminal laws of Ohio, another state, or the federal government; or

(2) Such an emergency action is necessary to prevent a violation of the Casino Law or a rule adopted thereunder.

An emergency order must state the reasons for the Commission's action, cite the law or rule directly involved, and state that the party will be afforded a hearing if the party requests a hearing within 30 days after the time of mailing or personal delivery of the order.

Not later than the next business day after the issuance of the emergency order, the order must be sent by registered or certified mail, return receipt requested, to the party at the party's last known mailing address appearing in the Commission's records or personally delivered at any time to the party by an employee or agent of the Commission. Additionally, a copy of the order must be mailed to the attorney or other representative of record representing the party.

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<sup>16</sup> R.C. 3772.04(B); repeal of R.C. 3772.14.

If the order sent by registered or certified mail is returned because the party fails to claim the order, the Commission must send the order by ordinary mail to the party at the party's last known address and must obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained unless the order is returned showing failure of delivery. If the order sent by registered, certified, or ordinary mail is returned for failure of delivery, the Commission must either make personal delivery of the order by an employee or agent of the Commission or cause a summary of the substantive provisions of the order to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known address of the party is located.

Failure of delivery occurs only when a mailed order is returned by the postal authorities marked undeliverable, address or addressee unknown, or forwarding address unknown or expired. When service is completed by publication, a proof of publication affidavit, with the first publication of the summary set forth in the affidavit, must be mailed by ordinary mail to the party at the party's last known address and the order is deemed received as of the date of the last publication. Refusal of delivery of the order sent by mail or personally delivered to the party is not failure of delivery and service is deemed to be complete.

The emergency order is effective immediately upon service of the order on the party. The emergency order remains effective until further order of the Executive Director or the Commission.

The Commission may, and if so requested by the person affected by the emergency order must, promptly conduct a hearing in an adjudication under the Administrative Procedure Act.<sup>17</sup>

### **Confidential information**

The act modifies the law regarding what is considered confidential information submitted, collected, or gathered as part of a license application filed with the Commission. First, it clarifies that such information is confidential and not subject to disclosure *by any state agency or political subdivision* as a record under the Public Records Law. The act amends references to "minor child" to refer to "dependent." Also included as confidential information are: the passport number or federal tax identification number of an applicant or the spouse of an applicant; the home address and telephone number of an applicant or the applicant's spouse or dependent; the applicant's date of birth; the applicant's place of birth; the personal financial information and records of an employee of an applicant, including tax returns and information, and records of

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<sup>17</sup> R.C. 3772.04(G).

criminal proceedings; security information, including risk prevention plans, detection and countermeasures, location of count rooms or other money storage areas, emergency management plans, security and surveillance plans, equipment and usage protocols, and theft and fraud prevention plans and countermeasures; and information provided in a multijurisdictional personal history disclosure form, including the Ohio supplement, exhibits, attachments, and updates. No longer included as confidential information are marketing materials maintained by the Commission concerning a person who holds, held, or has applied for a license.

Confidential information received by the Commission from another jurisdiction relating to a person who holds, held, or has applied for a license is confidential and not subject to disclosure as a public record. The Commission may share this information with, or disclose the information to, the Inspector General, any appropriate prosecuting authority, any law enforcement agency, or any other appropriate governmental or licensing agency, if that agency complies with the same requirements regarding confidentiality as those with which the Commission must comply.<sup>18</sup>

### **Intracorporate transfer of casino operator license**

The act states that an initial license is not considered transferred, and a new license is not required, when an initial licensee that is licensed before June 1, 2013, does or has done both of the following:

(1) Obtains a majority ownership interest in, or a change in or transfer of control of, another initial licensee for the same casino facility; and

(2) Was investigated under this chapter as a parent, affiliate, subsidiary, key employee, partner, or joint venturer with another initial licensee that has held for the same casino facility a majority ownership interest in or control of the initial license when the initial license was issued and when such an initial licensee obtains a majority ownership interest in or a change in or transfer of control.

The act defines "initial license" as the first plenary license issued to an initial licensee. "Initial licensee" means any of the persons issued an initial license to conduct or participate in conducting casino gaming at each casino facility as a casino operator, a management company, or a holding company of a casino operator or management company.

Except as described above, under continuing law, no license issued under the Casino Law is transferable. New majority ownership interest or control requires a new

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<sup>18</sup> R.C. 3772.16.

license. A significant change in or transfer of control, as determined by the Commission, requires the filing of an application for a new license and submission of a license fee with the Commission before any such change or transfer of control is approved. A change in or transfer of control to an immediate family member is not considered a significant change.<sup>19</sup>

### **License fees**

The act specifies that the \$50 million upfront license fee to obtain a casino operator license must be paid upon each casino operator's filing of its casino operator license application with the Commission. Additionally, if an applicant for a license as a management company or holding company is related through a joint venture or controlled by or under common control with another applicant for a license as a casino operator, management company, or holding company for the same casino facility and the applicant for a license as a management company or holding company was reviewed for suitability as part of the investigation of the casino operator, only one license fee must be assessed against both applicants for that casino facility. Under ongoing law, new casino operator, management company, and holding company license and renewal license fees are to be set by rule, subject to the review of the Joint Committee on Gaming and Wagering.

The act allows the application fee for a casino operator, management company, or holding company license to be increased to the extent that the actual review and investigation costs relating to an applicant exceed the application fee. If an applicant for a license as a management company or holding company is related through a joint venture or controlled by or under common control with another applicant for a license as a casino operator, management company, or holding company for the same casino facility, with the exception of actual costs of the review and investigation of the additional applicant, only one application fee is required of the applicants for that casino facility. Ongoing law sets the fee to obtain an application for a casino operator, management company, or holding company license at \$1.5 million per application.<sup>20</sup>

### **Debt transactions**

Under continuing law modified by the act, a casino operator is prohibited from entering into a debt transaction without the Commission's approval and must submit, in writing, a request for approval of a debt transaction. Under the act, the same requirement applies, but to a *licensed* casino operator, not a casino operator. And the act

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<sup>19</sup> R.C. 3772.091.

<sup>20</sup> R.C. 3772.17.

permits a licensed casino operator to enter into one or more debt transactions with affiliated companies, provided that the aggregate amount of all such debt transactions at any one time does not exceed \$10 million.

Continuing law defines a "casino operator" as any person, trust, corporation, partnership, limited partnership, association, limited liability company, or other business enterprise that directly or indirectly holds an ownership or leasehold interest in a casino facility. A "licensed casino operator" is a casino operator that has been issued a license by the Commission and that has been certified annually by the Commission to have paid all applicable fees, taxes, and debts to the state. A "debt transaction" means a transaction by a licensed casino operator concerning a casino facility totaling \$500,000 or more in which a licensed casino operator acquires debt, including bank financing, private debt offerings, and any other transaction that results in the encumbrance of assets.

When a licensed casino operator intends to enter into a debt transaction, it must provide immediate written notification to the Commission. The Commission may require prior approval of the debt transaction if the Commission provides notice to the licensed casino operator within seven days after receiving the notification. In determining whether to approve the debt transaction, the Commission may require the licensed casino operator to submit information specified in ongoing law. The Commission may adopt rules governing its review and approval of debt transactions. For the purposes of this new provision, "affiliated companies" means any holding company or institutional investor, or any individual, partnership, corporation, association, trust, or any other group of individuals, however organized, that directly or indirectly owns, has the power or right to control, or holds with the power to vote, an ownership interest in a licensed casino operator.<sup>21</sup>

### **Key employee licenses**

Under continuing law, key employees must hold a valid key employee license. The act specifies that this requirement applies to the key employee of a casino operator, management company, or holding company. And the act prohibits a person from being employed as a key employee unless the person is either the holder of a valid key employee license issued by the Commission, or the person, at least five business days before the first day of employment as a key employee, has filed a notification of employment with the Commission and subsequently files a completed application for a key employee license within the first 30 days of employment as a key employee.<sup>22</sup>

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<sup>21</sup> R.C. 3772.01(G) and (O) and 3772.28.

<sup>22</sup> R.C. 3772.13.

