



# Ohio Legislative Service Commission

## Bill Analysis

Bethany Boyd

### **Sub. H.B. 386**

129th General Assembly

(As Reported by H. State Government and Elections)

**Reps.** Blessing, Gerberry, Combs, Letson

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## **BILL 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 bill'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.
- Authorizes the Inspector General to investigate employees of the Attorney General's Office who are contractually performing duties to enforce the Casino Law, and to provided support in furtherance of enforcing the Casino Law.
- Authorizes the Inspector General to enter into contracts necessary to complete such investigations.
- Modifies the definition of "holding company" under the Casino Law.
- Modifies the definition of "institutional investor" to mean an entity owning more than 5% 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 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.

- Modifies and consolidates the adjudication procedure applicable to Casino Law licensees and expands the factors the Commission may consider in disciplining a licensee.
- Modifies what information is considered confidential for 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 license transfer provision.
- Clarifies that the casino operator upfront license fee must not be assessed on the transfer of a casino operator license.
- Applies a \$1.5 million fee to the application to transfer a casino operator license.
- Specifies that the \$50 million 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 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 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.
- Exempts from the definition of "gross casino revenue" bad debts from receipts on the basis of which the Gross Casino Revenue Tax was paid in a prior tax period.
- Clarifies that skill-based amusement machines are not slot machines.
- 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; the bill's limited emergency clause applies to this requirement so it takes immediate effect.
- Requires a county to allocate a portion of its share of gross casino revenue, after fulfilling pledges to a specific entity or for a specific purpose, to municipal corporations and townships having territory in the county for the support of public safety services.

### **State Lottery Law**

- Requires both instant and non-instant game rules adopted by the State Lottery Commission to be promulgated under the abbreviated rulemaking procedure, but are not subject to legislative review and invalidation.
- Eliminates the requirement that the Controlling Board approve the fees each applicant pays for a lottery sales agent license, for administering and processing changes to an application, or for a license renewal.
- 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 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.

### **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 video lottery terminal games must be approved by resolution of the Commission.

- Requires the Commission, in conjunction with the State Racing Commission, to include in any rules adopted concerning video lottery terminals, the required level of minimum investments.
- Eliminates the Supreme Court's exclusive jurisdiction over claims arising from the Commission's rules or actions, and instead requires such claims be brought in the Franklin County Court of Common Pleas.
- 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.
- Requires the Commission's rules to exclude video lottery terminal promotional gaming credits in the calculation of video lottery terminal income.
- Authorizes the Director 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; the bill's limited emergency clause applies to this authorization so it takes immediate effect.
- 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.
- Prohibits the Liquor Control Commission's rules from prohibiting the operation of video lottery terminal games at a commercial race track.

## **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.
- Requires that each holder of a permit to conduct video lottery terminal gaming 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 according to its rules.
- 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 live racing program to obtain the consent of the appropriate horsemen's association.
- Eliminates the requirement that the consent of a horsemen's organization cannot be unreasonably withheld and the procedure for filing an objection with the Commission if consent is withheld.
- Eliminates the ability, if a horsemen's organization withholds its consent to certain simulcast events, of the permit holder to file an objection with the Commission.
- 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.
- Levies a local tax on thoroughbred racing and harness or quarter horse racing permit holders, to be paid to the legislative authority of the municipal corporation or the board of township trustees of the township in which live or simulcast racing programs are conducted.
- Creates certain funds related to racetrack relocation, establishes the purposes of the funds, and makes an appropriation of \$12 million in FY 2012 to the Racetrack Facility Community Economic Redevelopment Fund.

## **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.

- Authorizes bingo to be conducted within the municipal corporation in which a charitable organization's principal place of business is located, if the organization is located in more than one municipal corporation.
- Revises the definition of "instant bingo."
- Eliminates a prohibition that prohibits a charitable organization conducting instant bingo from failing, once it opens a deal of instant bingo tickets or cards, to continue to sell the tickets or cards in that deal until those with the top two highest tiers of prizes in that deal are sold.
- Eliminates a requirement that a charitable organization may conduct instant bingo other than at a bingo session at not more than five separate locations.
- Authorizes the owner or lessor of a location at which instant bingo other than at a bingo session is conducted to deduct expenses when determining full gross profit, and defines the expenses to be deducted.
- 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 on 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 no charitable organization must 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.
- Authorizes the owner of a permitted location to establish a charity card room that offers games of chance for up to 128 hours per year that are conducted by a charitable organization on the premises of the permitted location.
- Establishes rent, expense, and net revenue requirements, and allows compensation for dealers and other personnel for conducting games of chance in a charity card room.
- Changes a reference in the definition of "sporting organization" to reflect the correct title of an organization.

