Ohio Legislative Service Commission

Bill Analysis

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Rep. Blessing

BILL SUMMARY

Casino Law

- Defines "corrupt activity" for purposes of criminal law to include certain conduct under the Casino Law.
- Sets penalties for bribery under the Casino Law.
- Modifies the definition of "holding company" under the Casino Law.
- Modifies the definition of "institutional investor" to mean an entity owning more than five percent but less than 15% of an ownership interest in a casino facility, casino operator, management company, or holding company.
- Requires the Commission to notify an institutional investor 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.
- Modifies and consolidates the adjudication procedure applicable to Casino Law licensees.
- Modifies what is considered confidential concerning information submitted, collected, or gathered as part of a license application to the Commission.
- Permits the transfer of a casino operator license subject to Commission approval and requires the filing of an application and submission of an application fee.
- Amends the definition of "control" for the purposes of the transfer provision to mean 30% or more.

- Clarifies that the casino operator upfront license fee must not be assessed on the transfer of a casino operator.
- Applies a $1.5 million fee to the application to transfer a casino operator license.
- Specifies that the upfront license fee to obtain a casino operator license must be paid upon each casino operator's initial application filing.
- Permits a licensed casino operator to enter into one or more debt transactions with affiliated companies provided the aggregate amount of all such debt transactions at any one time does not exceed $10 million.
- Removes the requirements that the Commission obtain a criminal records check before issuing a license for each investor, except an institutional investor.
- During the first 60 days of a key employee's employment with a gaming-related vendor, exempts the gaming-related vendor and the key employee from the requirement that the person must hold a key employee license.
- Grants the State Highway Patrol jurisdiction to enforce Ohio law at casino facilities.
- Exempts from the definition of "gross casino revenue" the bad debts from receipts on the basis of which the Gross Casino Revenue Tax was paid in a prior tax period.
- 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, on or before the 30th day of the month following the end of each calendar quarter, the Tax Commissioner to provide for payment from certain casino-related funds to each county, municipal corporation, and school district.

State Lottery Law

- Clarifies that game rules promulgated by the State Lottery Commission (other than those for video lottery terminal games) be promulgated under the abbreviated rulemaking procedure.

- Removes the requirement that the Controlling Board must approve the fees: each applicant pays for a lottery sales agent license, for administering and processing changes to an application, or for a renewal.

- Permits the Director of the State Lottery Commission to establish an alternative program or policy to establish financial responsibility, with 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.

Video Lottery Terminal Law

- Specifies that the State Lottery Commission must promulgate rules for video lottery terminal games under the Administrative Procedure Act and that the Commission must approve rules for video lottery terminal games by resolution.

- Permits the Director to license video lottery technology providers, independent testing laboratories, and gaming employees, and promulgate related rules.

- Permits the Director to suspend or revoke the license of a video lottery technology provider, independent testing laboratory, or gaming employee.

- Requires the Commission to include, in conjunction with the State Racing Commission, in any rules adopted concerning video lottery terminals, the required level of minimum investments.

- Permits racetrack operators and management companies that are licensed lottery sales agents to provide video lottery terminal promotional gaming credits to patrons for video lottery terminal gaming.

- For the Commercial Activity Tax, excludes from the definition of "gross receipts" wagering by racetrack video lottery terminal patrons of promotional gaming credits.

- Describes 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.

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.

- If during the course of a racing meeting, 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, permits the racing secretary, after consulting a horsemen's association, to reduce the number of live races.

- Sets the minimum number of required live racing days and simulcast racing programs.

- For a permit holder to offer simulcast racing programs of races conducted at 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 its track, requires a permit holder conducting a thoroughbred live racing program to obtain the consent of the appropriate horsemen's association.

- 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 video lottery terminal facility.

- Creates certain funds related to racetrack relocation and establishes the purposes of the funds.

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.

- Reappropriates any unexpended and unencumbered portion of the Ohio Workforce Job Training appropriation item remaining at the end of fiscal year 2012 for the same purpose in fiscal year 2013.

- States that the items of law contained in the bill, and their applications, are severable.

- Provides that the provisions permitting the Director of the State Lottery Commission to license video lottery technology providers, independent testing laboratories, and gaming employees, and promulgate related rules and requiring the Tax Commissioner to provide for payments related to the Gross Casino Revenue Tax are an emergency measure that take immediate effect.