The act requires an applicant for a key employee license to complete a cover sheet for the application on which the applicant must disclose the applicant's name, the business address of the casino operator, management company, holding company, or gaming-related vendor employing the applicant, the business address and telephone number of the employer, and the county, state, and country in which the applicant's residence is located.<sup>23</sup> The act states in the law regarding what is considered confidential information submitted, collected, or gathered by the Commission as part of a license application that the cover sheet is not confidential.<sup>24</sup>

### **Skill-based amusement machines**

For purposes of the Casino Law, the act provides that the definition of "slot machines" does not include any device that is a skill-based amusement machine, as defined in the Gambling Law. Generally, a skill-based amusement machine is a mechanical, video, digital, or electronic device that rewards the player or players, if at all, only with merchandise prizes of limited value or vouchers redeemable only for merchandise prizes of limited value. In comparison, a slot machine is a mechanical, electrical, or other device that awards participants cash or things of value.<sup>25</sup>

### **Use of "casino"**

Under the act, noncriminal violations under the Casino Law include using the term "casino" in any advertisement in regard to a facility operating video lottery terminals in Ohio. The Governor vetoed a provision that would have specified that penalties for the use of the term "casino" must not be levied against and collected from a person operating such a facility that used the term "casino" in any advertisement before November 3, 2009. Continuing law requires the Commission to levy and collect penalties for noncriminal violations of the Casino Law.<sup>26</sup>

### **Wagers**

The act clarifies that the criminal penalties under the Casino Law apply to wagers of a person under 21 years of age *at a casino facility*. Under former law, these

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<sup>23</sup> R.C. 3772.13(E).

<sup>24</sup> R.C. 3772.16(C).

<sup>25</sup> R.C. 3772.01(X).

<sup>26</sup> R.C. 3772.99(A).

provisions applied to a person that wagered or accepted a wager at a location other than a casino facility.<sup>27</sup>

### **Students' county of residence**

The act provides that the guidelines for the establishment and maintenance of the Statewide Education Management Information System, as adopted by the State Board of Education, may require school districts to provide the county of residence for a student. The act specifies that the law regarding the guidelines does not prohibit the Board or Department of Education from providing a student's county of residence to the Department of Taxation to facilitate the distribution of tax revenue. Presumably, the Department of Taxation needs this information to distribute the portion of the Gross Casino Revenue Tax that will be allocated to counties in proportion to the counties' respective public school district student populations at the time of distribution.<sup>28</sup>

### **Tax Commissioner as agent of the counties**

The act specifies that the Tax Commissioner serves as an agent of the counties only for the purposes of the Gross Casino Revenue Tax and solely to make payments directly to municipal corporations and school districts, as applicable, on the counties' behalf. On or before the last day of the month following the end of each calendar quarter, the Tax Commissioner must provide for payment from the Gross Casino Revenue County Fund and the Gross Casino Revenue Host City Fund to each county and municipal corporation as prescribed.<sup>29</sup>

### **Student population**

For the purpose of calculating student population in the Gross Casino Revenue Tax portion to be distributed among all 88 counties in proportion to such counties' respective public school district student populations, each public school district must, twice annually, report to the Department of Education the students enrolled in the district on the days specified. Under the act, "student population" means the number of students residing in a county who are enrolled in a public school district in grades kindergarten through twelve and the total number of preschool children with disabilities on the following dates: for the January distribution, the Friday of the first full school week in October, and for the August distribution, the Friday of the first full school week in May. A student is considered to be enrolled in a public school district if the student is participating in education programs of the public school district and the

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<sup>27</sup> R.C. 3772.99(D).

<sup>28</sup> R.C. 3301.0714.

<sup>29</sup> R.C. 5753.11.

public school district has not: (1) received documentation from a parent terminating enrollment of the student, (2) been provided documentation of a student's enrollment in another public or private school, or (3) ceased to offer education to the student. "Public school district" means any city, local, exempted village, or joint vocational school district, community school, STEM school, or college-preparatory boarding school. "Public school district" does not include any STEM school that is governed by a school district.

If more than one public school district reports a student as enrolled, the Department must use procedures adopted by the Department for the reconciliation of enrollment to determine the district of enrollment. In the case of the dual enrollment of a student in a joint vocational school district and another public school district, the student must be included in the enrollments for both schools. If the valid school district or enrollment cannot be determined in time for the certification, the count of these students must be divided equally between the reporting districts.

The Department of Education must certify to the Department of Taxation the student population for each county and the student population for each public school district located in whole or in part in the county on or before December 30, for the January distribution, and on or before July 30, for the August distribution. A student must be included in the school district enrollment for a county only if a student resides in that county. The location of each community school must be the enrollment area required to be defined by the community school and its sponsor, the location of each STEM school must be any county in which its enrolled students reside, and the location of each college-preparatory boarding school must be the territory of the school district in which the college-preparatory school is located or the territory of any city, exempted village, or local school district that has agreed to be a participating district.

The student population count certified by the Department of Education to the Department of Taxation is final and must not be adjusted by future updates to the counts.

Beginning in 2013, not later than January 31 and August 31 of each year, the Tax Commissioner must distribute funds in the Gross Casino Revenue County Student Fund to public school districts. The Tax Commissioner must calculate the amount of funds to distribute to each public school district as follows:

(1) The Commissioner must calculate the proportional share of the funds attributable to each county by dividing the total student population certified for each county by the sum of the total student population certified in all counties statewide.

(2) The Commissioner must multiply the amount in (1), above, by the total amount of funds in the Gross Casino Revenue County Student Fund to obtain the share of funds for each county.

(3) The Commissioner must multiply the amount in (2), above, by the quotient of the student population certified for each individual district located in the county divided by the sum of the student population certified for all public school districts located in the county.

The Commissioner must distribute to each public school district the amount so calculated for each district.<sup>30</sup>

### **Jurisdiction**

Under the act, any action asserting that the Casino Law, any portion of the Casino Law, or any rule adopted under the Casino Law violates any provision of the Ohio Constitution must be brought in the Franklin County Court of Common Pleas within 90 days after this provision's effective date or within 90 days after the effective date of any rule, as applicable.

Any claim asserting that any action taken by the Ohio Casino Control Commission under the Casino Law violates any provision of the Ohio Constitution or any provision of Ohio Law must be brought in the Franklin County Court of Common Pleas within 60 days after the action is taken.

The act specifies that the above provisions do not apply to any claim within the original jurisdiction of the Supreme Court or a court of appeals under Article IV of the Ohio Constitution.

The Franklin County Court of Common Pleas must give any claim filed under the above provisions priority over all other civil cases before the court, irrespective of position on the court's calendar, and must make a determination on the claim expeditiously. A court of appeals must give any appeal from a final order issued in a case brought under the above provisions priority over all other civil cases before the court, irrespective of position on the court's calendar, and must make a determination on the appeal expeditiously.<sup>31</sup>

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<sup>30</sup> R.C. 5753.03(E) and 5753.11.

<sup>31</sup> R.C. 3772.35.

## **State Lottery Law**

### **Applicant fees**

The Governor vetoed a provision that would have required that the Permanent Joint Committee on Gaming and Wagering review the fees each applicant must pay for the following: a lottery sales agent license, administering and processing changes to a license application, or a renewal fee. Under continuing law, fees may be required by rule adopted by the Director of the State Lottery Commission under the Administrative Procedure Act and must be approved by the Controlling Board.<sup>32</sup>

### **Alternative to surety bonding or dedicated account**

The act permits the Director of the State Lottery Commission to establish an alternative program or policy to establish the financial responsibility of an applicant for a lottery sales agent license, with State Lottery Commission approval by rule adopted under the Administrative Procedure Act, and that ensures that the lottery's financial interests are adequately protected. If the Director establishes an alternative program or policy, an applicant or lottery sales agent, subject to the Director's approval, may be permitted to participate in the program or proceed under that policy in lieu of providing a surety bond or dedicated account. Like a surety bond or dedicated account, an alternative program or policy may be used to pay for the lottery sales agent's failure to make prompt and accurate payments for lottery ticket sales, for missing or stolen lottery tickets, for damage to equipment or materials issued to the lottery sales agent, or to pay for expenses the Commission incurs in connection with the lottery sales agent's license.