## 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.
- Requires a supersedeas bond to be executed to an appellee when an appellant obtains a stay of execution pending appeal, including an administrative-related appeal, of a decision of officers, boards, or other divisions of the state.
- 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.

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## TABLE OF CONTENTS

Casino Law .....	8
Corrupt activity .....	8
Wiretapping warrant felonies .....	11
Inspector General's investigatory authority .....	11
Holding company .....	12
Institutional investor .....	12
Commission as a law enforcement agency .....	13
Adjudications.....	14
Confidential information.....	15
Transfer of casino operator license .....	16
Upfront license fee .....	17
Debt transactions .....	17
Key employee licenses.....	18
Gross casino revenue – bad debts.....	18
Skill-based amusement machines.....	19
Students' county of residence .....	19
Tax Commissioner as agent.....	19
Gross casino revenue distributions .....	20
State Lottery Law .....	21
Adoption of rules .....	21
Applicant fees .....	21
Alternative to surety bonding or dedicated account .....	21
Licenses.....	22
Lottery prize awards.....	22
Video Lottery Terminal Law.....	22
Rules.....	22
Jurisdiction over claims arising from Commission rules.....	23
Promotional gaming credits.....	23
Additional licensees .....	24
Confidential information.....	24
Liquor Control Commission's rules .....	25



Horse Racing Law.....	26
Land conveyance.....	26
Permit holder commission.....	27
Reduction in live races during racing meeting.....	27
Required racing days.....	28
Simulcast racing.....	29
Objection with Commission.....	30
Temporary facility.....	30
Local tax on live racing and simulcast racing programs.....	31
Racetrack relocation funds.....	32
Gambling Law.....	32
Qualifications for a "charitable organization".....	32
Two-year existence qualification.....	33
Bingo and instant bingo sessions and locations.....	34
Instant bingo.....	35
Expenses for conducting instant bingo.....	35
Net profits from the proceeds of the sale of instant bingo.....	36
Leasing or subleasing premises.....	37
Games of chance at festivals.....	37
Charity card rooms.....	37
Name correction.....	39
Miscellaneous.....	39
Gaming addiction study.....	39
Supersedeas bonds.....	39
Reappropriation.....	40
Severability clause.....	40

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## CONTENT AND OPERATION

### Casino Law

#### Corrupt activity

Under the bill, "corrupt activity," which 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, is defined to include certain conduct under the Casino Law (R.C. Chapter 3772.).<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>

Under the bill, the types of activities in the Casino Law defined as "corrupt activity" are when a person knowingly or intentionally does any of the following:

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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 bill).

(1) Uses or possesses with the intent to use a device to assist in projecting the outcome of the "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 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 (the Commission);

(2) "Cheats" at a casino game, meaning 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 the 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;

(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 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.<sup>3</sup>

The bill 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 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;
- 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.<sup>4</sup>

The bill increases from a fifth degree felony to a third degree felony the penalty for a person who knowingly or intentionally commits either of these 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 is forever disqualified from holding any public office, employment, or position of trust in Ohio.

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

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

## **Wiretapping warrant felonies**

The bill adds all of the corrupt activity felonies discussed above to the list of "designated felonies" for which the prosecuting attorney may apply for an interception warrant. Under continuing law, the 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 the 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 bill authorizes the Inspector General to do both of 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;
- Provide support in furtherance of enforcing the Casino Law.

The Inspector General and each deputy inspector may administer oaths, examine witnesses under oath, and issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of all kinds of books, records, papers, and tangible things. Upon the refusal of a witness to be sworn or to answer any question put to the witness, or if a person disobeys a subpoena, the Inspector General must apply to the court of common pleas for a contempt order, as in the case of disobedience to the requirements of a subpoena issued from the court of common pleas, or a refusal to testify in the court.

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>5</sup> R.C. 2933.51(I), 2933.53, not in the bill, 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 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 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 current law, a "holding company" is 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.<sup>7</sup>

### **Institutional investor**

The bill modifies the definition of "institutional investor" to mean an entity owning more than 5% 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 current law. The bill also includes in the types of entities that can 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 bill 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. Rather, the bill simply refers to securities, without the publicly traded designation.

