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Bill Analysis
Legislative Service Commission

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(As Introduced)

Reps. Hollister, Faber, Aslanides, Blasdel, Brinkman, Callender, Carmichael, Clancy, Collier, Daniels, C. Evans, Fessler, Flowers, Gibbs, Gilb, Grendell, Hoops, Latta, Kearns, Niehaus, Oelslager, Olman, Peterson, Raussen, Reidelbach, Reinhard, Schaffer, Schmidt, J. Stewart, Taylor, Trakas, Wagner, Widener, Widowfield, Willamowski, Wolpert, Young, Allen, Book, Carano, Cirelli, DePiero, Distel, Domenick, Driehaus, Hartnett, Harwood, Jerse, Koziura, Otterman, S. Patton, Perry, Redfern, Seaver, Sferra, Wilson

BILL SUMMARY

- Creates the short-term bingo license to be issued to certain charitable organizations to conduct bingo at a specific event, but for not more than 72 hours from the event's beginning.
- Changes definitions of various charitable organizations and other terms used in the Charitable Bingo Law.
- Modifies the restrictions on the use of electronic bingo aids.
- Authorizes charitable organizations to purchase, lease, and use instant bingo ticket dispensers.
- Authorizes more charitable organizations to conduct games of chance and instant bingo at festivals they conduct.
- Allows more charitable organizations to conduct raffles without having to obtain a bingo license.
- Changes the times during which veteran's, fraternal, and sporting organizations may conduct instant bingo at other than a bingo session.
- Requires a charitable organization to keep a separate account in a financial institution for the deposit of the net profit from the proceeds of

its conduct of instant bingo and to keep records of deposits into and withdrawals from the account.

- Provides that a bartender who commits certain gambling offenses while working at a liquor permit premises for which the permit has been issued to a charitable organization is guilty of no more than a misdemeanor of the first degree.
- Requires the Attorney General to grant a temporary bingo license to initial applicants if the issuance of their regular license is delayed.
- Decreases the annual license fees charged to distributors and manufacturers of bingo supplies from \$5,000 to \$1,500.
- Makes other changes in the Charitable Gambling Law.

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CONTENT AND OPERATION

Short-term license to conduct bingo

Application

Under the bill, a charitable organization (see **COMMENT 1**) that does not have a license to conduct bingo issued under the Charitable Bingo Law but that desires to conduct, at a specific event, regular bingo, instant bingo at a bingo session, or instant bingo at other than a bingo session must make out, at least 30 business days before the event, an application for a short-term license to conduct bingo, instant bingo at a bingo session, or instant bingo at other than a bingo session (hereafter, a short-term license). The application must be on a form to be furnished by the Attorney General for that purpose and be delivered to the Attorney General with a license fee of \$250. The short-term license, if granted, will be in effect for 72 hours from the time when the event begins. A charitable organization may apply for no more than two short-term licenses during a calendar year. (R.C. 2915.083(A).)

The bill requires the application to be in the form prescribed by the Attorney General, be signed and sworn to by the applicant, and contain the information generally required of an applicant for a bingo license under current law. The applicant is not required to submit information on the application other than this information. (R.C. 2915.083(B).)

Granting or denying the application

Except as described in this paragraph, the bill requires the Attorney General, within ten business days after receiving a timely submitted application from a charitable organization, to issue a short-term license to the charitable organization (R.C. 2915.083(C)). The Attorney General may refuse to grant a short-term license to, and can revoke or suspend a previously granted short-term license of, any charitable organization that does any of the following or to which any of the following applies: (1) it fails or has failed at any time to meet any requirement of the Charitable Bingo Law, the laws dealing with the registration of and issuance of reports by charitable trusts and with the registration of charitable organizations that intend to solicit contributions in Ohio, or any rule adopted by

the Attorney General under the bill, (2) it makes or has made an incorrect or false statement material to the granting of the short-term license in the application for the license, (3) it submits or has submitted any incorrect or false information relating to an application which is material to the granting of the short-term license, or (4) the Attorney General has good cause to believe that the organization will not conduct bingo, instant bingo at a bingo session, or instant bingo at other than a bingo session in accordance with the Charitable Bingo Law (R.C. 2915.083(D)).

If the Attorney General refuses to grant or revokes or suspends a short-term license, the Attorney General must notify the applicant in writing and specifically identify the reason for the refusal, revocation, or suspension in narrative form and, if applicable, by identifying the section of the Revised Code violated. The Attorney General's failure to give this written notice or a mistake in it does not affect the validity of the Attorney General's refusal to grant, or revocation or suspension of, a short-term license. If the Attorney General fails to give, or if there is a mistake in, the written notice, the applicant may bring an action to compel the Attorney General to comply with the bill or correct the mistake, but the Attorney General's order refusing to grant, or revoking or suspending, the short-term license cannot be enjoined during the pendency of the action. (R.C. 2915.083(E).)