Under continuing law, an applicant for a lottery sales agent license or renewal must obtain a surety bond in an amount required by the Director's rules, or, with the Director's approval, must deposit the same amount into a dedicated account for the benefit of the state lottery.<sup>33</sup>

### **Licenses**

Under the act, a lottery sales agent license is effective for at least one year, but not more than three years, and the renewal of a license is effective for at least one year,

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<sup>32</sup> R.C. 3770.05(G) and 3772.032.

<sup>33</sup> R.C. 3770.05(G)(1).

but not more than three years. Under former law, a lottery sales agent license was effective for at least one year and the renewal of the license was effective for one year.<sup>34</sup>

### **Lottery prize awards**

The act prohibits a lottery prize award with a value that meets or exceeds the reportable winnings amounts set by the Internal Revenue Code<sup>35</sup> from being claimed by or paid to any person until the name, address, and social security number of each beneficial owner of the prize award is documented for the State Lottery Commission. Former law set the value that triggered this reporting requirement at \$599.

A lottery prize award cannot be awarded to any officer or employee of the Commission or of the Auditor of State actively coordinating and certifying Commission drawings. The act adds to this prohibition when the officer or employee is actively auditing Commission drawings.

The act revises references to "winning lottery ticket" and instead uses the term "winning lottery product."<sup>36</sup>

The act also uses the reportable winnings amounts set by the Internal Revenue Code as the level at which a lottery prize award winner must affirm in writing whether or not the winner is in default under a support order. Prior law required the affirmation if the amount of the prize money or the cost of goods or services awarded as a lottery prize award was \$600 or more.<sup>37</sup>

If a person is entitled to a lottery prize award and is indebted to a political subdivision that has a certified claim and if the amount of the prize money or the cost of goods or services awarded as a lottery prize award is \$5,000 or more, the Director of the State Lottery Commission, or the Director's designee, must do either of the following:

(1) If the prize award will be paid in a lump sum, deduct from the prize award and pay to the Attorney General an amount in satisfaction of the debt and pay any remainder to that person. If the amount of the prize award is less than the amount of the debt, the entire amount of the prize award must be deducted and paid in partial satisfaction of the debt.

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<sup>34</sup> R.C. 3770.05.

<sup>35</sup> 26 U.S.C. § 6041.

<sup>36</sup> R.C. 3770.07.

<sup>37</sup> R.C. 3770.071.

(2) If the prize award will be paid in annual installments, on the date the initial installment payment is due, deduct from that installment and pay to the Attorney General an amount in satisfaction of the debt and, if necessary to collect the full amount of the debt, do the same for any subsequent annual installments, at the time the installments become due and owing to the person, until the debt is fully satisfied.

Continuing law establishes the same procedure for certain debts owed to the state.

The act also sets out that if a person entitled to a lottery prize award owes more than one debt, any debt owed to the state must be satisfied first. Additionally, the act states that any debt owed for child support or spousal support arrearages must be satisfied with first priority over other debts.<sup>38</sup>

### **VLT rules**

Under the act, the State Lottery Commission, in conjunction with the State Racing Commission, must include in any rules adopted concerning video lottery terminals (VLTs), the level of minimum investments that must be made by VLT licensees in the fixtures, equipment, and facilities-related preparation at the facilities, including temporary facilities, in which the terminals will be located, along with any standards and timetables for such investments. Continuing law requires rules setting the level of minimum investments in buildings and grounds. Under prior law, the State Lottery Commission need not to have adopted these rules in conjunction with the State Racing Commission.<sup>39</sup>

The act defines "video lottery terminal" as any electronic device approved by the State Lottery Commission that provides immediate prize determinations for participants on an electronic display "that is located at a facility owned by a holder of a permit as defined in rule 3769-1-05 of the Administrative Code." Such a permit is a permit issued by the State Racing Commission to conduct a horse racing meeting in Ohio. Prior law did not require VLTs to be at such a facility.<sup>40</sup>

### **Awarding contracts to minority business enterprises**

The act requires that VLT sales agents develop internal guidelines and controls for the purpose of giving minority business enterprises the ability to compete for the awarding of contracts to provide goods and services to those sales agents. A "minority

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<sup>38</sup> R.C. 3770.073.

<sup>39</sup> R.C. 3770.21(B).

<sup>40</sup> R.C. 3770.21.

business enterprise" means an individual who is a United States citizen and owns and controls a business, or a partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, which citizen or citizens are Ohio residents and are members of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians.<sup>41</sup>

### **Jurisdiction over claims arising from Commission law or rules**

The act provides the following:

(1) Any action asserting that the law authorizing the State Lottery Commission to adopt rules or that any rule adopted under those laws violates the Ohio Constitution, must be brought in the Franklin County Court of Common Pleas within 90 days after the act's effective date or within 90 days after the effective date of any rule, as applicable.

(2) Any claim asserting that any action taken by the Governor or the State Lottery Commission under the above violates any provision of the Ohio Constitution or any provision of Ohio law must be brought in the Franklin County Court of Common Pleas within 60 days after the action is taken.

(3) The provisions in (1) and (2), above, do not apply to any claim within the original jurisdiction of the Supreme Court or a court of appeals under Article IV of the Ohio Constitution.

(4) The Franklin County Court of Common Pleas must give any claim filed under (1) or (2), above, priority over all other civil cases before the court, irrespective of position on the court's calendar, and must make a determination on the claim expeditiously. A court of appeals must give any appeal from a final order issued in a case brought under these provisions priority over all other civil cases before the court, irrespective of position on the court's calendar, and must make a determination on the appeal expeditiously.

Former law granted the Ohio Supreme Court exclusive, original jurisdiction over such claims.<sup>42</sup>

The act also removes a redundant provision relating to severability.

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<sup>41</sup> R.C. 3770.21(D).

<sup>42</sup> R.C. 3770.21(F).

## **VLT promotional gaming credits**

The act permits a licensed video lottery sales agents to provide VLT promotional gaming credits to patrons for VLT gaming. VLT promotional gaming credits are subject to approval by the State Lottery Commission. A "video lottery terminal promotional gaming credit" is a VLT game credit, discount, or other similar item issued to a patron to enable the placement of, or increase in, a wager at a VLT.<sup>43</sup>

The act defines "video lottery terminal income" as credits played, minus approved VLT promotional gaming credits, minus video lottery terminal prize awards.<sup>44</sup>

## **Additional video lottery licensees**

The act permits the Director of the State Lottery Commission to license video lottery technology providers, independent testing laboratories, and gaming employees, and to promulgate related rules. The Director may suspend or revoke the licenses of providers, laboratories, or gaming employees without affording an opportunity for a prior hearing under the Administrative Procedure Act when the public safety, convenience, or trust requires immediate action.<sup>45</sup>

## **Confidential information in video lottery-related license application**

The act mandates that any information concerning the following that is submitted, collected, or gathered as part of an application to the State Lottery Commission for a video lottery-related license is confidential and not subject to disclosure by a state agency or political subdivision as a public record under the Public Records Law:

- (1) A dependent of an applicant;
- (2) The social security number, passport number, or federal tax identification number of an applicant or the applicant's spouse;
- (3) The home address and telephone number of an applicant or the applicant's spouse or dependent;
- (4) An applicant's birth certificate;

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<sup>43</sup> R.C. 3770.21(A) and (C).

<sup>44</sup> R.C. 3770.21(A) and (C).

<sup>45</sup> R.C. 3770.02(E) and Section 14.

- (5) The driver's license number of an applicant or the applicant's spouse;
- (6) The name or address of a previous spouse of the applicant;
- (7) The date of birth of the applicant and the applicant's spouse;
- (8) The place of birth of the applicant and the applicant's spouse;
- (9) The personal financial information and records of an applicant or of an employee or the spouse or dependent of an applicant, including tax returns and information, and records of criminal proceedings;
- (10) Any information concerning a victim of domestic violence, sexual assault, or stalking;
- (11) The electronic mail address of the spouse or family member of the applicant;
- (12) Any trade secret, medical records, and patents or exclusive licenses;
- (13) Security information, including risk prevention plans, detection and countermeasures, location of count rooms or other money storage areas, emergency management plans, security and surveillance plans, equipment and usage protocols, and theft and fraud prevention plans and countermeasures; and
- (14) Information provided in a multijurisdictional personal history disclosure form, including the Ohio supplement, exhibits, attachments, and updates.

An individual who holds, held, or has applied for a video lottery-related license may waive the confidentiality requirements described above.