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CONTENT AND OPERATION

Casino Law

Corrupt activity

Under the bill "corrupt activity" (engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to

engage in) for purposes of criminal law is defined to include certain conduct under the Casino Law.[1] 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.[2]

The types of activities in the Casino Law defined as corrupt activity are a person who 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 the casino game ("casino game" means 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 an event relating to the casino game, or analyzing the strategy for playing or betting to be used in the casino game, except as permitted by the Ohio Casino Control Commission;

(2) Cheats at a casino game ("cheat" 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 (a) the result of the casino game, (b) the amount or frequency of payment in a casino game, (c) the value of a wagering instrument, or (d) the value of a wagering credit);

(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;

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[1] R.C. 2923.31.

[2] R.C. 2923.32, 2923.34, and 2923.36 (not in the bill).

(8) Claims, collects, or takes an amount of money or thing of value 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 an electronic or a mechanical device connected with the casino game or removing coins, tokens, chips, or other contents of a casino game. (This 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.)

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

(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 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 felony of the fifth degree on a first offense and a felony of the fourth degree for a subsequent offense. If the person is a Casino Law licensee, the Commission must revoke the person's license after the first offense.[3]

Bribery

Under the bill, a person who knowingly or intentionally does either of the following commits a third degree felony. 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 is forever disqualified from holding any public office, employment, or position of trust in Ohio.

(1) Offers, promises, or gives anything of value or benefit to a person who is connected with the 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;

(2) 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

[3] R.C. 3772.01(D) and (I) and 3772.99(E).

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.

Under current law, a person who knowingly or intentionally does either of the above commits a fifth degree felony on 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.[4]

Holding company

The bill 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 five percent 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 five percent or more of the outstanding voting rights of a casino operator, management company, or gaming-related vendor applicant or licensee.

Under current law, a "holding company" means any corporation, firm, partnership, limited partnership, limited liability company, trust, or other form of business organization not a natural person that directly or indirectly owns, has the power or right to control, or holds with power to vote, any part of an applicant, casino operator, management company, or gaming-related vendor license.

Institutional investor

The bill modifies the definition of "institutional investor" to mean an entity owning more than 5% but less than 15% (as opposed to one percent or less, or a percentage between 1 and 10% as approved by the Commission through a waiver on a case-by-case basis, as under current law) of an ownership interest in a casino facility, casino operator, management company, or holding company. The bill also includes in the types of entities that can be institutional investors any association engaged, as a

[4] R.C. 3772.99(G).

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 over the affairs of a licensee and its ownership interest in a licensee must be for investment purposes only.[5]

The bill removes references to an institutional investor owning, holding, controlling, or exercising voting privileges over *publicly traded* securities issued by a licensee or holding, intermediate, or parent company of a licensee.

Under the bill, 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 or investigate the suitability if the Commission has any reason to seek information from the investor to determine its qualifications.

Additionally, if the Commission finds an institutional investor to be unsuitable or unqualified, the Commission must notify the investor and the casino operator, holding company, management company, or gaming-related vendor in which the investor invested. The Commission must allow the 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 investor unsuitable or unqualified. If during the specified time-period, the investor or licensee does not or cannot cure the conditions, the Commission can allow more time or can begin proceedings to deny, suspend, revoke, or deny the renewal of the applicable license.

The bill requires a private licensee or holding company to provide the same information to the Commission as a public company would provide in a form 13d or form 13g filing to the Securities and Exchange Commission.[6]

Adjudications

The bill makes modifications to and consolidates the adjudication procedure applicable to Casino Law licensees. Under the bill, after notice and opportunity for an adjudication under the Administrative Procedure Act (R.C. Chapter 119.), the Commission can limit, condition, restrict, suspend, revoke, deny, or not renew a license under rules adopted by the Commission. The Commission can reopen a licensing adjudication at any time. The bill also expands the findings under which the Commission can issue an order to include finding that a person fails or has failed to

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[5] R.C. 3772.01(M) and (O).

[6] R.C. 3772.10(E).

meet any requirement under the Casino Law or rules or violates the Casino Law or rules. In addition to limiting, conditioning, restricting, suspending, or revoking a license, the bill permits the Commission to deny or not renew a license. The bill removes a provision that permits a Commission-appointed administrative law judge to conduct a hearing under the Casino Law and recommend findings of fact and decisions to the Commission.

