Ohio Legislative Service Commission

Bill Analysis

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H.B. 7

130th General Assembly
(As Introduced)

Reps. Huffman, Batchelder, Amstutz, Buchy, Hill

BILL SUMMARY

- Provides certain scenarios that are prohibited activities related to sweepstakes terminal devices, including cash prizes and prizes with a value over $10.
- Requires persons who conduct a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility to obtain a certificate of registration from the Attorney General.
- Exempts certain persons who have not more than two sweepstakes terminal devices at the location of their business from the requirement to obtain a certificate of registration, provided that they obtain a certificate of compliance from the Attorney General.
- Permits the Bureau of Criminal Identification and Investigation to investigate criminal activity involving Gambling Law violations.
- Requires the Attorney General to contract with the State Lottery Commission to delegate certain regulatory powers to the Commission with respect to sweepstakes terminal device facilities.

CONTENT AND OPERATION

Schemes of chance

The bill clarifies the definition of "scheme of chance" under the Gambling Law to mean a slot machine *unless authorized under the Casino Law*, lottery *unless authorized under the Lottery Law*, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit.

Under the bill, a "scheme of chance" also includes the use of an electronic device to reveal the results of a game entry if valuable consideration is paid, directly or indirectly, for a chance to win a prize. Valuable consideration is deemed to be paid for a chance to win a prize in the following instances:

(1) Less than 50% of the goods or services sold by a scheme of chance operator in exchange for game entries are used or redeemed by participants at any one location.

(2) Less than 50% of participants who purchase goods or services at any one location do not accept, use, or redeem the goods or services sold or purportedly sold.

(3) More than 50% of prizes at any one location are revealed to participants through use of an electronic device simulating a game of chance or a "casino game" (as defined in the Casino Law).

(4) The good or service sold by a scheme of chance operator in exchange for a game entry cannot be used or redeemed in the manner advertised.

(5) A participant pays more than fair market value for goods or services offered by a scheme of chance operator in order to receive one or more game entries.

(6) A participant can use the electronic device to purchase additional game entries.

(7) A participant can purchase additional game entries by using points or credits won as prizes while using the electronic device.

(8) A scheme of chance operator pays out in prize money more than 20% of the gross revenue received at one location.

(9) A participant makes a purchase or exchange in order to obtain any good or service that may be used to facilitate play on the electronic device.[1]

Under continuing law, whoever establishes, promotes, or operates or knowingly engages in conduct that facilitates any scheme of chance in guilty of gambling. The bill increases the penalty for illegal gambling from a first degree misdemeanor to a fifth

[1] R.C. 2915.01(C). For purposes of the definition of "scheme of chance," "electronic device" means a mechanical, video, digital, or electronic machine or device that is capable of displaying information on a screen or other mechanism and that is owned, leased, or otherwise possessed by any person conducting a scheme of chance, or by that person's partners, affiliates, subsidiaries, or contractors.

degree felony for the first offense and from a fourth degree felony to a fifth degree felony for a subsequent offense.[2]

Sweepstakes terminal devices

Definition

The bill defines "sweepstakes terminal device" as a mechanical, video, digital, or electronic machine or device that is owned, leased, or otherwise possessed by any person conducting a sweepstakes, or by that person's partners, affiliates, subsidiaries, or contractors, that is intended to be used by a sweepstakes participant, and that is capable of displaying information on a screen or other mechanism. A device is a sweepstakes terminal device if any of the following apply:

(1) The device uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries.

(2) The device utilizes software such that the simulated game influences or determines the winning of or value of the prize.

(3) The device selects prizes from a predetermined finite pool of entries.

(4) The device utilizes a mechanism that reveals the content of a predetermined sweepstakes entry.

(5) The device predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed.

(6) The device utilizes software to create a game result.

(7) The device reveals the prize incrementally, even though the device does not influence the awarding of the prize or the value of any prize awarded.

(8) The device determines and associates the prize with an entry or entries at the time the sweepstakes is entered.[3]

Additionally, for the purposes of the bill:

"Enter" means the act by which a person becomes eligible to receive any prize offered in a sweepstakes.

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[2] R.C. 2915.02.

[3] R.C. 2915.01(AAA)(1).

"Entry" means one event from the initial activation of the sweepstakes terminal device until all the sweepstakes prize results from that activation are revealed.

"Prize" means any gift, award, gratuity, good, service, credit, reward, or any other thing of value that can be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

"Sweepstakes terminal device facility" means any location in Ohio where a sweepstakes terminal device is provided to a sweepstakes participant.[4]

"Sweepstakes" means any game, contest, advertising scheme or plan, or other promotion where consideration is not required for a person to enter to win or become eligible to receive any prize, the determination of which is based upon chance. "Sweepstakes" does not include bingo authorized under the Gambling Law, pari-mutuel wagering as authorized by the Horseracing Law, lotteries conducted by the State Lottery Commission as authorized by the Lottery Law, and casino gaming as authorized by the Casino Law.[5]

The bill amends the definition on "conduct" under the Gambling Law to mean to back, promote, organize, manage, carry on, sponsor, or prepare for the operation of bingo or a game of chance, *a scheme of chance or a sweepstakes*.[6]

Prohibited activity; penalty

The bill prohibits any person from conducting, or participating in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility and either:

(1) Giving to another person any of the following: (a) cash, gift cards, or any equivalent thereof, (b) plays on games of chance, state lottery tickets, bingo, or instant bingo, (c) firearms, tobacco, or alcoholic beverages, or (d) a redeemable voucher that is redeemable for any of the items listed in (a) through (c) as a prize for playing or participating in a sweepstakes; or

(2) Giving to another person any merchandise prize, or a redeemable voucher for a merchandise prize, the wholesale value of which is in excess of $10 and which is awarded as a single entry for playing or participating in a sweepstakes. Redeemable

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[4] R.C. 2915.01(AAA)(2).