For an individual who holds, held, or has applied for a video lottery-related license, the individual's name, place of employment, job title, and gaming experience are not confidential. Also, the reason for denial or revocation of a video lottery-related license or for disciplinary action against the individual is not confidential.

Confidential information received by the Commission from another jurisdiction relating to a person who holds, held, or has applied for a license is confidential and not subject to disclosure as a public record. The Commission may share the information, or disclose the information to, the Inspector General, any appropriate prosecuting authority, any law enforcement agency, or any other appropriate governmental or licensing agency, if the agency complies with the same requirements regarding confidentiality as those with which the Commission must comply.

The applicant must complete a cover sheet for the application on which the applicant must disclose the applicant's name, the business address of the lottery sales agent, management company, holding company, or gaming-related vendor employing the applicant, the business address and telephone number of the employer, and the county, state, and country in which the applicant's residence is located.<sup>46</sup>

### **Liquor Control Commission's rules**

The act provides that the Liquor Control Commission cannot prohibit the operation of VLT games at a commercial race track where live horse racing and simulcasting are conducted. Under continuing law, although the Commission's rules may provide in detail for the conduct of any retail business authorized under liquor permits, the Commission's rules cannot prohibit the sale of lottery tickets issued under the Lottery Law by any authorized retail business.<sup>47</sup>

### **Video lottery sales agent commission**

Unless otherwise agreed to by the VLT sales agent and the applicable horsemen's association recognized by the state to represent such persons, the act allows the State Racing Commission to direct through rule that a percentage of a VLT sales agent's commission as determined by the State Lottery Commission for conducting VLT gaming on behalf of the state (currently set at 66.5%) be paid to the State Racing Commission for the benefit of breeding and racing in Ohio. The act requires the percentage to not be less than 9% nor more than 11% of the VLT income. The act specifies that the aggregate of 100% of VLT income minus the VLT sales agent's commission percentage, as determined by the State Lottery Commission, plus the percentage of the VLT sales agent's commission, as determined by the State Racing Commission or otherwise agreed to by the VLT sales agent and the applicable horsemen's association, for the benefit of breeding and racing in Ohio, must not exceed 45% of the VLT income. In addition, beginning July 1, 2013, the State Lottery Commission must adopt a rule to require such a VLT sales agent to disperse to the State Lottery Commission  $\frac{1}{2}$  of 1% of the commission for the purpose of providing funding support to appropriate state agencies for programs that provide gambling addiction and other related addiction services. The Commission's rule also may require the VLT sales agent to disperse to the Commission an additional amount up to  $\frac{1}{2}$  of 1% of the commission for that purpose.<sup>48</sup>

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<sup>46</sup> R.C. 3770.22.

<sup>47</sup> R.C. 4301.03(B).

<sup>48</sup> R.C. 3769.087(C); O.A.C. 3770:2-3-08.

## Horse Racing Law

### Land conveyance

The act authorizes the Governor to execute a deed in the name of the state conveying to Lebanon Trotting Club, Inc., and Miami Valley Trotting, Inc., the holders of pari-mutuel racing permits, or to their respective successors and assigns (hereinafter, "grantee"), all of the state's right, title, and interest in certain real estate situated in Turtlecreek Township, City of Lebanon, Warren County. The northerly boundary must be established by a survey designed to ensure that the land to be conveyed does not exceed 120 acres. In preparing the deed, the Auditor of State, with the assistance of the Attorney General, may modify the description as necessary to bring it into conformity with the actual bounds of the real estate.

Consideration for the conveyance is \$4.5 million. The net proceeds of the sale must be deposited in the state treasury to the credit of the Department of Rehabilitation and Correction, Ohio Penal Industries Fund, which contains funds for expenditures on farm and agricultural uses, for which these proceeds must be used.

The grantee, following the conveyance, and in accordance with the purchase contract, must do all of the following:

(1) Permit the state and its successors and assigns perpetual ingress and egress rights to the culvert and roadway located along the easterly line of the real estate, which culvert and roadway are presently used by the state to access the Lebanon Correctional Institution's dairy barn. The grantee is responsible for all costs related to the continued maintenance of the culvert and roadway in their current condition.

(2) Create and maintain, at the grantee's sole cost, a landscape buffer zone along the perimeter of the real estate. The design, location, and materials used in the landscape buffer zone must be approved by the state.

(3) Coordinate with the appropriate state and local authorities to improve State Route 63 with new signage and adequate turning lanes.

The grantee must not use, develop, or sell the premises such that it will interfere with the quiet enjoyment of the neighboring state-owned land.

The real estate must be sold as an entire tract and not in parcels.

The grantee must pay all costs associated with the purchase and conveyance of the real estate, including surveying costs, title costs, preparation of metes and bounds

property descriptions, appraisals, environmental studies, assessments, and remediation, as well as deed recordation costs.

The Auditor of State, with the assistance of the Attorney General, must prepare a deed to the real estate. The deed must state the consideration and the conditions. The deed must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee must present the deed for recording in the Office of the Warren County Recorder.

This provision expires two years after the act's effective date.<sup>49</sup>

### **Reduction in live races during racing meeting**

Under the act, if, during the course of a racing meeting at a standardbred or thoroughbred track, the racing secretary of the permit holder determines that there is an insufficient number of entries to have a full field of eight horses for each of nine races on a live racing program, the racing secretary, after consultation with the Ohio Harness Horsemen's Association, at a standardbred track, or the Thoroughbred Horsemen's Association, at a thoroughbred track, may reduce the number of live races on a live racing program as the racing secretary determines. But the racing secretary cannot reduce the live racing program to less than seven live races. Under former law, the racing secretary, after consultation with the Ohio Harness or Thoroughbred Horsemen's Association, as appropriate, could reduce the number of live races on a live racing program from nine to either eight or seven.<sup>50</sup>

### **Required racing days**

Notwithstanding a law that sets the maximum number of racing days approved for each permit at 56 (although the State Racing Commission may approve more days under certain circumstances and unless otherwise agreed to by the applicable horsemen's association and the permit holder), beginning in the year the permit holder first receives VLT income, the act requires a permit holder to do one of the following, as determined on a yearly basis:

(1) If 11% of the gross gaming revenue from VLTs at the permit holder's facilities (either existing or relocated) in the previous calendar year exceeds \$15 million, conduct a minimum of 125 live racing days.

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<sup>49</sup> Section 6.

<sup>50</sup> R.C. 3769.089(A).

(2) If 11% of the gross gaming revenue from VLTs at the permit holder's facilities (either existing or relocated) in the previous calendar year exceeds \$11 million, but is less than or equal to \$15 million, conduct a minimum of 100 live racing days or the number of racing days applied for by the permit holder in calendar year 2012, whichever is greater.

(3) If 11% of the gross gaming revenue from VLTs at the permit holder's facilities (either existing or relocated) in the previous calendar year is less than or equal to \$11 million, conduct a minimum of 75 racing days or the number of racing days applied for by the permit holder for calendar year 2012, whichever is greater.

In no case can the minimum number of racing days for any permit holder exceed 125 racing days or the maximum number of racing days for any permit holder exceed 210 racing days.

The minimum and maximum live racing days apply to permits collectively and not as a single permit. In addition to the required live racing days, a permit holder must simulcast a simulcast racing program on a minimum of 360 days each calendar year. The permit holder must simulcast all simulcast racing programs conducted in Ohio and made available to the permit holder and must simulcast racing programs conducted outside Ohio.

The State Racing Commission may make an exception to the required minimum number of live racing days or simulcast racing program days in instances of natural disaster or other unexpected circumstances as the Commission defines. For any calendar year, the horsemens' association at each track may negotiate an agreement with the permit holder for that track to reduce the number of live racing days at that track to less than the minimum live racing days required by the act, as applicable, or to increase the number of live racing days at that track to a number that is greater than the maximum live racing days permitted in 2015, subject to the approval of the Commission. These negotiations must not reduce the number of live racing days to less than 50 per calendar year.

To satisfy the requirement of live racing days, a permit holder may include the number of days on which live racing programs were conducted under a permit issued for racing days authorized at a winterized facility.<sup>51</sup>

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<sup>51</sup> R.C. 3769.089(B).