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 as an institutional investor.

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 licensee 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 may allow more time or may begin proceedings to deny, suspend, or 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 to the Securities and Exchange Commission in a form 13d or form 13g filing.<sup>9</sup>

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

The bill 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, which definition applies throughout the Revised Code. Under continuing law, the Commission and its gaming agents are authorized to detect and

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

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

investigate, seize evidence relating to, and apprehend and arrest persons allegedly committing gaming offenses.<sup>10</sup>

### **Adjudications**

The bill makes modifications to and consolidates the adjudication procedure applicable to Casino Law licensees. Under the bill, the Commission may, and if so requested by a licensee or applicant, shall, conduct a hearing in an adjudication under the Administrative Procedure Act (R.C. Chapter 119.). After notice and opportunity for a hearing, the Commission may limit, condition, restrict, suspend, revoke, deny, or not renew a license under rules adopted by the Commission. The Commission may reopen a licensing adjudication at any time. Under current law, if, as the result of an investigation, the Commission concludes that a license or finding should be limited, conditioned, or restricted, or suspended or revoked, the Commission must conduct an adjudication under the Administrative Procedure Act.

The Commission may require testimony and issue subpoenas, along with other powers, in the discharge of its duties. The bill extends those 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 bill 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 adjudication hearing. The bill further requires all fees and mileage expenses incurred at the request of a party to be paid in advance by the party.<sup>11</sup>

The bill also expands the findings under which the Commission can 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 bill permits the

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<sup>10</sup> R.C. 2901.01, not in the bill, and 3772.03(F).

<sup>11</sup> R.C. 119.094, not in the bill, and 3772.04(A) and (D).

Commission to deny or not renew a license. The bill 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 bill also eliminates 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.<sup>12</sup>

The bill consolidates into the adjudication statute the Commission's existing authority to take into consideration certain factors when imposing the appropriate level and type of discipline to impose on a licensee, for example, whether the licensee has previously been disciplined by the Commission or whether the licensee realized a pecuniary gain from a violation. The bill 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>13</sup>

### **Confidential information**

The bill modifies current law regarding what is considered confidential 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 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 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

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<sup>12</sup> R.C. 3772.04(A).

<sup>13</sup> R.C. 3772.04(B); repeal of R.C. 3772.14.

subject to disclosure as a public record. The Commission may 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.<sup>14</sup>

### **Transfer of casino operator 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, and, 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 may assess a reasonable fee in the amount necessary to review the transfer application. 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. And the Commission may reopen a licensing investigation at any time.

The bill amends the definition of "control" for the purposes of this transfer provision to mean either: (1) holding 30% or more of the outstanding voting securities of a licensee or, for an unincorporated licensee, having the right to 30% or more of the profits of the licensee or having the right in the event of dissolution to 30% or more of the assets of the licensee, or (2) having the contractual power presently to designate 30% 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. Current law sets all of these percentages at 50%.<sup>15</sup>

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 if the transfer is approved by the Commission. 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.<sup>16</sup>

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

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<sup>14</sup> R.C. 3772.16.

<sup>15</sup> R.C. 3772.091.

<sup>16</sup> R.C. 3772.17.

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>17</sup>

### **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.<sup>18</sup>

### **Debt transactions**

Currently, 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 that contains certain information. Under the bill, the same requirement applies, but to a *licensed* casino operator, not a casino operator. And the bill now 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 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 information specified in ongoing law. The Commission may adopt rules governing its review and approval of such debt

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<sup>17</sup> R.C. 3772.091 and 3772.17.

<sup>18</sup> R.C. 3772.17(A).

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>19</sup>

### **Key employee licenses**

Under continuing law, key employees must hold a valid key employee license. The bill specifies that this requirement applies to the key employee of a casino operator, management company, or holding company. And the bill 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>20</sup>

The bill 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, or holding company employing the applicant, the business address and telephone number of such employer, and the county, state, and country in which the applicant's residence is located.<sup>21</sup> The bill 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>22</sup>

### **Gross casino revenue – bad debts**

A casino operator is required to pay a tax of 33% of the casino operator's gross casino revenue received at the casino facility. Under the bill, "gross casino revenue" does not include bad debts from receipts on the basis of which the Gross Casino Revenue Tax was paid in a prior tax period to the extent not previously excluded. "Bad debts" are any debts that have become worthless or uncollectible in a prior tax period, have been uncollected for at least six months, and that may be claimed as a deduction under section 166 of the Internal Revenue Code (itemized deductions for wholly worthless or partially worthless debts) and the regulations adopted under that section,

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<sup>19</sup> R.C. 3772.01(G) and (O) and 3772.28.

