



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [Sub. H.B. 195 of the 129th G.A.](#)
(LSC 129 1079-12)

Date: November 29, 2012

Status: In House State Government & Elections

Sponsor: Reps. Anielski and Baker

Local Impact Statement Procedure Required: No

Contents: Licensing and regulation of sweepstakes gaming device operators and vendors

State Fiscal Highlights

- **Regulation and enforcement costs.** The Ohio Lottery Commission will experience an increase in expenditures related to the creation of the Office of Sweepstakes Compliance. The annual magnitude of these expenses, including the addition of any staff, is unknown.
- **Licensing and fine revenues.** The Lottery Commission's new Office of Sweepstakes Compliance will be supported by the licensing and fine revenue derived from sweepstakes gaming device operators and vendors. These funds will be deposited to the credit of the newly created Sweepstakes Gaming Compliance Fund in the state treasury. The annual magnitude of these revenues is unknown.
- **Criminal records checks.** The Attorney General's Bureau of Criminal Identification and Investigation will experience an increase in the number of requests for criminal background checks, with the revenues generated likely to offset any expenditures incurred. The revenues will be credited to, and the expenditures charged against, the General Reimbursement Fund (Fund 1060).
- **Incarceration expenditures.** GRF-funded incarceration costs may increase, as additional felony offenders could be convicted and sentenced to prison.
- **Court cost revenues.** As a result of additional felony convictions, the state may gain a minimal annual amount of locally collected state court cost revenues that would be divided between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

Local Fiscal Highlights

- Certain townships or municipal corporations will experience a gain in annual revenue as the bill directs the Lottery Commission to distribute \$250 of each annual gaming device fee to the township or municipal corporation in which the devices are located.
 - As a result of violations of the bill's prohibited conduct, additional felony criminal cases may be generated for county criminal justice systems to process, potentially producing a minimal annual increase in their costs to investigate, prosecute, adjudicate, and sanction violators. A minimal annual amount of revenue in the form of court costs and fines may also be generated.
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Detailed Fiscal Analysis

Lottery Commission

The bill creates the Office of Sweepstakes Compliance within the Ohio Lottery Commission, and prescribes it perform new licensing, regulation, and enforcement duties (specifically ORC 3770.30 to 3770.40). At the time of this writing, LSC fiscal staff have not been able to ascertain how many staff would need to be hired or the annual operating expenses that would be incurred in order to accomplish the regulation and licensing duties of this new division. The bill creates a Sweepstakes Gaming Compliance Fund in the state treasury, to be administered by the Lottery Commission, in which all fees and fines received under ORC 3770.30 to 3770.40 will be deposited. All investment earnings are also to be credited to the fund.

The bill requires that sweepstakes gaming device operators and vendors obtain a license from the Lottery Commission before they may legally operate in the state. These fees are shown in Table 1 below. The annual revenue that could be generated annually is uncertain.

Table 1: Annual Sweepstakes Gaming Device Licensing Fees	
Type of License	Annual Fee
Sweepstakes gaming device operator	
Up to 10 devices	\$5,000, plus \$250 for each sweepstakes gaming device
11 to 24 devices	\$10,000, plus \$250 for each sweepstakes gaming device
25 to 49 devices	\$20,000, plus \$250 for each sweepstakes gaming device
50 or more devices	\$30,000, plus \$250 for each sweepstakes gaming device
Sweepstakes gaming device vendor	\$100,000, plus software certification costs

Rules adopted by the Lottery Commission under ORC Chapter 119. may include authorizing a computerized central system used in connection with sweepstakes related to security, auditing, data and information retrieval, and other purposes deemed necessary by the Office of Sweepstakes Compliance. The bill specifies that sweepstakes gaming device operators are responsible for the costs of the system, and for the cost of any actual certification of the sweepstakes software.

The bill states that the \$250 annual fee collected by the Lottery Commission for each sweepstakes gaming device fee is to be distributed to the township or municipal corporation in which the sweepstakes gaming devices are located.