## Simulcast racing

The act provides that the State Racing Commission must not permit the simulcast of any simulcast racing program conducted at tracks or facilities located outside this state unless the out-of-state simulcast racing program is available at the same signal rate to all permit holders, whether serving as simulcast hosts or simulcast guests, and all satellite facilities, in Ohio open and operating on that day. Former law did not specify that the programs were required to be available at the same signal rate.<sup>52</sup>

Under the act, the following provisions of law remain in effect for each permit holder until the calendar year after that permit holder first receives a commission as a lottery sales agent for conducting VLT gaming on behalf of the state:

(1) A permit holder offering simulcasts of races conducted at race tracks located outside Ohio at the same time and during the hours in which the live races of a live racing program are being conducted at the track has to obtain the consent of the appropriate horsemen's organization, but the consent of the horsemen's organization cannot be unreasonably withheld. If the horsemen's organization withholds its consent, the permit holder can file an objection with the State Racing Commission, which must promptly consider the objection and determine whether withholding consent is without substantial merit and, if the Commission so determines, must authorize the permit holder to simulcast the simulcast racing programs. The determination of the Commission is final.<sup>53</sup>

(2) In order for a permit holder to offer simulcasts of horse races conducted at facilities located outside Ohio, the permit holder must conduct live racing programs during the immediately preceding calendar year on a number of days that is not less than the number of regular live racing days it conducted in calendar year 1991, not including additional racing days conducted in calendar year 1991 by the permit holder at a winterized facility. In satisfying the foregoing requirement for live racing days during the immediately preceding calendar year, a permit holder could include the number of days on which live racing programs were conducted under a permit issued for additional racing days at a winterized facility. In addition, for a permit holder to offer simulcasts of horse races conducted at facilities located outside Ohio, the permit holder must offer all simulcasts of horse races conducted in Ohio made available to it.<sup>54</sup>

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<sup>52</sup> R.C. 3769.089(B)(1)(a).

<sup>53</sup> R.C. 3769.089(B) and (K).

<sup>54</sup> R.C. 3769.089(B)(1)(b) and (B)(1)(c).

## **Temporary facility**

Continuing law authorizes a 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. The act allows a permit holder that is not transferring its horse racing track and is remaining at its permitted location, and that is a video lottery sales agent, to operate a temporary facility at its permitted location while constructing or otherwise preparing its permanent VLT facility at its track. A temporary facility, at either a new track location or an existing track location of a permit holder who does not transfer its track, must meet any minimal capital investment and structure requirements established by Commission rule, promulgated in conjunction with the State Lottery Commission. Under current law, a temporary facility must meet any minimal capital investment and structure requirements established by the State Racing Commission.<sup>55</sup>

The act repeals a redundant provision<sup>56</sup> that allows, for a period of two years after its effective date, any person holding a horseracing permit to conduct live horse-racing meetings at a facility owned by a political subdivision to apply for, and the State Racing Commission to grant, a permit to conduct horse-racing meetings at a location at which such meetings previously have not been conducted. Under that provision, the Commission could only grant such an application if the proposed location was in the same or a contiguous county and was within 50 miles of the current location associated with the permit, but was not in the same county as another location at which live horse-racing meetings were conducted.<sup>57</sup>

## **Racetrack relocation funds**

The act creates in the state treasury the Racetrack Relocation Fund, which must receive any money paid to the state by horse-racing permit holders for the privilege of relocating to a new facility in accordance with continuing law, which allows the State Racing Commission to establish fees to relocate tracks. Upon the allocation of all the money in the Fund, the Fund ceases to exist. The Fund must be allocated by the Director of Budget and Management as follows: (1) \$500,000 to the Problem Casino Gambling and Addictions Fund, to be used for research and data collection on gambling addiction issues, (2) not more than \$3 million to the previous community of each moved track, which must be deposited in the Racetrack Facility Community Economic Redevelopment Fund, and (3) the remainder to the General Revenue Fund.

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<sup>55</sup> Sections 3 and 4.

<sup>56</sup> Section 4 of Sub. H.B. 277 of the 129th General Assembly.

<sup>57</sup> Section 5.

Additionally, the act creates in the state treasury the Racetrack Facility Community Economic Redevelopment Fund into which must be deposited money as specified in (2), above, and in rules promulgated by the State Racing Commission. The Fund must be used for repurposing or demolishing an abandoned horse-racing facility or for reinvestment in the area, neighborhood, and community near an abandoned facility, and for the costs incurred in administering the program. Any remaining funds must be transferred to the General Revenue Fund. Upon the allocation of all the money in the Fund, the Fund ceases to exist.

The Director of Development or any successor department or agency must oversee and administer the Racetrack Facility Community Economic Redevelopment Fund for the purposes for which it was created through loans and grants. The Director must provide guidelines for racetrack facility community economic development projects in Ohio. Projects may include: site planning, site certification, structure demolition, physical site redevelopment, relocation of utilities, or construction. Projects must not incorporate acquisition and related expense. The appropriation may be used to pay reasonable administrative costs incurred by the Director.<sup>58</sup>

The act requires the Director of Budget and Management to pay \$1 million by December 31, 2012, from the Casino Operator Settlement Fund to the municipal corporation or township in which each commercial racetrack is located, including a municipal corporation or township to which a racetrack is to relocate as specified in the memorandum of understanding of February 17, 2012, between the Office of the Governor, state of Ohio, and Penn National Gaming, Inc., pertaining to racing permit transfers, but excluding the previous municipal corporation or township of each moved track and excluding a municipal corporation or township in a county with a population between 1,100,000 and 1,200,000 in the most recent federal decennial census. The Director must pay an additional \$1 million by June 30, 2013, to each of these municipal corporations and townships, and must transfer these payments from the Casino Operator Settlement Fund. Each municipal corporation or township must use at least 50% of such a payment for infrastructure or capital improvements.<sup>59</sup>

Additionally, the act requires, within six months of its effective date, the Governor, in consultation with the State Racing Commission, to discuss, negotiate in good faith, and reach an agreement with necessary parties regarding providing \$500,000 per year, with the first payment by December 31, 2014, and annually thereafter, to the municipal corporations or townships receiving moneys from the Racetrack Relocation Fund. The act refers specifically to the provision regarding the

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<sup>58</sup> Sections 7 and 8.

<sup>59</sup> Section 10.

remaining funds in the Racetrack Relocation Fund going to the General Revenue Fund. Apparently, this reference should be to the provision described directly above providing money from the Casino Operator Settlement Fund to municipal corporations or townships in which each commercial racetrack is located or relocated.<sup>60</sup>

### **Confidential information**

The act provides that any information concerning the following that is submitted, collected, or gathered as part of an application to the State Racing Commission for a license or permit is confidential and not subject to disclosure by a state agency or political subdivision as a public record:

- (1) A minor child of an applicant;
- (2) The social security number, passport number, or federal tax identification number of an applicant or of the spouse of an applicant;
- (3) The home address and telephone number of an applicant or of the spouse or dependent of an applicant;
- (4) An applicant's birth certificate;
- (5) The driver's license number of an applicant or of the applicant's spouse;
- (6) The name or address of a previous spouse of the applicant;
- (7) The date of birth of the applicant and of the spouse of an applicant;
- (8) The place of birth of the applicant and of the spouse of an applicant;
- (9) The personal financial information and records of an applicant or of an employee or the spouse or dependent of an applicant, including tax returns and information, and records of criminal proceedings;
- (10) Any information concerning a victim of domestic violence, sexual assault, or stalking;
- (11) The electronic mail address of the spouse or family member of the applicant;
- (12) Any trade secret, medical records, and patents or exclusive licenses;

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<sup>60</sup> Section 9.

(13) Security information, including risk prevention plans, detection and countermeasures, location of count rooms or other money storage areas, emergency management plans, security and surveillance plans, equipment and usage protocols, and theft and fraud prevention plans and countermeasures;

(14) Information provided in a multijurisdictional personal history disclosure form, including the Ohio supplement, exhibits, attachments, and updates.

Notwithstanding any other law to the contrary, upon written request from a person, the Commission must provide the following information to the person, except as provided in the Racing Law:

(1) The information provided concerning a licensee, permit holder, or an applicant;

(2) A copy of a letter providing the reasons for the denial of an applicant's license or permit and a copy of a letter providing the reasons for the Commission's refusal to allow an applicant to withdraw the applicant's application, but with confidential information redacted if that information is the reason for the denial or refusal to withdraw.