<sup>20</sup> R.C. 3772.13.

<sup>21</sup> R.C. 3772.13(E).

<sup>22</sup> R.C. 3772.16(C).

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 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.<sup>23</sup>

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

For purposes of the Casino Law, the bill 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.<sup>24</sup> 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.

### **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, may 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 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>25</sup>

### **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

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<sup>23</sup> R.C. 5753.01.

<sup>24</sup> R.C. 3722.01(X).

<sup>25</sup> R.C. 3301.0714.

school district as prescribed. This provision takes immediate effect under the bill's emergency clause.<sup>26</sup>

### **Gross casino revenue distributions**

Gross casino revenue must be distributed to various funds in the percentages specified in Article XV, § 6(C) of the Ohio Constitution. Included in those distributions is the requirement that 51% of the tax on gross casino revenue be distributed among all 88 counties in proportion to the counties' respective populations at the time of distribution. These distributions are made in the form of payments out of the Gross Casino Revenue County Fund. If a county's most populated city had a population greater than 80,000, then one-half of that county's distribution must go to that city. This formula is codified in the Gross Casino Revenue Law and is structured to replicate the constitutional formula for distributing gross casino revenues.<sup>27</sup>

The bill requires that a county allocate each payment received from the Gross Casino Revenue County Fund as follows:

(1) If, on or before the bill's effective date, the board of county commissioners has entered into a contract or similar agreement pledging any portion of the payment to a specific entity or for a specific purpose, the county must allocate the amount necessary to fulfill the pledge to the entity or for such purpose.

(2) The payment amount remaining after subtracting the amounts allocated under (1), above, must be allocated as follows:

- 50% to the general funds of the county and of any municipal corporations or townships having territory within the county, in such proportions as are determined by the board of county commissioners, for the support of police, fire, emergency medical service, or other public safety services provided by those subdivisions within the county.
- 50% to the county's general fund or a special fund to be used for any county purpose.<sup>28</sup>

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<sup>26</sup> R.C. 5753.03(E) and Section 13.

<sup>27</sup> R.C. 5753.03(D).

<sup>28</sup> R.C. 5753.03(F).

## **State Lottery Law**

### **Adoption of rules**

The bill provides that instant and non-instant game rules promulgated by the State Lottery Commission must be promulgated under the abbreviated rulemaking procedure (R.C. 111.15), but are not subject to legislative review and invalidation. Current law provides that only instant game rules are not subject to legislative review and invalidation.<sup>29</sup>

### **Applicant fees**

The bill eliminates 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 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.<sup>30</sup>

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

The bill permits the Director 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 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.<sup>31</sup>

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<sup>29</sup> R.C. 111.15(D)(7) and 3770.03(A).

<sup>30</sup> R.C. 3770.05(G).

<sup>31</sup> R.C. 3770.05(G)(1).

## **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.<sup>32</sup>

## **Lottery prize awards**

The bill prohibits a lottery prize award with a value that meets or exceeds the reportable winnings amounts set by the Internal Revenue Code (26 U.S.C. § 6041) 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. Current law sets the value that triggers 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 bill adds to this prohibition when the officer or employee is actively auditing Commission drawings.

The bill revises references to "winning lottery ticket" and instead uses the term "winning lottery product."<sup>33</sup>

The bill 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. Current law requires the affirmation if the amount of the prize money or the cost of goods or services awarded as a lottery prize award is \$600 or more.<sup>34</sup>

## **Video Lottery Terminal Law**

### **Rules**

The bill apparently specifies that the State Lottery Commission must promulgate rules for video lottery terminal games under the abbreviated rule-making procedure

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<sup>32</sup> R.C. 3770.05.

<sup>33</sup> R.C. 3770.07.

<sup>34</sup> R.C. 3770.071.