License form

A short-term license must set forth the information contained on the charitable organization's application that the Attorney General determines is relevant, including, but not limited to, the location at which the organization will conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session and the dates and times on each of those dates when bingo will be conducted (R.C. 2915.083(E)).

Changes in definitions used in the Charitable Bingo Law

Charitable organization

Current law generally specifies that a charitable organization is tax exempt for purposes of the Charitable Bingo Law if it is, and has received from the Internal Revenue Service a determination letter that currently is in effect stating that it is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code (see **COMMENT 1**).¹ The bill retains most of this

¹ Current law separately states that a charitable organization is tax exempt for purposes of the Charitable Bingo Law if it is a sporting organization that is exempt from federal

specification but removes its reference to *subsection 501(c)(4)* and substitutes a distinct statement that an organization is tax exempt for purposes of the Charitable Bingo Law if it is a veteran's organization or fraternal organization and is, and has received from the Internal Revenue Service a determination letter that currently is in effect stating that it is, exempt from federal income taxation and described in subsection 501(c)(4) of the Internal Revenue Code. (R.C. 2915.01(H).)

Charitable instant bingo organization

Current law authorizes a charitable instant bingo organization to conduct instant bingo other than at a bingo session at not more than five separate locations. If such an organization conducts instant bingo at other than a bingo session, it must 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 the instant bingo. (R.C. 2915.093(B) and (C)(1)--not in the bill.)

Existing law generally defines a "charitable instant bingo organization" as a charitable organization as generally defined for the Charitable Bingo Law that is exempt from federal income taxation under subsection 501(a) and described in *subsection 501(c)(3)* of the Internal Revenue Code. But, a charitable organization that is so tax exempt but that is created by a veteran's organization, fraternal organization, or sporting organization in regards to bingo conducted or assisted by it under the provision of the Charitable Bingo Law that authorizes such an organization to conduct instant bingo other than at a bingo session is currently not a "charitable instant bingo organization." The bill redefines a "charitable instant bingo organization" to mean a charitable organization as generally defined for the Charitable Bingo Law that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), *501(c)(4)*, *501(c)(8)*, *501(c)(10)*, or *501(c)(19)* of the Internal Revenue Code. (R.C. 2915.01(XX).)

Fraternal organization

Current law defines a "fraternal organization" as any society, order, state headquarters, or association within Ohio, except a college or high school fraternity, that is not organized for profit, that is a branch, lodge, or chapter of a national or state organization, that exists exclusively for the common business or sodality of its members, and that has been in continuous existence in Ohio for a period of five years. The bill reduces the organization's required length of continuous existence in Ohio to *two years*. (R.C. 2915.01(M) and 2915.08(A)(2)(b).)

income taxation under subsection 501(a) and described in subsection 501(c)(7) of the Internal Revenue Code.



Sporting organization

Current law defines a "sporting organization" as a hunting, fishing, or trapping organization, other than a college or high school fraternity or sorority, that is not organized for profit, that is affiliated with a state or national sporting organization, including, but not limited to, the Ohio League of Sportsmen, and that has been in continuous existence in Ohio for a period of three years. The bill reduces the organization's required length of continuous existence in Ohio to *two years*. (R.C. 2915.01(CCC).)

Veteran's organization

Current law defines a "veteran's organization" as any individual post or state headquarters of a national veteran's association, or any auxiliary unit of any individual post of a national veteran's association, that, among other requirements, has been in continuous existence in Ohio for at least two years and is incorporated as a nonprofit corporation. The bill substitutes that a post, state headquarters, or auxiliary unit must have been in continuous existence in Ohio for at least two years *immediately preceding making an application for a bingo license* and removes the nonprofit corporation requirement. (R.C. 2915.01(K).)

Charitable purpose for which net regular bingo profits may be used

Current law requires a charitable organization to use, or to give, donate, or otherwise transfer, all of the net profit it derives from bingo, other than instant bingo, for a charitable purpose authorized by the Charitable Bingo Law and described in its license application (R.C. 2915.09(A)(3)). And, it defines "charitable purpose" to mean that the net profit of bingo, other than instant bingo, is used by, or is given, donated, or otherwise transferred to, among other organizations an organization that is a certain type of private foundation and that is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code. The bill expands this definition and, thus, also allows the net profit from bingo, other than instant bingo, to be used by, or to be given, donated, or otherwise transferred to, any organization that is a certain type of private foundation and that is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code. (R.C. 2915.01(Z)(1).)