Under the act, the individual's name, the individual's place of employment, the individual's job title, and the individual's gaming experience that is provided for an individual who holds, held, or has applied for a license or permit is not confidential. The reason for denial or revocation of a license or permit or for disciplinary action against the individual is not confidential. The cover sheet completed by an applicant for a key employee license is not confidential.

The act permits a person who holds, held, or has applied for a license to waive the confidentiality requirements described above. The act specifies that confidential information received by the Commission from another jurisdiction relating to a person who holds, held, or has applied for a license or permit is confidential and not subject to disclosure as a public record. The Commission can share this information with, or disclose the information to, the Inspector General, any appropriate prosecuting authority, any law enforcement agency, or any other appropriate governmental or licensing agency, if the agency that receives the information complies with the same requirements regarding confidentiality as those with which the Commission must comply.<sup>61</sup>

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<sup>61</sup> R.C. 3769.041.

## **Collection and settlement agent**

Beginning July 1, 2015 and notwithstanding continuing law that requires the appointment of a permit holder as a collection and settlement agent, after 60 days' notification to the State Racing Commission, a permit holder can take responsibility for handling any payments and distributions required of a collection and settlement agent for any or all related permits under common ownership in lieu of making the required payments and distributions through the collection and settlement agent designated by the Commission.

Any permit holder having responsibility for payments and distributions must, on or before the tenth day of each month, file a report with the Commission showing the following:

(1) All payments and disbursements made by the permit holder to permit holders operating as simulcast hosts and the method of calculation of the share of each simulcast host;

(2) All payments and disbursements of required fees to tracks, racing associations, and state regulatory agencies located outside Ohio from which there were simulcasts of simulcast racing programs into the permit holder's facilities;

(3) Other information regarding the performance of the permit holder's duties as the Commission may request.

A permit holder having responsibility for payments and distributions can utilize an authorized agent to make the required payments and distributions.<sup>62</sup>

## **Jockey fees**

Beginning in the calendar year after the first calendar year in which all thoroughbred permit holders receive a commission as a lottery sales agent for conducting VLT gaming on behalf of the state or on January 1, 2015, whichever occurs first, the act requires the fees to be paid to thoroughbred jockeys to be according to the following schedule:

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<sup>62</sup> R.C. 3769.0810; Section 16.

Purse	Winning Mount	Second Mount	Third Mount	Fourth Mount	Losing Mount
Up to \$5,999	10% of win purse	\$65	\$60	\$55	\$50
\$6,000 to \$7,799	10% of win purse	\$75	\$70	\$65	\$60
\$7,800 to \$9,999	10% of win purse	5% of place purse	\$75	\$70	\$65
\$10,000 to \$17,999	10% of win purse	5% of place purse	\$85	\$80	\$75
\$18,000 to \$24,999	10% of win purse	5% of place purse	5% of show purse	\$85	\$80
\$25,000 to \$49,999	10% of win purse	5% of place purse	5% of show purse	\$95	\$85
\$50,000 to \$74,999	10% of win purse	5% of place purse	5% of show purse	\$100	\$90
\$75,000 and up	10% of win purse	5% of place purse	5% of show purse	5% of fourth purse	\$105

Under the above table, "win purse" means the amount paid the winning horse less the fees paid by the owner to enter the horse in the race.<sup>63</sup>

## Gambling Law

### Qualifications for a "charitable organization"

The Gambling Law authorizes a "charitable organization" to conduct certain games of chance, and to conduct and advertise bingo, instant bingo at a bingo session, and instant bingo other than at a bingo session if it holds a license issued by the Attorney General. The act simplifies the definition of "charitable organization" by defining it as an organization that is either of the following:

- ◆ An organization that is, and has received from the Internal Revenue Service a determination letter that currently is 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.
- ◆ A volunteer rescue service organization, volunteer firefighter's organization, veteran's organization, fraternal organization, or sporting

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<sup>63</sup> R.C. 3769.0812.

organization that is exempt from federal income taxation under subsection 501(c)(4), (c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code.<sup>64</sup>

The prior definition listed and defined the various organizations that qualified as a charitable organization. The act simplifies the definition by eliminating references to and the definitions of "educational organization," "service organization," "nonprofit medical organization," "senior citizen's organization," "amateur athletic organization," and "historic railroad educational organization." Rather, these types of organizations that qualified as charitable organizations under former law appear to be included in and covered by the act's references to the various subsections of 501(c) of the Internal Revenue Code, without specifically naming these types of organizations. The **COMMENT** at the end of this analysis describes the various types of organizations that are exempt from federal income taxation under those subsections of the Internal Revenue Code.

The act revises division references in various statutes because of the elimination of these definitions from the Gambling Law.<sup>65</sup>

### **Two-year existence qualification**

The act changes who may qualify as a charitable organization. The act eliminates a requirement that a fraternal organization or a nonprofit medical organization be in existence for five years immediately preceding the making of an application. Instead, the act reverts to the requirement in continuing law that to qualify as a charitable organization, an organization must have been in continuous existence 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 game of chance authorized by law.<sup>66</sup>

The act eliminates an exception for volunteer rescue service organizations or volunteer firefighter's organizations. Under former law, they did not have to be in continuous existence for two years before making an application for a bingo license or before conducting a game of chance. But under the act, the two-year requirement discussed in the previous paragraph applies to them.<sup>67</sup>

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<sup>64</sup> R.C. 2519.01(H).

<sup>65</sup> R.C. 173.121, 2915.01, 2915.06, 2915.09, 2915.092, 2915.094, 2915.10, 2915.101, 2915.12, 4301.03, and 4303.17.

<sup>66</sup> R.C. 2915.01(H) and 2915.08(A)(2).

<sup>67</sup> R.C. 2915.01(H).

The act also eliminates an exception for a charitable organization that is exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code and that is created by a veteran's organization, fraternal organization, and sporting organization. Under former law, that organization did not have to have been in continuous existence for a period of two years before making an application for a bingo license or before conducting a game of chance. Under the act, the two-year requirement applies to such an organization.<sup>68</sup>

### **Bingo and instant bingo sessions**

The act expands by two hours the time period during which a charitable organization may conduct a bingo session (which includes bingo, instant bingo, and seal cards). The act provides that no charitable organization may conduct a bingo session at any time during the eight-hour period between 2 a.m. and 10 a.m. Former law prohibited a charitable organization from conducting a bingo session at any time during the ten-hour period between midnight and 10 a.m.<sup>69</sup>

### **Electronic fund transfers**

Under the act, the gross profit from each bingo session or game must be deposited into a checking account devoted exclusively to the bingo session or game. Payments for allowable expenses incurred in conducting the bingo session or game and payments to recipients of some or all of the net profit of the bingo session or game must be made only by checks or electronic fund transfers drawn on the bingo session or game account. Prior law allowed payments to be made only by checks.<sup>70</sup>

### **Bingo at senior centers**

The act permits a multipurpose senior center to conduct bingo games, but only if all participants are 21 years of age or older. Under prior law, a multipurpose senior center could conduct bingo games, but only if all participants were 60 years of age or older.<sup>71</sup>

### **Instant bingo**

The act revises the form of instant bingo. Under the act, instant bingo is a form of bingo that must use folded or banded tickets or paper cards with perforated break-

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<sup>68</sup> R.C. 2915.01(H).

<sup>69</sup> R.C. 2915.09(C).

<sup>70</sup> R.C. 2915.10.

<sup>71</sup> R.C. 173.121.