(R.C. 111.15). The Commission must "approve" "video lottery terminal games" by resolution.<sup>35</sup>

Under the bill, the State Lottery Commission, in conjunction with the State Racing Commission, must include in any rules adopted concerning video lottery terminals, the level of minimum investments that must be made by video lottery terminal 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 already requires rules setting the level of minimum investments in buildings and grounds. Under current law, the State Lottery Commission need not adopt these rules in conjunction with the State Racing Commission.<sup>36</sup>

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

The bill provides that any action asserting that the laws authorizing the State Lottery Commission to adopt rules or that any rule adopted under those laws violates the Ohio Constitution, any claim asserting that any action taken by the Governor or the Commission under those laws violates any provision of the Ohio Constitution or of the Revised Code, or any claim asserting that any portion of the law authorizing the adoption of rules concerning video lottery terminals violates any provision of the Ohio Constitution must be brought in the Franklin County Court of Common Pleas. Current law granted the Ohio Supreme Court exclusive, original jurisdiction over such claims.<sup>37</sup>

### **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" is 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.<sup>38</sup>

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<sup>35</sup> R.C. 3770.03.

<sup>36</sup> R.C. 3770.21(B).

<sup>37</sup> R.C. 3770.21(E).

<sup>38</sup> R.C. 3770.21(A) and (C).

The rules adopted by the Commission must exclude video lottery terminal promotional gaming credits in the calculation of video lottery terminal income or any payments or amounts due to the state or to the Commission. (The bill does not indicate what payments or amounts may be due to Ohio or the Commission.) The bill defines "video lottery terminal income" as credits played, minus video lottery terminal promotional gaming credits and the value of video lottery terminal promotional gaming credits awarded that can be redeemed for cash or other designated prizes as a result of a video lottery winning game outcome.<sup>39</sup>

### **Additional licensees**

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 may suspend or revoke the licenses of such providers, laboratories, or gaming employees, 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. This provision is subject to the bill's emergency clause and takes immediate effect.<sup>40</sup>

### **Confidential information**

The bill 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;
- (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;

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<sup>39</sup> R.C. 3770.21(A) and (C).

<sup>40</sup> R.C. 3770.02(E) and Section 13.

- (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.

An individual who holds, held, or has applied for a video lottery-related license may 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.<sup>41</sup>

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

The bill provides that the Liquor Control Commission cannot prohibit the operation of video lottery terminal games at a commercial race track where live horse

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<sup>41</sup> R.C. 3770.22.

racing and simulcasting are conducted under the Horse Racing Law. 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 pursuant to the Lottery Law by any retail business authorized under permits issued pursuant to that law.<sup>42</sup>

## **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, 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 real estate 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 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.

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<sup>42</sup> R.C. 4301.03(B).

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, 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, and 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 is not subject to the bill's limited emergency clause and expires two years after the bill's effective date.<sup>43</sup>

### **Permit holder commission**

The bill requires that each permit holder authorized by the State Lottery Commission to conduct video lottery terminal gaming receive a commission of video lottery terminal income (currently set at 66½% of VLT income) as set forth in a rule of the Commission. A percentage of the commission may be paid to the State Racing Commission for the benefit of breeding and racing in Ohio. Any percentage paid to the State Racing Commission must be based on rules promulgated by that Commission.<sup>44</sup>

### **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 Horsemen's Association, may reduce the number of live races on a live racing program as the racing secretary determines. However, the bill specifies that the racing secretary must not reduce the live racing program to less than seven live races. Under current law, the racing secretary, after consultation with the Ohio Harness Horsemen's Association, may

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<sup>43</sup> Section 8.

<sup>44</sup> R.C. 3769.087(C); O.A.C. 3770:2-3-08.

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 Horsemen's Association, may reduce the number of live races on that live racing program as the racing secretary determines. But 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 Horsemen's Association, may reduce the number of live races on a live racing program, from nine to either eight or seven.<sup>45</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), the bill requires a permit holder at each standardbred track 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 and a maximum of 210 live racing days in calendar year 2015 and in each subsequent calendar year. The bill requires a permit holder at each thoroughbred track to conduct a minimum of 75 live racing days in 2013 or the number of live racing days that were conducted at that track in calendar year 2012, whichever is greater; a minimum of 100 live racing days in 2014 or the number of live racing days that were conducted at that track in calendar year 2012, whichever is greater; and a minimum of 125 live racing days and a maximum of 210 live racing days in calendar year 2015 and in each subsequent calendar year. The live racing days must be selected by the permit holder, but are subject to approval of the Commission. 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 simulcast racing programs conducted outside Ohio.