Expenses for maintaining a charitable organization's facilities

Current law describes various "expenses" that a charitable organization incurs and that can be deducted from its gross profit derived from bingo to calculate its net profit derived from bingo. One category of expenses is expenses

of maintaining and operating a charitable organization's facilities, including, but not limited to, a post home, club house, lounge, tavern, or canteen and any grounds attached to any of the preceding. The bill also includes within this category of expenses "any other expenses for operating the post home, club house, lounge, tavern, or canteen." (R.C. 2915.01(LL)(11).)

Net profit from the proceeds of the sale of instant bingo

Current law defines "net profit from the proceeds from the sale of instant bingo" as gross profit minus the ordinary, necessary, and reasonable expenses expended for the purchase of instant bingo supplies. The bill redefines this term to mean gross profit minus the ordinary, necessary, and reasonable expenses expended for the purchase of instant bingo supplies and *any and all expenses* as defined in the Charitable Bingo Law. (R.C. 2915.01(WW).) (See **COMMENT 2.**)

Use of electronic bingo aids

Current law defines "electronic bingo aid" as an electronic device that is used by a participant in a regular bingo game to monitor bingo cards or sheets purchased at the time and place of a bingo session and that does all of the following: (1) it provides a means for a participant to input numbers and letters announced by a bingo caller, (2) it compares the numbers and letters the participant enters to the bingo faces previously stored in the device's memory, and (3) it identifies a winning bingo pattern. "Electronic bingo aid" does not include any device into which a coin, currency, token, or equivalent is inserted to activate play. (R.C. 2915.01(TT).)

Current law prohibits a charitable organization from conducting regular bingo games that use or permit the use of electronic bingo aids except under six specified circumstances. Two of them are that a single participant cannot play more than 90 bingo faces using one or more electronic bingo aids and that the charitable organization must provide a participant who uses an electronic bingo aid with corresponding paper bingo cards or sheets. The bill eliminates those two circumstances. (R.C. 2915.09(C)(11)(a)(i) and (ii).)

Use of instant bingo ticket dispensers and sale prices of instant bingo tickets

Current law defines an "instant bingo ticket dispenser" as a mechanical device that dispenses an instant bingo ticket or card as the sole item of value dispensed, that is activated upon the insertion of United States currency, that performs no gaming functions, and that has certain other characteristics (R.C. 2915.01(SS)). And, it prohibits a charitable organization that conducts instant bingo from purchasing, leasing, or using instant bingo ticket dispensers to sell

instant bingo tickets or cards. The bill removes this prohibition. (R.C. 2915.091(A)(16).)

Current law also prohibits a charitable organization that conducts instant bingo from selling or providing any instant bingo ticket or card for a price different than that printed by the manufacturer on it or on the game flare. The bill amends this prohibition to apply only to sales or provisions of instant bingo tickets or cards on or after January 1, 2004 (R.C. 2915.091(A)(6)).

Games of chance at festivals

Permissible charitable organizations

Current law exempts from the general prohibition against establishing, promoting, or operating any game of chance conducted for profit, those games of chance that are not craps or roulette for money and that are conducted by a charitable organization *described in subsection 501(c)(3)* of the Internal Revenue Code at certain festivals of the charitable organization.² These festivals can be conducted either for a period of four consecutive days or less and not more than twice a year or for a period of five consecutive days and not more than once a year. The bill allows *any charitable organization* to conduct games of chance (that are not craps or roulette for money) at these festivals. (R.C. 2915.02(D)(1).)

Leases

Current law prohibits a charitable organization from leasing a premises from a veteran's or fraternal organization to conduct a festival if the veteran's or fraternal organization has already leased the premises four times during the immediately preceding year to charitable organizations for that purpose. The bill increases the maximum number of these leases to *12* during the immediately preceding 12 months. (R.C. 2915.02(D)(1)(c).)

Use of profit

Current law requires that all of the money or assets received from games of chance conducted at these festivals, after deduction only of prizes paid out during their conduct, be used by, or be given, donated, or otherwise transferred to, any organization that is a specified type of private foundation and either is a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code. The bill also

² *A violation of the general prohibition as well as of certain other violations constitutes the offense of gambling, which can be a felony of the fifth degree or a misdemeanor of the first degree (R.C. 2915.02(F)).*

allows that remaining money or assets to be used by, or to be given, donated, or otherwise transferred to, any organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code. (R.C. 2915.02(D)(1)(d).)