Under continuing but reorganized law, without in any manner limiting the Commission's authority to impose the appropriate level and type of discipline, the Commission can take the following into consideration:

(1) If the licensee knew or reasonably should have known that the action complained of was a violation of any law, rule, or condition on the licensee's license;

(2) If the licensee has previously been disciplined by the Commission;

(3) If the licensee has previously been subject to discipline by the Commission concerning the violation of any law, rule, or condition of the licensee's license;

(4) If the licensee reasonably relied upon professional advice from a lawyer, doctor, accountant, or other recognized professional that was relevant to the action resulting in the violation;

(5) If the licensee or the licensee's employer had a reasonably constituted and functioning compliance program;

(6) If the imposition of a condition requiring the licensee to establish and implement a written self-enforcement and compliance program would assist in ensuring the licensee's future compliance with all statutes, rules, and conditions of the license;

(7) If the licensee realized a pecuniary gain from the violation;

(8) If the amount of any fine or other penalty imposed would result in disgorgement of any gains unlawfully realized by the licensee;

(9) If the violation was caused by an officer or employee of the licensee, the level of authority of the individual who caused the violation;

(10) If the individual who caused the violation acted within the scope of the individual's authority as granted by the licensee;

(11) The adequacy of any training programs offered by the licensee or the licensee's employer that were relevant to the activity that resulted in the violation;

(12) If the licensee's action substantially deviated from industry standards and customs;

(13) The extent to which the licensee cooperated with the Commission during the investigation of the violation;

(14) If the licensee has initiated remedial measures to prevent similar violations;

(15) The magnitude of penalties imposed on other licensees for similar violations;

(16) The proportionality of the penalty in relation to the misconduct;

(17) The extent to which the amount of any fine imposed would punish the licensee for the conduct and deter future violations;

(18) Any mitigating factors offered by the licensee; and

(19) Any other factors the Commission considers relevant.

Under current law, if, as the result of an investigation, the Commission concludes that a license should be limited, conditioned, or restricted, or suspended or revoked, the Commission must conduct an adjudication under the Administrative Procedure Act.[7]

Confidential information

The bill modifies current law regarding what is considered confidential concerning information submitted, collected, or gathered as part of a license application. 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 bill amends references to "minor child" to refer to "dependent." Also included as confidential 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 spouse or dependent of an applicant; the date of birth of the applicant; the place of birth of the applicant; the personal financial information and records of an employee of an applicant, including tax returns and information, and records of criminal proceedings; and 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. No longer

[7] R.C. 3772.04.

included in the list of 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 can share such 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.[8]

Transfer of license

The bill permits the transfer of a casino operator license subject to Commission approval. Any change or transfer of control of a casino operator requires Commission approval. Any change in or transfer of control of a casino operator, as determined by the Commission, requires the filing of an application for transferring the casino operator license and submission of an application fee with the Commission before the approval of any change or transfer of control. Additionally, the Commission can assess a reasonable fee in the amount necessary to review the transfer. In determining whether to approve the transfer, the Commission must consider all the factors established in the Casino Law that pertain to the granting of a casino operator license.

The bill also amends the definition of "control" for the purposes of this provision to mean either: (1) holding 30% (50% under current law) or more of the outstanding voting securities of a licensee or, for an unincorporated licensee, having the right to 30% (50% under current law) or more of the profits of the licensee or having the right in the event of dissolution to 30% (50% under current law) or more of the assets of the licensee, or (2) having the contractual power presently to designate 30% (50% under current law) or more of the directors of a for-profit or not-for-profit corporation, or in the case of trusts described in paragraphs (c)(3) to (5) of 16 C.F.R. 801.1, the trustees of such a trust.

The bill clarifies that the $50 million upfront license fee to obtain a casino operator license must not be assessed on the transfer of a casino operator license to a new casino operator. However, the bill applies a $1.5 million fee to the application to transfer a casino operator license to a new casino operator. The application fee must be deposited into the Casino Control Commission Fund and is nonrefundable.

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[8] R.C. 3772.16.

Under current law, no license issued under the Casino Law is transferable. New majority ownership interest or control requires a new 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.[9]

Upfront license fee

The bill specifies that the $50 million upfront license fee to obtain a casino operator license must be paid upon each initial casino operator's filing of its casino operator license application with the Commission.[10]

Debt transactions

Under the bill, a licensed casino operator must not enter into a debt transaction without the Commission's approval and must submit, in writing, a request for approval of a debt transaction that contains certain information. Under current law, the same requirement applies, but to a casino operator, not a *licensed* casino operator. A "casino operator" is 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.