[5] R.C. 2915.01(BBB).

[6] R.C. 2915.01(P).

vouchers must not be redeemable for a merchandise prize that has a wholesale value of more than $10.

Also prohibited under the bill is conducting, or participating in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility without first obtaining a current annual "certificate of registration" from the Attorney General as explained below. Additionally, a person must not acquire, possess, control, or operate any gambling device with the purpose of violating the above provisions.[7]

Under the bill, whoever violates the bill's provisions related to sweepstakes is guilty of gambling, a fifth degree felony for the first offense or a fourth degree felony for a subsequent offense. However, the bill states that failing to file a sweepstakes terminal device monthly report, as described below, is a first degree misdemeanor.[8]

Certificate of registration; monthly report

Any person desiring to conduct, or participate in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility must first register with the Attorney General and obtain an annual certificate of registration by providing a filing fee of $200 and all information as required by rule adopted by the Attorney General.

Additionally, not later than the tenth day of each month, each sweepstakes terminal device operator must file a sweepstakes terminal device monthly report with the Attorney General and provide a filing fee of $50 and all information as required by rule adopted by the Attorney General.

The bill specifies that all information provided to the Attorney General under this provision must be available to law enforcement upon request.

Certificate of compliance; semiannual report

Under the bill, certain persons who have not more than two sweepstakes terminal devices at the location of their business may be exempt from the requirements to obtain a certificate of registration, as described above. If these persons meet certain other requirements, they may apply to the Attorney General, on a form prescribed by the Attorney General, for a certificate of compliance that the person is not operating a sweepstakes terminal device facility. The form must require the person to include the

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[7] R.C. 2915.02(A)(5), (6), and (7).

[8] R.C. 2915.02(J).

address of the business location where sweepstakes terminal devices will be used and to make the following certifications:

(1) That the person will not use more than two sweepstakes terminal devices at the business location;

(2) That the retail value of sweepstakes prizes to be awarded at the business location using sweepstakes terminal devices during a reporting period will be less than 3% of the gross revenue received at the business location during the reporting period;

(3) That no other form of gaming except lottery ticket sales authorized under the Lottery Law will be conducted at the business location or in an adjoining area of the business location;

(4) That any sweepstakes terminal device at the business location will not allow any deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of similar payment to be used, directly or indirectly, to participate in a sweepstakes;

(5) That notification of any prize will not take place on the same day as a participant's sweepstakes entry; and

(6) That the person consents to provide any other information to the Attorney General as required by rule.

The filing fee for a certificate of compliance is $250. The Attorney General may charge up to an additional $250 for reasonable expenses resulting from any investigation related to an application for a certificate of compliance.

A certificate of compliance is effective for one year. The certificate holder may reapply for a certificate of compliance.

A person issued a certificate of compliance must file semiannual reports with the Attorney General stating the number of sweepstakes terminal devices at the business location and that the retail value of prizes awarded at the business location using sweepstakes terminal devices is less than 3% of the gross revenue received at the business location. The reports are confidential and are not public records.[9]

[9] R.C. 2915.02(G).

Issuance of certificates

The Attorney General must issue a certificate of registration or a certificate of compliance to all persons who have successfully registered as required by the bill. The Attorney General must post online a registry of all properly registered sweepstakes terminal device operators. The Attorney General can refuse to issue an annual certificate of registration or certificate of compliance to any person or, if one has been issued, can revoke a certificate of registration or certificate of compliance if the applicant has provided any information to the Attorney General as part of a registration, certification, monthly report, or any other information that is materially false or misleading, or if the applicant or any officer, partner, or owner of 5% or more interest in the applicant has violated any provision of the Gambling Law.[10]

Attorney General/State Lottery Commission

Under the bill, the Attorney General must enter into a written contract with the State Lottery Commission to delegate to the Commission the following responsibilities of the Attorney General:[11]

- Adopting rules setting forth the required information to be submitted by persons conducting a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility.
- Receiving and processing certificates of registration to operate a sweepstakes terminal device facility.
- Receiving and processing certificates of compliance that exempt certain qualifying persons from registration.
- Adopting rules setting forth the requirements pertaining to a certificate of compliance. These rules must provide for a person to file a consolidated semiannual report if the person has more than one business location.

The Attorney General can take any necessary and reasonable action to determine a violation of the Gambling Law, including requesting documents and information, performing inspections of premises, or requiring the attendance of any person at an examination under oath.[12]

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[10] R.C. 2915.02(H), and (I).

[11] R.C. 2915.02(F), (G), (H), (I), and (K).

[12] R.C. 2915.02(J).

Bureau of Criminal Identification and Investigation

The bill permits the Bureau of Criminal Identification and Investigation to investigate any criminal activity in Ohio involving any violation of the Gambling Law.[13]

HISTORY

ACTION	DATE
Introduced	01-30-13

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[13] R.C. 109.54(A).