Instant bingo at festivals

The bill appears to specify another exemption from the general prohibition against establishing, promoting, or operating any game of chance conducted for profit or any scheme of chance.³ It specifically allows a charitable organization that holds a bingo license to conduct instant bingo at its festivals, provided the festivals (1) are conducted either for a period of four consecutive days or less and not more than twice a year or for a period of five consecutive days and not more than once a year, and (2) are conducted (a) on premises that the charitable organization owned for a period of no less than one year immediately preceding the conducting of the instant bingo, (b) on premises leased from a governmental unit, or (c) on premises leased from a veteran's or fraternal organization and owned by the lessor organization for a period of no less than one year immediately preceding the conducting of the instant bingo. (R.C. 2915.02(D)(4).)

Charitable organizations that may conduct raffles

Current law authorizes a charitable organization, public school, chartered nonpublic school, community school, or sporting organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), or 501(c)(7) of the Internal Revenue Code to conduct a raffle to raise money for the organization or school without the need to obtain a bingo license so long as the raffle drawing is not for profit. The bill also allows a charitable organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code to conduct a raffle under these same conditions. (R.C. 2915.092(A).)

³ *The location of the specific authorization for festival--instant bingo conduct may be inappropriate. Since instant bingo is a form of "bingo" by definition and bingo is not a game of chance, a game of chance conducted for profit, or a scheme of chance by definition, it does not seem that instant bingo conducted by a charitable organization at a festival would run afoul of the gambling offense prohibitions in RC. 2915.02 and need, then, to be made an exception to those prohibitions (see definitions in R.C. 2915.01(C), (D), (E), and (S)(2)).*

Conduct of instant bingo by certain charitable organizations other than at a bingo session

Hours

Current law authorizes a veteran's, fraternal, or sporting organization authorized to conduct regular bingo, instant bingo, and seal cards at a bingo session to conduct instant bingo at other than a bingo session if it meets specified requirements. One of these requirements is that the organization limit the sale of instant bingo to ten consecutive hours per day for up to six days per week. The bill changes this limitation to *12 consecutive hours during any day*. (R.C. 2915.13(A)(1).)

Liquor permit premises

Current law also provides that if a veteran's, fraternal, or sporting organization authorized to conduct instant bingo other than at a bingo session has been issued a liquor permit, the permit may be suspended, revoked, or cancelled if the organization violates a provision of the Charitable Gambling Law. The bill, while retaining that provision, authorizes such an organization *to sell instant bingo* in the area to which its "license" applies.⁴ (R.C. 2915.13(C)(1).)

Use of the net profit derived from instant bingo

Current law regulates the *distribution* of the net profit that a charitable organization derives from its conduct of instant bingo.⁵ Under the bill, a charitable organization that conducts instant bingo *must deposit* the net profit from the proceeds of the sale of instant bingo into *a separate account* established at a financial institution prior to distributing the net profit as prescribed by law. The bill defines "financial institution" to mean a state bank, national bank, savings association, or bank doing business under authority granted by the bank regulatory authority of another state or another country. (R.C. 2915.101(B)(1).)

The bill also requires the charitable organization to do all of the following: (1) include in its application to the Attorney General for an instant bingo license a statement of the designated purpose for which it will use the net profit from the proceeds of the sale of instant bingo maintained in such a separate account, (2) maintain for at least three years from the date on which instant bingo is conducted an itemized list of each deposit into and withdrawal from such a separate account

⁴ *It appears this term probably should be "permit" for liquor permit.*

⁵ *The bill does not substantively change the distribution provisions, but corrects a technical error in one of them: 35% should be 45% (R.C. 2915.101(A)(1)(c) and (3)).*

and an itemized list of the purpose for each withdrawal, and (3) use the net profit from the proceeds of the sale of instant bingo as specified in its instant bingo license application (R.C. 2915.08(A)(2)(g), 2915.10(A)(8), and 2915.101(B)(2)). The bill authorizes the Attorney General or any law enforcement agency to conduct an audit of such a separate account (R.C. 2915.10(H)(5)).

Criminal liability of bartenders for gambling violations

Under current law, a violation of the various prohibitions relating to bookmaking or conducting schemes of chance or games of chance for profit constitutes the offense of *gambling*, a misdemeanor of the first degree or, if the offender previously has been convicted of any gambling offense, a felony of the fifth degree (R.C. 2915.02(F)). Also, under current law, a violation of the prohibitions constituting the offense of *operating a gambling house* carries one of those same criminal penalties (R.C. 2915.03(B)). Finally, current law prohibits any person, except a charitable organization that has obtained a bingo license, from conducting or advertising bingo. A violation of this prohibition constitutes the offense of *conducting illegal bingo*, a felony of the fourth degree *in all situations*. (R.C. 2915.07.)