Office of the Attorney General

The bill requires that all persons licensed to be a sweepstakes gaming device operator or vendor obtain a criminal records check. The Attorney General's Bureau of Criminal Identification and Investigation (BCII) charges \$22 to perform a state criminal records check and an additional \$24 to obtain information from the FBI to perform a federal criminal records check. Presumably, these charges will offset BCII's cost of performing the background checks. The revenue will be deposited to the credit of the General Reimbursement Fund (Fund 1060).

Criminal prohibitions

The bill creates two new criminal prohibitions. These prohibitions and related penalties are summarized in Table 2 below.

Table 2: Criminal Prohibitions and Penalties				
Prohibited Conduct	Degree of Offense	Possible Term of Incarceration	Maximum Fine	ORC
Conducting an illegal sweepstakes	4th degree felony	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18-month prison term*	\$5,000	3770.35
Illegal sweepstakes operations	1st Offense: civil fine only	N/A	\$100,000	3770.35
	2nd Offense: civil fine only	N/A	\$500,000	
	3rd Offense: 4th degree felony and barred from obtaining a sweepstakes gaming device operating license	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18-month prison term*	\$5,000	

*Sentencing guidance in existing law has a general preference against a prison term for a felony of the fourth or fifth degree with a minimum of one year of community control sanctions as being the preferred sentencing alternative.

Subsequent to enactment, it is likely that some number of individuals will be arrested, charged, and prosecuted for violating the bill's prohibited conduct. However, the number of violations likely to occur statewide or in any given local jurisdiction is unknown. The paragraphs below outline the state and local government cost points that are typically affected when criminal prohibitions are enacted or expanded, and as a result, additional criminal cases are created for local jurisdictions to process.

Local expenditures and revenues

As a result of violations of the bill's prohibited conduct, additional felony criminal cases will likely be generated for county criminal justice systems to process, potentially increasing their costs to investigate, prosecute, adjudicate, and sanction violators. Revenues in the form of costs and fines imposed on violators by the sentencing court may also be generated, and if collected, deposited in the county treasury. Any resulting local expenditure increases or revenue gains will likely be minimal at most on an ongoing basis.

State expenditures and revenues

As a result of individuals violating the bill's prohibitions, additional felony offenders may be sentenced to prison under certain circumstances. Such an outcome may increase the Department of Rehabilitation and Correction's GRF-funded incarceration costs. The potential magnitude of that increase annually is uncertain, as the number of additional felony convictions and associated lengths of stay in prison are unknown. The average annual cost for the Department of Rehabilitation and Correction to incarcerate an offender in an Ohio prison is currently around \$24,870, with the marginal cost of adding an offender estimated at \$3,600.

Violations of the bill's prohibited conduct may also generate additional state revenue in the form of state court costs that a sentencing court is generally required to impose on individuals convicted of a misdemeanor or felony offense. The likely amount to be collected and deposited in the state treasury annually is likely to be minimal. Under existing law, the amount and distribution of those state court costs is as follows:

- For a misdemeanor, a total of \$29, with \$20 being deposited in the Indigent Defense Support Fund (Fund 5DY0) and \$9 being deposited in the Victims of Crime/Reparations Fund (Fund 4020).
- For a felony, a total of \$60, with \$30 being deposited in Fund 5DY0 and \$30 being deposited in Fund 4020.

Synopsis of Fiscal Effect Changes

The notable differences between the fiscal effects of the latest substitute version of the bill (LSC 129 1079-12) and those of the previous version (LSC 129 1079-7) are highlighted below.

- The latest substitute bill removes all references to the licensing and regulation duties of the Ohio Casino Control Commission.
- The latest substitute bill gives licensing and regulatory authority of sweepstakes gaming devices (as redefined in the substitute bill) to the newly created Office of Sweepstakes Compliance within the Ohio Lottery Commission, creates a fee and fine structure for both operators and vendors of such devices, and creates the Sweepstakes Gaming Compliance Fund to be used by the Commission.
- The latest substitute bill states that the \$250 gaming device fee is to be distributed to the township or municipal corporation in which the device is located.
- The latest substitute bill removes all provisions related to instant bingo and various penalty enhancements under the existing Gambling Law.