The Commission may make 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 horsemen's association at each track may negotiate an agreement with the permit

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<sup>45</sup> R.C. 3769.089(A).

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 bill, 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>46</sup>

### **Simulcast racing**

Under the bill, 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 Horsemen's Association and a permit holder conducting a harness live racing program must obtain the consent of the Ohio Harness Horsemen's Association. The consent of the applicable horsemen's association must be consistent with the interest of preserving live racing in Ohio. Under continuing law, a permit holder, as a simulcast host, may 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.

Under current law, 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 current law eliminated by the bill states that the consent of the horsemen's organization cannot be unreasonably withheld. If the horsemen's organization withholds its consent, current law eliminated by the bill authorizes the permit holder to 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. Current law eliminated by the bill mandated that the determination of the Commission was final.<sup>47</sup>

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<sup>46</sup> R.C. 3769.089(B).

<sup>47</sup> R.C. 3769.089(B) and (K).

The bill eliminates a provision in current law requiring that, 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 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, 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.<sup>48</sup>

### **Objection with Commission**

Continuing law authorizes the State Racing 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 Horsemen's Association or the Ohio Harness Horsemen's Association, as applicable. Ongoing law requires a permit holder proposing 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. Likewise, 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.<sup>49</sup>

### **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 State Racing Commission rule, promulgated in conjunction with the State Lottery Commission. Under current law, a

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<sup>48</sup> R.C. 3769.089(B).

<sup>49</sup> R.C. 3769.089(C), (E), and (G).

temporary facility must meet any minimal capital investment and structure requirements established by the State Racing Commission.<sup>50</sup>

The bill repeals a redundant provision (Section 4) 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 State Racing 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.<sup>51</sup>

### **Local tax on live racing and simulcast racing programs**

In addition to the state tax levied under continuing law, the bill requires a permit holder authorized to conduct thoroughbred racing and a permit holder authorized to conduct harness or quarter horse racing to pay a local tax on and after January 1, 2013, to the legislative authority of the municipal corporation or the board of township trustees of the township in which the permit holder conducted thoroughbred, or harness or quarter horse, racing. The tax, to be paid on the first day of each month, is a sum equal to 1½% of the moneys wagered on live racing programs during the prior month, and a sum equal to 1½% of the money wagered on simulcast racing programs during the prior month. The tax is to be paid out of the amount retained during the prior month by the permit holder. The tax must be paid by check, draft, or money order to the legislative authority or board of township trustees.<sup>52</sup>

Continuing law requires a permit holder authorized to conduct thoroughbred racing to use for purse money, and a permit holder authorized to conduct harness racing to pay to the harness horsemen's purse pool, a sum equal to 50% of the pari-mutuel revenues retained by the permit holder as a commission *after* payment of the state tax. The bill adds after payment of the local tax to this formula.<sup>53</sup>

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<sup>50</sup> Sections 5 and 6.

<sup>51</sup> Section 7.

<sup>52</sup> R.C. 3769.08(B)(2) and (C)(2).

<sup>53</sup> R.C. 3769.08(B)(3) and (F).

## **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 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.

Additionally, the bill creates in the state treasury the Racetrack Facility Community Economic Redevelopment Fund into which must be deposited moneys as specified in the bill and in rules promulgated by the State Racing Commission. The bill appropriates \$12 million for fiscal year 2012 to the Fund, and any unexpended and unencumbered portion of the appropriation is reappropriated for the same purpose in fiscal year 2013. 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. 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. 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 may 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.<sup>54</sup>

## **Gambling Law**

### **Qualifications for a "charitable organization"**

The Gambling Law (R.C. Chapter 2915.) 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

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<sup>54</sup> Sections 9 and 10.

by the Attorney General. The bill 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 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>55</sup>

The current definition lists and defines the various organizations that may qualify as a charitable organization. The bill 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 currently may qualify as charitable organizations appear to be included in and covered by the bill'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 that subsection of the Internal Revenue Code.

The bill revises division references in various statutes in the bill because of the elimination of these definitions from the Gambling Law.<sup>56</sup>

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

The bill changes who may qualify as a charitable organization. The bill 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 bill 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

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<sup>55</sup> R.C. 2519.01(H).