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. The act also allows instant bingo to include games in which some winners are determined by the random selection of one or more bingo numbers by the use of a seal card or bingo blower. The act requires that in all instant bingo, the prize amount and structure must be predetermined.<sup>72</sup>

Former law allowed a charitable organization or a charitable instant bingo organization to conduct instant bingo other than at a bingo session at not more than five separate locations. The act eliminates this limitation.<sup>73</sup>

### **Expenses for conducting instant bingo other than at a bingo session**

Continuing law requires a charitable instant bingo organization that conducts instant bingo other than at a bingo session to enter into a written contract with the owner or lessor of the location at which the instant bingo is conducted to allow the owner or lessor to assist in the conduct of instant bingo other than at a bingo session. The owner or lessor of a location that enters into a contract must pay the full gross profit to the charitable instant bingo organization, in return for the deal of instant bingo tickets. "Full gross profit" continues to mean the amount by which total receipts of all instant bingo tickets, if the deal had been sold in full, exceeds the amount that would be paid out if all prizes were redeemed. But the act requires the charitable instant bingo organization to pay 6% of the total gross receipts of any deal of instant bingo tickets for the purpose of reimbursing the owner or lessor for expenses. The act defines "expenses" as the following which, in the aggregate must not exceed 6% of the total gross receipts of any deal of instant bingo tickets:

- (1) Audits and accounting services;
- (2) Safes;
- (3) Cash registers;
- (4) Hiring security personnel;
- (5) Advertising instant bingo;
- (6) Payment of real property taxes and assessments that are levied on a premises on which instant bingo is conducted;

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<sup>72</sup> R.C. 2915.01(AA).

<sup>73</sup> R.C. 2915.091(B) and 2915.093(B).

(7) Any other product or service directly related to the conduct of instant bingo that is authorized in rules adopted by the Attorney General;

(8) That percentage of the owner's or lessor's rent to the location where instant bingo is conducted.<sup>74</sup>

A charitable organization is prohibited from paying fees to any person for any services performed in relation to an instant bingo game. The act creates an exception to this prohibition for the owner or lessor of a location that must pay the full gross profit, as defined under the act, to a charitable instant bingo organization under a contract, as discussed immediately above.<sup>75</sup>

### **Net profits from the proceeds of the sale of instant bingo**

A charitable organization that conducts instant bingo must distribute the net profit from the proceeds of the sale of instant bingo according to the Gambling Law and as stated in its license application.<sup>76</sup> Under continuing law, "net profit from the proceeds of the sale of instant bingo" is calculated by deducting from gross profit the ordinary, necessary, and reasonable expense expended for the purchase of instant bingo supplies. The act requires that the payment by a veteran's, fraternal, or sporting organization of real property taxes and assessments levied on the premises on which instant bingo is conducted also are to be deducted from gross profit to determine net profit.<sup>77</sup>

### **Leasing or subleasing premises**

The act authorizes a charitable organization to lease or sublease premises that it owns or leases to not more than three other charitable organizations per calendar week for conducting bingo sessions on the premises. Prior law limited the leasing or subleasing of premises to not more than one other charitable organization per calendar week.<sup>78</sup>

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<sup>74</sup> R.C. 2915.093(D).

<sup>75</sup> R.C. 2915.091(A)(10).

<sup>76</sup> R.C. 2915.09(A)(3) and 2915.101.

<sup>77</sup> R.C. 2915.01(RR).

<sup>78</sup> R.C. 2915.09(B)(1).

The act states that no charitable organization is required to pay property taxes or assessments on premises that it leases from another person to conduct bingo sessions.<sup>79</sup>

### **Games of chance at festivals**

The act revises one of six criteria that must be met for a game of chance to be exempt from the prohibition against gambling. To be lawful under the act, a game of chance, in addition to meeting the other criteria, must be conducted at festivals of a charitable organization for a total of not more than five days a calendar year. Formerly, to be lawful, a game of chance, in addition to meeting the other criteria, must have been conducted at festivals of a charitable organization for a period of four consecutive days or less and not more than twice a year or for a period of five consecutive days not more than once a year.<sup>80</sup>

### **Name correction**

The act corrects a reference in the definition of "sporting organization" in the Gambling Law. Prior law referred to organizations affiliated with the Ohio League of Sportsmen. The correct title is the League of Ohio Sportsmen.<sup>81</sup>

## **Income tax withholding from lottery and casino winnings**

### **Withholding requirement**

Under continuing law, the State Lottery Commission must withhold income taxes from each lottery prize award that exceeds \$5,000, and casino operators must withhold taxes from casino winnings that exceed \$600. The act adds a similar requirement for lottery sales agents that operate VLTs. Under the act, such agents must withhold taxes from VLT prize awards that exceed \$3,000.

Prior law required casino operators and the Lottery Commission to withhold 6% of a person's casino or lottery winnings. The act lowers this withholding percentage to 4% and applies the lower percentage to all three types of lottery or casino winnings from which taxes must be withheld.<sup>82</sup>

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<sup>79</sup> R.C. 2915.09(B)(1).

<sup>80</sup> R.C. 2915.02.

<sup>81</sup> R.C. 2915.01(EEE).

<sup>82</sup> R.C. 3770.072(C), 5747.062(A)(1), 5747.063(A)(1), and 5747.064(B).

## **Monthly return requirement**

Each month, casino operators and the Lottery Commission must file a monthly return with the Tax Commissioner and forward to the Tax Commissioner all taxes withheld during the previous month. In addition, the Lottery Commission and casino operators must file an annual return with the Tax Commissioner that includes payment of any withholding taxes not previously remitted with a monthly return.<sup>83</sup>

The act applies these requirements to lottery sales agents that withhold taxes from video lottery terminal awards.<sup>84</sup>

### **Timing of monthly returns**

The act modifies the deadline for filing monthly returns. Former law required monthly returns to be filed on or before the tenth banking day of each month. The act instead provides that monthly returns are due on or before the tenth day of each month.<sup>85</sup> A "banking day" is defined as the part of a day that a bank is open to the public for business.

### **Monthly return contents**

Under continuing law, a casino operator's monthly return must identify each person subject to tax withholding in the previous month and the amount that was withheld from each such person. The act additionally requires that monthly returns specify the amount of winnings from which taxes were withheld, the type of casino gambling that resulted in those winnings, and any other information required by the Tax Commissioner.<sup>86</sup>

Similarly, the act specifies that a lottery sales agent's monthly return must identify each person subject to tax withholding in the previous month, the amount that was withheld, the amount of each prize award from which taxes were withheld, and any other information required by the Tax Commissioner.<sup>87</sup>

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<sup>83</sup> R.C. 5747.062(A) and 5747.063(B).

<sup>84</sup> R.C. 5747.064(C).

<sup>85</sup> R.C. 5747.062(A)(2), 5747.063(B)(1), and 5747.064(C)(1).

<sup>86</sup> R.C. 5747.063(B)(1).

<sup>87</sup> R.C. 5747.064(C)(1).

## **Annual information returns**

Continuing law requires casino operators and the Lottery Commission to issue an annual information return to each person that was subject to tax withholding during the previous year. The act imposes a similar requirement on lottery sales agents, and additionally requires lottery sales agents and casino operators (but not the Lottery Commission) to provide a copy of each annual information return to the Tax Commissioner. The Tax Commissioner may require the copies to be submitted electronically.<sup>88</sup>

## **Withholding receipts**

Under continuing law, a casino operator must issue receipts to patrons who are subject to the withholding tax that show the amount of taxes withheld from each patron's casino winnings. The casino operator must electronically submit the receipts to the Tax Commissioner with the appropriate monthly return.

The act requires lottery sales agents to issue a similar receipt to each person who is subject to tax withholding with regard to a video lottery terminal award. In addition, the act specifies that, instead of the required electronic submission of receipts, casino operators and lottery sales agents need only maintain copies of the receipts and make the copies available to the Tax Commissioner upon request.<sup>89</sup>

## **Tax liability and penalties**

The act specifies that a lottery sales agent that fails to file a return or remit withheld taxes is personally liable for any amount not remitted. If the agent does not file a return or files a return late, or if the agent does not remit taxes or remits taxes late, the agent may also be subject to a fine of up to \$1,000. Continuing law imposes similar requirements on casino operators.<sup>90</sup>

## **Disclosure of taxpayer information**

With some exceptions, continuing law prohibits the Department of Taxation from releasing information about a person's business, property, or transactions. One exception allows the Department to disclose to the Ohio Casino Control Commission information that is necessary to ensure a casino operator's compliance with withholding and casino gross revenue tax payments. The act additionally allows the Department to

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<sup>88</sup> R.C. 5747.062(A)(4), 5747.063(C), and 5747.064(D).

<sup>89</sup> R.C. 5747.063(A) and (B) and 5747.064(B) and (C)(2).

