Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 115*

130th General Assembly
(As Reported by S. State Government Oversight and Reform)

Sen. Faber

BILL SUMMARY

- Extends by one year a moratorium that prohibits a person from conducting a sweepstakes through the use of a sweepstakes terminal device if the person has not conducted such a sweepstakes before June 11, 2012.
- Requires a sweepstakes establishment to file a new affidavit with the Attorney General.
- Extends by one year the authority of the Attorney General or the appropriate county prosecuting attorney to bring an injunction action and a contempt action against a sweepstakes establishment that violates the moratorium, and allows an injunction action against a sweepstakes establishment for failure to file the new affidavit.
- Permits the Attorney General to impose a civil penalty of not more than $1,000 for each day a person violates the requirement to file a new affidavit.
- Allows a county prosecuting attorney to prosecute a criminal action for falsification against any person that provides false information on the new affidavit.
- Declares an emergency.

*This analysis was prepared before the report of the Senate State Government Oversight and Reform Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

CONTENT AND OPERATION

Sweepstakes establishment moratorium

The bill extends to June 20, 2014, from June 30, 2013, a moratorium that went into effect on June 11, 2012 (the effective date of Am. Sub. H.B. 386 of the 129th General Assembly), that prohibits a person from conducting a sweepstakes through the use of a sweepstakes terminal device if the person has not conducted such a sweepstakes before June 11, 2012. As provided in continuing law, all sweepstakes establishments conducting a sweepstakes through the use of a sweepstakes terminal device, whether or not licensed by a local entity, in existence and operating before June 11, 2012, may continue to operate at only their current locations after June 11, 2012.

Definitions

Sweepstakes terminal device

Under the bill, a "sweepstakes terminal device" means 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 to enter a sweepstakes, and that is capable of displaying information on a screen or other mechanism.

The bill removes the current law requirement that the device is intended to be used by a sweepstakes participant *who purchases a tangible product*. The bill also includes that in addition to the device being intended to be used by a sweepstakes participant to enter a sweepstakes, it also means a device that is intended to be used by a sweepstakes participant to reveal the results of a sweepstakes.

Sweepstakes establishment

The bill defines "sweepstakes establishment" to mean any business or premises in or upon which one or more persons conduct one or more sweepstakes through the use of one or more sweepstakes terminal devices.

Affidavit

New affidavit

Under the bill, within 30 days after the bill's effective date, a sweepstakes establishment conducting a sweepstakes through the use of a sweepstakes terminal device in existence and operating before June 11, 2012, must file an affidavit with the Attorney General. The affidavit must be made under oath on a form prescribed by the

Attorney General, and must contain information as prescribed by the Attorney General, including, but not limited to, the appropriate names, as determined by the Attorney General, of owners or employees of the establishment, the date that the establishment began conducting sweepstakes through the use of a sweepstakes terminal device, and the date that the establishment began making sweepstakes available to the general public. Immediately, on the bill's effective date, the Attorney General must send notice of the requirement to file the affidavit by regular mail to all sweepstakes establishments for which the Attorney General has an address on record, and must post information about the requirement on the Attorney General's web site.

Prior affidavit

Under ongoing law, within 30 days after June 11, 2012, or within 30 days after an establishment is permitted to resume operations pursuant to court order, a sweepstakes establishment conducting a sweepstakes through the use of a sweepstakes terminal device in existence and operating before that date must file an affidavit with the Attorney General certifying that the establishment was in existence and operating before that date and indicating the address of the establishment.

Actions and penalties

Injunction

The bill extends the existing authority through June 20, 2014, of the Attorney General or the appropriate county prosecuting attorney to bring an action for injunction against a person that conducts a sweepstakes through the use of a sweepstakes terminal device that has not conducted such a sweepstakes before June 11, 2012. If such a person continues to conduct such a sweepstakes after an injunction is granted, a contempt action may be brought by any means necessary.

Additionally, if a sweepstakes establishment does not file the new affidavit, the Attorney General or the appropriate county prosecuting attorney can bring an action for injunction to prohibit the sweepstakes establishment from conducting a sweepstakes through the use of a sweepstakes terminal device. If the sweepstakes establishment continues to conduct such a sweepstakes after an injunction is granted, a contempt action can be brought by any means necessary.

Civil penalty

The bill permits the Attorney General to impose a civil penalty of not more than $1,000 for each day a person violates the requirement to file the new affidavit described above. The Attorney General must commence and prosecute to judgment a civil action in a court of competent jurisdiction to collect any civil penalty imposed that remains

unpaid. All amounts collected must be deposited into the Attorney General Reimbursement Fund, and must be used by the Attorney General solely to enforce the bill's provisions.

Criminal action

Under the bill, if the Attorney General becomes aware that false information has been provided on the new affidavit, the Attorney General must refer the appropriate evidence to the appropriate county prosecuting attorney, and the county prosecuting attorney can initiate and prosecute a criminal action for falsification, in any court of competent jurisdiction in Ohio, against any person that provides false information on the new affidavit described above. Falsification generally is a first degree misdemeanor.

Conduct under bill

The bill states that nothing in the provisions amended by the bill are to be construed to do either of the following:

(1) Authorize or permit conduct prohibited, either before or after June 11, 2012, by any provision of the Gambling Law (R.C. Chapter 2915.); or

(2) Exempt from the application of the Gambling Law any sweepstakes conducted by any person.

The bill also specifies that the provisions amended by the bill do not authorize or permit any person or entity to conduct a game of chance or a scheme of chance as defined under the Gambling Law. Under current law, "scheme of chance" means a slot machine, lottery, 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 and "game of chance" means poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo.

Emergency clause

The bill declares that it is an emergency measure and therefore goes into immediate effect. The reasons given for the emergency are the same as the findings of the General Assembly described in continuing law. Those findings are as follows:

(1) Ohio has experienced a proliferation of retail businesses that utilize a sweepstakes to facilitate sales. These establishments utilize computer terminals or stand alone machines, which currently are not consistently and uniformly regulated statewide

and have created a window of opportunity for rogue operators to open in cities across Ohio.

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

(3) The General Assembly has determined that a moratorium on new retail sweepstakes establishments is needed while legislation is being considered.[1]

HISTORY

ACTION	DATE
Introduced	04-25-13
Reported, S. State Gov't Oversight & Reform	---

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[1] Sections 1 and 3.