However, the bill permits a licensed casino operator to enter into one or more debt transactions with affiliated companies provided the aggregate amount of all such debt transactions at any one time does not exceed $10 million. When a licensed casino operator intends to enter into such a debt transaction, it must provide immediate written notification to the Commission. The Commission can 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 can require the licensed casino operator to submit

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[9] R.C. 3772.091 and 3772.17.

[10] R.C. 3772.17.

specified information. The Commission can adopt rules governing its review and approval of such debt transactions. "Affiliated companies" means any holding company or institutional investor or any individual, partnership, corporation, association, trust, or any other group of individuals, however organized, which 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.[11]

Criminal records check

The bill removes the requirement that the Commission obtain a criminal records check before issuing a license for each investor, except an institutional investor.[12]

Exemption from holding of valid license

During the first 60 days of a key employee's employment with a gaming-related vendor, the bill exempts the gaming-related vendor and a key employee of that gaming-related vendor from the requirement that a person employed as a key employee must hold a valid key employee license issued by the Commission.[13]

State Highway Patrol

Under the bill, the State Highway Patrol is granted jurisdiction to enforce Ohio law at any casino facility.[14]

Gross casino revenue

Under the bill, "gross casino revenue" does not include the bad debts from receipts on the basis of which the Gross Casino Revenue Tax was paid in a prior tax period. "Bad debts" means any debts that have become worthless or uncollectible between the preceding and current tax periods, have been uncollected for at least six months, and that may be claimed as a deduction under section 166 of the Internal Revenue Code and the regulations adopted under that section, or that could be claimed as such if the taxpayer kept its accounts on the accrual basis. "Bad debts" does not include repossessed property, uncollectible amounts on property that remains in the

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[11] R.C. 3772.01 and 3772.28.

[12] R.C. 3772.07.

[13] R.C. 3772.13.

[14] R.C. 5503.02.

possession of the casino operator until the full purchase price is paid, or expenses in attempting to collect any account receivable or for any portion of the debt recovered.[15]

Students' county of residence

The bill provides that the guidelines for the establishment and maintenance of the Statewide Education Management Information System, as adopted by the State Board of Education, can require school districts to provide the county of residence for a student. The bill specifies that the law regarding the guidelines does not prohibit the Board or the Department of Education from providing a student's county of residence to the Department of Taxation to facilitate the distribution of tax revenue.[16] Presumably, the Department of Taxation needs this information to distribute the portion of the Gross Casino Revenue Tax allocated to counties in proportion to such counties' respective public school district student populations at the time of distribution.[17]

Tax Commissioner as agent

The bill 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, as applicable, on the counties' behalf.

On or before the 30th 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, the Gross Casino Revenue County Student Fund, and the Gross Casino Revenue Host City Fund to each county, municipal corporation, and school district as prescribed.[18]

State Lottery Law

Adoption of rules

The bill clarifies that game rules promulgated by the State Lottery Commission (other than those for video lottery terminal games) be promulgated under the abbreviated rulemaking procedure. Therefore, the bill requires that non-instant game rules be adopted by the Commission in the same manner as lottery instant game rules.

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[15] R.C. 5753.01.

[16] R.C. 3301.0714.

[17] R.C. 5753.03.

[18] R.C. 5753.03.

However, instant game rules are not subject to legislative review and invalidation, but non-instant game rules are subject to legislative review and invalidation.[19]

Applicant fees

The bill removes the requirement that the Controlling Board approve the fees each applicant must pay for the following: a lottery sales agent license, administering and processing changes to an application, or a renewal fee. Under continuing law, fees can be required by the Commission by rule adopted by the Director of the State Lottery Commission under the Administrative Procedure Act.

Alternative to surety bonding or dedicated account

The bill permits the Director to establish an alternative program or policy to establish financial responsibility, with Commission approval by rule adopted under the Administrative Procedure Act, that ensures 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, can 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 current 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.

Licenses

Under the bill, 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, but not more than three years. Under current law, a lottery sales agent license is effective for at least one year and the renewal of the license is effective for one year.[20]

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[19] R.C. 111.15(D)(7) and 3770.03(A).

[20] R.C. 3770.05.