<sup>90</sup> R.C. 5747.063(B)(4) and 5747.064(C)(4).

disclose to the State Lottery Commission information necessary to ensure a lottery sales agent's compliance with the new VLT award tax withholding requirements.<sup>91</sup>

### **Application of tax refunds to satisfy withholding tax debts**

Continuing law allows the Tax Commissioner to apply a taxpayer's income tax refund to satisfy certain debts to the state, including tax debts and other claims certified to the Attorney General. The act specifies that, when a taxpayer has multiple debts and one of those debts arises out of a failure to pay the withholding tax on casino winnings or video lottery terminal awards, the debt arising out of the failure to pay the withholding tax must be satisfied first.<sup>92</sup>

### **Statements from casino patrons in default under a support order**

Ongoing law provides that, when a casino operator withholds taxes from an individual's winnings, the operator must obtain a written statement from the individual indicating whether the individual is in default under a support order. The act additionally requires casino operators to maintain a record of these written statements and make the records available to the Department of Job and Family Services upon request.<sup>93</sup>

The act does not include a similar requirement for lottery sales agents.

### **Municipal income tax withholding**

The act allows a municipal corporation to require a casino facility or a casino operator, or a lottery sales agent conducting VLTs on behalf of the state to withhold and remit tax with respect to amounts other than qualifying wages at the rate of tax of the municipal corporation in which the facility is located.<sup>94</sup>

## **Miscellaneous**

### **Gaming addiction study**

The act requires the Director of Alcohol and Drug Addiction Services to complete a study to identify the current status of gaming addiction problems in Ohio. In fiscal year 2013, the Director may certify to the Director of Budget and Management the cost,

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<sup>91</sup> R.C. 5703.21(C)(14) and (15).

<sup>92</sup> R.C. 5747.12.

<sup>93</sup> R.C. 5747.063(A)(2).

<sup>94</sup> R.C. 718.03, 5747.063, and 5747.064.

not exceeding \$250,000, incurred by the Department of Alcohol and Drug Addiction Services in conducting the gaming addiction study. In response to receiving this certification, the Director of Budget and Management can transfer the cost of the study in cash from the General Revenue Fund to the Problem Casino and Gambling Addictions Fund to reimburse the fund for costs incurred in conducting the study.<sup>95</sup>

### **Sweepstakes establishments**

On and after the act's effective date, and through June 30, 2013, the act prohibits a person from conducting a sweepstakes through the use of a sweepstakes terminal device that has not conducted such a sweepstakes before that date. All sweepstakes establishments conducting a sweepstakes through the use of a sweepstakes terminal device, whether or not licensed by a local entity, in existence and operating before that date, may continue to operate at only their current locations after that date.

Upon the expiration of any current occupancy permit, permission to operate, or other permit or license issued by a local entity for a sweepstakes establishment that was in existence before that date, the local entity must renew the occupancy permits or licenses or grant permission at those pre-existing locations in accordance with that local entity's current permit or licensing ordinances or procedures. The act clarifies that these provisions are not intended to supersede any similar action taken by a county, township, or municipal corporation.

The act states that the General Assembly finds the following:

(1) The state has experienced a proliferation of retail businesses that utilize a sweepstakes to facilitate sales. These establishments utilize computer terminals or stand alone machines, which currently are not consistently and uniformly regulated statewide and have created a window of opportunity for rogue operators to open in cities across Ohio.

(2) Judges across the state have issued conflicting rulings regarding the legality of these sweepstakes establishments.

(3) The General Assembly has determined that a moratorium on new retail sweepstakes establishments is needed while legislation is being considered.

Within 30 days after the act's effective date, a sweepstakes establishment conducting a sweepstakes through the use of a sweepstakes terminal device in existence and operating before that date must file an affidavit with the Attorney General

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<sup>95</sup> Section 11.

certifying that the establishment was in existence and operating before that date and indicating the address of the establishment.

If a sweepstakes establishment was in existence and operating before that date, but was involuntarily shut down by law enforcement before that date, solely for the purposes of this moratorium, those sweepstakes establishments must be considered to be in existence and operating before that date. If the sweepstakes establishment is permitted to resume operations pursuant to court order, the sweepstakes establishment has 30 days from the date of resuming operations to file the required affidavit.

On and after the act's effective date, and through June 30, 2013, the Attorney General or the appropriate county prosecuting attorney may bring an action for injunction against a person that conducts a sweepstakes through the use of a sweepstakes terminal device that has not conducted such a sweepstakes before that date. If such a person continues to conduct such a sweepstakes after an injunction is granted, a contempt action may be brought by any means necessary.<sup>96</sup>

### **Ohio Law Enforcement Training Fund recommendations**

By December 31, 2013, the Attorney General must submit to the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives a report on the Attorney General's recommendations on how to best use resources and moneys that are distributed from the gross casino revenue tax pursuant to the Ohio Constitution to the Ohio Law Enforcement Training Fund under Ohio law. The report must include a provision on sharing a portion of such resources and moneys with local law enforcement agencies beginning in fiscal year 2015.<sup>97</sup>

### **Data match**

Within one year of the act's effective date, the Department of Job and Family Services must negotiate with the casino operators and video lottery sales agents and must issue a report to the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives and the Permanent Joint Committee on Gaming and Wagering that makes recommendations on the processes and procedures necessary to allow the state to establish a data match and prize and winnings intercept program to identify obligors who are subject to a final and enforceable determination of default for child support. Such a program must require casino operators and video lottery sales agents to withhold an amount sufficient to satisfy any past due support owed by an obligor from a lottery prize award or from

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<sup>96</sup> Section 12.

<sup>97</sup> Section 13.

casino winnings owed to an obligor identified in the data match, up to the amount of the award. The report must include recommendations on taking steps necessary to limit access to an obligor's personal information viewed by employees of the casino operator or video lottery sales agent when determining a data match.<sup>98</sup>

### **Severability clause**

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 this act and their applications that can be given effect without the invalid item of law or application.<sup>99</sup>

### **Emergency clause**

The act declares itself to be an emergency measure that therefore goes into immediate effect.<sup>100</sup>

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## **COMMENT**

The following types of organizations are exempt from federal income taxation under the Internal Revenue Code, 26 U.S.C. § 501(a), if they meet the descriptions in § 501(c), unless the exemption is denied, and are considered to be "charitable organizations" under the act and the Gambling Law:

- Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster a national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (by making lobbying or grass roots expenditures in excess of the expenditure or grass roots ceiling amount for the organization for each taxable year), and which does not participate in, or intervene in, any political campaign on

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<sup>98</sup> Section 14.

<sup>99</sup> Section 15.

<sup>100</sup> Section 18.

behalf of or in opposition to any candidate for public office. 26 U.S.C. 501(c)(3).

- Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes, but only if no part of the net earnings of these entities inures to the benefit of any private shareholder or individual. 26 U.S.C. 501(c)(4).
- Clubs organized for pleasure, recreation, and other non-profitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder. 26 U.S.C. 501(c)(7).
- Fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sickness, accident, or other benefits to the members of such society, order, or association or their dependents. 26 U.S.C. 501(c)(8).
- Domestic fraternal societies, orders, or associations, operating under the lodge system, the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and that do not provide for the payment of life, sickness, accident, or other benefits. 26 U.S.C. 501(c)(10).
- A post or organization of past or present members of the United States Armed Forces, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization that is organized in the United States or any of its possessions, at least 75% of the members of which are past or present members of the United States Armed Forces and substantially all of the other members of which are individuals who are cadets, or are spouses, widows, widowers, ancestors, or lineal descendants of past or present members of the United States Armed Forces or of cadets, and no part of the net earnings of which inures to the benefit of any private shareholder or individual. 26 U.S.C. 501(c)(19).

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## HISTORY

ACTION	DATE
Introduced	12-01-11
Reported, H. State Gov't & Elections	02-08-12
Re-Reported, H. Rules & Reference	02-15-12
Passed House (69-24)	02-15-12
Reported, S. Government & Oversight Reform	05-09-12
Passed Senate (29-3)	05-09-12
House refused to concur in Senate amendments (0-94)	05-09-12
Senate requested conference committee	05-10-12
House acceded to request for conference committee	05-10-12
House agreed to conference committee report (71-23)	05-24-12
Senate agreed to conference committee report (26-3)	05-24-12

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