Under the bill in relation to gambling or operating a gambling house, if a violation normally would be punishable as a felony of the fifth degree but the offender who has the prior gambling offense conviction *is a bartender* who committed the violation while working at a premises for which the Division of Liquor Control has issued a liquor permit *to a charitable organization*, the offense continues to be only a misdemeanor of the first degree (R.C. 2915.02(F) and 2915.03(B)). With respect to conducting illegal bingo, a violation that normally would be a felony of the fourth degree in all situations would be reduced to a misdemeanor of the first degree under the bill if (1) the offender is a veteran's, fraternal, or sporting organization or (2) a bartender as described above (R.C. 2915.07(B)).⁶

Mandatory issuance of temporary bingo licenses

Current law sets time deadlines within which the Attorney General must respond to an application for an initial license to conduct bingo, instant bingo at a bingo session, or instant bingo at other than a bingo session: a 30-day preliminary review-notification of deficiencies deadline, followed by a 60-day investigation

⁶ *The bill creates distinct penalties for veteran's, fraternal, or sporting organizations who commit "conducting illegal bingo" and for all other charitable organizations who commit that offense. The disparate criminal penalties for the same conduct may raise constitutional issues.*

and grant-denial deadline. As an option to granting or denying an initial license application within the latter deadline, the Attorney General *may grant* a temporary license and request additional time to conduct the investigation if the Attorney General has cause to believe that additional time is necessary to complete the investigation and has notified the applicant in writing about the specific concerns raised during the investigation. The bill instead *requires* the Attorney General, when the Attorney General has that cause, to make such a request, to give such a notice, and to *grant a temporary license* to the applicant. (R.C. 2915.08(A)(4).)

Decreased license fees for distributors and manufacturers of bingo supplies

Current law prohibits a distributor from selling, offering to sell, or otherwise providing or offering to provide bingo supplies to another person for use in Ohio without obtaining a distributor license from the Attorney General (R.C. 2915.081(A)). The bill decreases the current annual fee for that license from \$5,000 to \$1,500 (R.C. 2915.081(B)).

Current law forbids a manufacturer from selling, offering to sell, or otherwise providing or offering to provide bingo supplies to another person for use in Ohio without obtaining a manufacturer license from the Attorney General (R.C. 2915.082(A)). The bill also decreases the current annual license fee for that license from \$5,000 to \$1,500. (R.C. 2915.082(B).)

COMMENT

1. Under the Charitable Gambling Law, "charitable organization" means any tax-exempt religious, educational, veteran's, fraternal, sporting, service, nonprofit medical, volunteer rescue service, volunteer firefighter's, senior citizen's, historic railroad educational, amateur athletic, youth athletic, or youth athletic park organization. A charitable organization must be tax exempt under subsection 501(a) and be described in subsection 501(c)(3), 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code. (R.C. 2915.01(H).)

The following are descriptions of relevant subsections of the Internal Revenue Code:

Subsection 501(c)(3) concerns 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, or for the prevention of cruelty to children or animals.

Subsection 501(c)(4) describes 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 employees of a designated person or persons in a municipality, and the net earnings of which are devoted exclusively to charitable, recreational, or educational purposes. Subsection 501(c)(7) describes clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for these purposes and no part of the net earnings of which inures to the benefit of any private shareholder. Subsection 501(c)(8) describes fraternal organizations that provide payment of life, sick, accident, or other benefits to their members and their members' dependents, and subsection 501(c)(10) describes domestic fraternal organizations that devote their net earnings exclusively to religious, charitable, scientific, educational, and fraternal purposes other than the payment of life, sick, accident, or other benefits to their members. Subsection 501(c)(19) describes certain veteran organizations and their auxiliaries.

2. "Expenses" are defined for the Charitable Gambling Law as the reasonable amount of gross profit actually expended for all of the following:

- (a) The purchase or lease of bingo supplies;
- (b) The annual license fee required under section 2915.08 of the Revised Code;
- (c) Bank fees and service charges for a bingo session or game account described in section 2915.10 of the Revised Code;
- (d) Audits and accounting services;
- (e) Safes;
- (f) Cash registers;
- (g) Hiring security personnel;
- (h) Advertising bingo;
- (i) Renting premises in which to conduct a bingo session;
- (j) Tables and chairs;
- (k) Expenses for maintaining and operating a charitable organization's facilities;
- (l) Any other product or service directly related to the conduct of bingo that is authorized in certain rules adopted by the Attorney General.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-06-03	p. 1054

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