Video Lottery Terminal Law

Rules

The bill specifies that the State Lottery Commission must promulgate rules for video lottery terminal games under the Administrative Procedure Act (R.C. Chapter 119.) and that the Commission must approve rules for video lottery terminal games by resolution.[21]

The bill permits the Director of the Commission to license video lottery technology providers, independent testing laboratories, and gaming employees, and promulgate related rules. The Director can suspend or revoke the license of a video lottery technology provider, independent testing laboratory, or gaming employee, including suspension or revocation without affording an opportunity for a prior hearing under the Administrative Procedure Act when the public safety, convenience, or trust requires immediate action.[22]

Under the bill, the Commission must include, in conjunction with the State Racing Commission, in any rules adopted concerning video lottery terminals, the level of minimum investments that must be made by video lottery terminal licensees in the buildings, fixtures, and grounds at the facilities, including temporary facilities, in which the terminals will be located, along with any standards and timetables for such investments. Under current law, the State Lottery Commission need not adopt these rules in conjunction with the State Racing Commission.[23]

Promotional gaming credits

The bill permits racetrack operators and management companies that are licensed lottery sales agents to provide video lottery terminal promotional gaming credits to patrons for video lottery terminal gaming. Video lottery terminal promotional gaming credits are subject to oversight by the State Lottery Commission. The Commission must adopt rules for video lottery terminal promotional gaming credits. A "video lottery terminal promotional gaming credit" means a video lottery terminal game credit, discount, or other similar item issued to a patron to enable the placement of, or increase in, a wager at a video lottery terminal.[24]

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[21] R.C. 3770.03.

[22] R.C. 3770.02(E).

[23] R.C. 3770.21(B).

[24] R.C. 3770.21(A) and (C).

For the purposes of the Commercial Activity Tax (R.C. Chapter 5751.), the bill excludes from the definition of "gross receipts," wagering by racetrack video lottery terminal patrons of promotional gaming credits.[25]

Confidential information

Any information concerning the following that is submitted, collected, or gathered as part of an application to the 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 spouse of an applicant;

(3) The home address and telephone number of an applicant or the spouse or dependent of an applicant;

(4) An applicant's birth certificate;

(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 spouse of an applicant;

(8) The place of birth of the applicant and 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;

(13) Security information, including risk prevention plans, detection and countermeasures, location of count rooms or other money storage areas, emergency

[25] R.C. 5751.01(F)(2)(kk).

management plans, security and surveillance plans, equipment and usage protocols, and theft and fraud prevention plans and countermeasures.

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

The individual's name, place of employment, job title, and gaming experience that is provided for an individual who holds, held, or has applied for a video lottery-related license is 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 such 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.[26]

Horse Racing Law

Land conveyance

The bill 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, can 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 real estate conveyance, and in accordance with the purchase contract, must do all of the following:

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[26] R.C. 3770.22.

(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 must be 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 shall be sold as an entire tract and not in parcels.

The grantee shall pay all costs associated with the purchase and conveyance of the real estate, which include: surveying costs, title costs, preparation of metes and bounds property descriptions, appraisals, environmental studies, assessments, and remediation, and 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 its effective date.[27]

Reduction in live races during racing meeting

Under the bill, if during the course of a racing meeting at a standardbred 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 Horsemens Association, can reduce the number of live races on a live racing program as the racing secretary determines. However, the bill also specifies that the racing secretary must not reduce the live racing program to less than seven live races. Under current law, the

[27] Section 8.

racing secretary, after consultation with the Ohio Harness Horsemens Association, can reduce the number of live races on a live racing program from nine to either eight or seven.

Similarly, if during the course of a meeting at a thoroughbred track, the racing secretary of a 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, then the racing secretary, with the consent of the Thoroughbred Horsemens Association, can reduce the number of live races on that live racing program as the racing secretary determines. The racing secretary must not reduce the live racing program to less than seven live races. Under current law, the racing secretary, after consent of the Thoroughbred Horsemens Association, can reduce the number of live races on a live racing program, from nine to either eight or seven.[28]

Required racing days

The bill

The bill requires a permit holder to conduct a minimum of 75 live racing days in calendar year 2013; a minimum of 100 live racing days in calendar year 2014; and a minimum of 125 live racing days in calendar year 2015 and each subsequent calendar year. The live racing days must be selected by the permit holder, but are subject to approval of the State Racing Commission. 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 simulcast racing programs conducted outside Ohio.

The Commission can make exception to the required minimum number of live racing days or simulcast racing program days in instances of natural disaster or other emergency circumstances as the Commission defines. The horsemens' associations can negotiate an agreement with a permit holder to reduce the number of live racing days. 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.

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[28] R.C. 3769.089(A).