<sup>56</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.

application for a bingo license or the conducting of any game of chance authorized by law.<sup>57</sup>

The bill eliminates an exception for volunteer rescue service organizations or volunteer firefighter's organizations. Under current law, they do 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 bill, the two-year requirement discussed in the previous paragraph applies to them.<sup>58</sup>

The bill 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 current law, that organization does 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 bill, the two-year requirement applies to such an organization.<sup>59</sup>

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

The bill 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 bill provides that no charitable organization may conduct a bingo session at any time during the eight-hour period between 2:00 a.m. and 10:00 a.m. Current law prohibits a charitable organization from conducting a bingo session at any time during the ten-hour period between midnight and 10:00 a.m.<sup>60</sup>

In an application for a license to conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session, the applicant must indicate the location at which the charitable organization will conduct bingo. Currently, the location must be within the county in which the principal place of business of the applicant is located. The bill adds that the location may be within the municipal corporation in which the principal place of business of the applicant is located if the organization is located in more than one municipal corporation.<sup>61</sup>

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<sup>57</sup> R.C. 2915.01(H) and 2915.08(A)(2).

<sup>58</sup> R.C. 2915.01(H).

<sup>59</sup> R.C. 2915.01(H).

<sup>60</sup> R.C. 2915.09(C).

<sup>61</sup> R.C. 2915.08(A)(2).

## **Instant bingo**

The bill revises the form of instant bingo. Under the bill, instant bingo is a form of bingo that must use folded or banded tickets or paper cards with perforated break-open tabs, a face of which is covered or otherwise hidden from view to conceal a number, letter, or symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners. The bill 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 bill requires that in all instant bingo, the prize amount and structure must be predetermined.<sup>62</sup>

The bill eliminates a prohibition that prohibits a charitable organization that conducts instant bingo from failing, once it opens a deal of instant bingo tickets or cards (a single game of instant bingo tickets all the same serial number), to continue to sell the tickets or cards in that deal until those with the top two highest tiers of prizes in that deal are sold.<sup>63</sup>

Current law allows a charitable organization to conduct instant bingo other than at a bingo session at not more than five separate locations. The bill eliminates this limitation.<sup>64</sup>

## **Expenses for conducting instant bingo**

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 bill requires that "expenses" incurred by the owner or lessor of the location be deducted to calculate the resulting full gross profit, if the expenses can be attributed to conducting instant bingo at that location. The bill defines "expenses" as reasonable amounts actually expended, and accounted for on a monthly basis, in total not to exceed 20% of the full gross profit of the deal, for all of the following:

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<sup>62</sup> R.C. 2915.01(AA).

<sup>63</sup> R.C. 2915.091(A)(15).

<sup>64</sup> R.C. 2915.091(B) and 2915.093(B).

- (1) Audits and accounting services;
- (2) Safes;
- (3) Cash registers;
- (4) Advertising instant bingo;
- (5) Tables and chairs;
- (6) Wages for employees of the owner or lessor that are attributable to managing or assisting with the conduct of instant bingo;
- (7) Expenses that can be attributed to maintaining the owner or lessor's premises at which instant bingo is conducted, including rent or other costs of facility ownership, property or casualty insurance premiums, and utility costs.<sup>65</sup>

A charitable organization is prohibited from paying fees to any person for any services performed in relation to an instant bingo game. The bill 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 bill, to a charitable instant bingo organization under a contract, as discussed immediately above.<sup>66</sup>

The bill provides that the deduction of expenses does not make the owner or lessor a professional solicitor of contributions for a charitable organization under the Charitable Organization Professional Fund Raisers Law.<sup>67</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>68</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 bill requires that the payment by a veteran's, fraternal, or sporting organization of real property taxes and assessments levied on the premises on which

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<sup>65</sup> R.C. 2915.093(D).

<sup>66</sup> R.C. 2915.091(A)(10).

<sup>67</sup> R.C. 2915.093(D).

<sup>68</sup> R.C. 2915.09(A)(3) and 2915.101.

instant bingo is conducted are also to be deducted from gross profit to determine net profit.<sup>69</sup>

### **Leasing or subleasing premises**

The bill authorizes a charitable organization to lease or sublease premises that it owns or leases to no more than three other charitable organizations per calendar week for conducting bingo sessions on the premises. Current law limits the leasing or subleasing of premises to no more than one other charitable organization per calendar week.<sup>70</sup>

The bill 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>71</sup>

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

The bill 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 bill, 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 year. Currently, to be lawful, a game of chance, in addition to meeting the other criteria, must be 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>72</sup>

### **Charity card rooms**

The bill authorizes the owner of a permitted location to establish a charity card room that offers games of chance conducted by a charitable organization on the premises of the permitted location. Under the bill, a "permitted location" means a building leased by a county in Ohio under a lease pursuant to which charitable organizations have operated festivals weekly for the 18 months immediately preceding the bill's effective date, at which games of chance were offered.<sup>73</sup>

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<sup>69</sup> R.C. 2915.01(RR).