For a permit holder to offer simulcast racing programs of races conducted at 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 its track, a permit holder conducting a thoroughbred live racing program must obtain the consent of the Thoroughbred Horsemens Association and a permit holder conducting a harness live racing program must obtain the consent of the Ohio Harness Horsemens Association. The consent of the applicable horsemen's association must be consistent with the interest of preserving live racing in Ohio. A permit holder, as a simulcast host, can offer simulcast racing programs at its track or enclosure of races conducted at tracks and facilities located outside Ohio before the commencement of, and following the conclusion of, its live races without obtaining the consent of a horsemen's association.

Current law

Under current law, in order for a permit holder to offer simulcasts of horse races conducted at facilities located outside Ohio, the permit holder must have conducted 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 can 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, in order 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.

If the consent of the horsemen's association to offer simulcasts of races conducted at race tracks located outside Ohio is withheld, the permit holder can file an objection with the Commission, which must promptly consider the objection and determine whether the association's action in withholding consent is without substantial merit and, if the Commission so determines, it must authorize the permit holder to simulcast the simulcast racing programs. The determination of the Commission is final.[29]

Objection with Commission

Continuing law authorizes the Commission, in emergency situations, to authorize a live racing day at a track in which all horse races on that day are simulcast with the consent of the Thoroughbred Horsemens Association or the Ohio Harness Horsemens Association, as applicable. Ongoing law requires a permit holder proposing

[29] R.C. 3769.089(B) and (K).

to simulcast a special racing event as a simulcast host to advise its horsemen's association of the proposed schedule of the special racing event and obtain its consent to this schedule. The consent of the horsemen's association at the track of the permit holder applying to the Commission to simulcast horse races conducted at the permit holder's track to racing associations, tracks, and facilities located outside Ohio is required. The bill removes the ability, if a horsemen's association withholds its consent, for the permit holder to file an objection with the Commission.[30]

Temporary facility

The bill 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 video lottery terminal facility at its track. A temporary facility, either at a new track location or an existing track location, must meet any minimal capital investment and structure requirements established by Commission rule, 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.[31]

The bill repeals a redundant provision from Sub. H.B. 277 of the 129th General Assembly 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 Commission to grant, a permit to conduct horse-racing meetings at a location at which such meetings have not previously been conducted. The Commission can only grant such an application if the proposed location is in the same or a contiguous county and is within 50 miles of the current location associated with the permit, but is not in the same county as another location at which live horse-racing meetings are conducted.[32]

Racetrack relocation funds

The bill 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 to relocate to a new facility in accordance with the law. Upon the allocation of all the money in the Fund, the Fund ceases to exist. The Racetrack Relocation Fund must be allocated as follows: (1) $500,000 to the Problem Casino Gambling and Addictions

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[30] R.C. 2769.089(C), (E), and (G).

[31] Sections 5 and 6.

[32] Section 7.

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, (3) the remainder to the General Revenue Fund.

Additionally, the bill creates in the state treasury the Racetrack Facility Community Economic Redevelopment Fund into which must be deposited moneys as specified and by rules promulgated by the State Racing Commission. The Fund must be used for repurposing or demolishing an abandoned horse-racing facility or reinvestment in the area, neighborhood, and community near an abandoned facility. 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 purpose of the repurposing or demolishing of an abandoned horse-racing facility or reinvestment in the area, neighborhood, and community near an abandoned facility 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. Moneys in the Fund can be used to pay reasonable administrative costs incurred by the Director. Communities whose racetrack permit holders did not pay to move its track to a new location are not eligible for these funds.[33]

Gaming addiction study

The bill 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, 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 to the Problem Casino and Gambling Addictions Fund to reimburse the fund for costs incurred in conducting the study.[34]

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[33] Section 9.

[34] Section 10.

Reappropriation

The bill provides that any unexpended and unencumbered portion of the appropriation item, Ohio Workforce Job Training, remaining at the end of fiscal year 2012 is appropriated for the same purpose in fiscal year 2013.[35]

Severability clause

The bill states that the items of law contained in it, and their applications, are severable. If any item of law contained in the bill, 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.[36]

Emergency clause

The bill's amendment of R.C. 3770.02 (permitting the Director of the State Lottery Commission to license video lottery technology providers, independent testing laboratories, and gaming employees, and promulgate related rules) and 5753.03 (requiring the Tax Commissioner to provide for payments related to the Gross Casino Revenue Tax) are an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is the importance of not delaying licensing procedures and money distribution. Therefore, the amendment by this bill of those provisions goes into immediate effect.[37]

HISTORY

ACTION	DATE
Introduced	12-01-11

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[35] Sections 3 and 4.

[36] Section 11.

[37] Section 13.