<sup>70</sup> R.C. 2915.09(B)(1).

<sup>71</sup> R.C. 2915.09(B)(1).

<sup>72</sup> R.C. 2915.02.

<sup>73</sup> R.C. 2915.01(GGG) and (HHH) and 2915.18(A).

The owner of a permitted location must provide necessary game tables, chairs, surveillance, and other equipment in the charity card room. A charitable organization may conduct games of chance in a charity card room for up to 128 hours annually. Those hours need not be on consecutive days. More than one charitable organization may conduct games of chance in a charity card room simultaneously. Charitable organizations may pool revenue and expenses when applicable in a charity card room.

The charitable organization is required to pay rent to the owner of a permitted location in the amount of 15% of the revenue made from conducting the games of chance in the charity card room. A charitable organization also must pay expenses for conducting games of chance in a charity card room, including expenses for dealers, payroll administration, security, accounting, auditing, shuffle machine rental, insurance, marketing, advertising, utilities, cleanup, maintenance, and repair. A charitable organization may pay these expenses from its share of the revenue made from conducting games of chance in the charity card room.

The bill requires that 100% of the net revenue in a charity card room remaining after payment of expenses and rent be paid to each charitable organization on a pro rata basis, based on volunteer hours of each charitable organization.

Notwithstanding continuing law that prohibits a person from receiving any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, for operating or assisting in the operation of any game of chance, the bill provides that a charitable organization may compensate dealers, dealer supervisors, human resource personnel, and other related personnel for operating games of chance in a charity card room. Dealers also may accept tips from games of chance players.

For purposes of the law authorizing games of chance to be conducted at festivals of a charitable organization for limited days, a charitable organization may conduct games of chance at a permitted location, and conducting those games of chance in a charity card room is considered a festival if the charitable organization provides a display booth about the charitable organization in the charity card room at all times when it is conducting games of chance.<sup>74</sup>

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<sup>74</sup> R.C. 2915.18.

## **Name correction**

The bill corrects a reference in the definition of "sporting organization" in the Gambling Law. Current law refers to organizations affiliated with the Ohio League of Sportsmen. The correct title is the League of Ohio Sportsmen.<sup>75</sup>

## **Miscellaneous**

### **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.<sup>76</sup>

### **Supersedeas bonds**

The bill requires that any appellant who obtains a stay of execution pending the appeal, including an administrative-related appeal, of a final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state,<sup>77</sup> must simultaneously execute a supersedeas bond to the appellee with sufficient sureties and in an amount established by the court. Continuing law requires the amount to be the total for all claims covered by the final order, judgment, or decree and interest involved, not exceeding \$50 million excluding interest and costs, as directed by the court. In establishing the amount of the bond, the bill requires that the court give great weight and due consideration to the reasonable value of the matter at issue in the final order, adjudication, or decision, the circumstances giving rise to the appeal, and the economic impact of other consequences of delay to the appellee and to those prevented from taking action that was permitted by the final order, adjudication, or decision. The bond is not required for perfection of an administrative-related appeal of a final order that is not for the payment of money.<sup>78</sup>

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<sup>75</sup> R.C. 2915.01(EEE).

<sup>76</sup> Section 11.

<sup>77</sup> R.C. 2506.01, not in the bill.

<sup>78</sup> R.C. 2505.09, 2505.12, and 2505.122.

Under continuing law, the initial determination of the Ohio Casino Control Commission to deny, or to limit, condition, or restrict, a license issued under the Casino Law may be appealed under this law that requires a supersedeas bond.<sup>79</sup>

### **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.<sup>80</sup> The appropriation is used to support the Ohio Incumbent Workforce Training Voucher Program.

### **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.<sup>81</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 bill 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 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

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<sup>79</sup> R.C. 3772.10(D).

<sup>80</sup> Sections 3 and 4.

<sup>81</sup> Section 12.

which does not participate in, or intervene in any political campaign on 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, sick, 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, sick, 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  
Reported, H. State Gov't & Elections

12-01-11  
02-08-12

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