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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 29  
134<sup>th</sup> General Assembly

## Bill Analysis

[Click here for H.B. 29's Fiscal Note](#)

**Version:** As Passed by the Senate

**Primary Sponsors:** Reps. Wiggam and A. Miller

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## SUMMARY

### Veterans identification cards and recording of discharge records

- Authorizes counties that have a veterans' identification card program to issue veterans identification cards to individuals who have served with the U.S. Public Health Service and the National Oceanic and Atmospheric Administration, in addition to other uniformed services, as under continuing law.
- Requires a county recorder, upon request, to record the discharge record of a former member of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration, in addition to discharge records of other former uniformed services members, as under continuing law.

### Sports gaming

#### Overview

- Legalizes and regulates sports gaming (betting) in Ohio through sports gaming proprietors licensed and regulated by the Ohio Casino Control Commission to offer sports gaming online, at sports gaming facilities, and through terminals located in bars and restaurants.
- Requires participants to be at least 21 and to be physically present in Ohio.
- Requires the Commission to begin accepting license applications on January 1, 2022, and to begin issuing licenses on April 1, 2022.

#### Permitted sporting events for betting

- Allows betting on any professional sport or athletic event, any collegiate sport or athletic event, any Olympic or international sports competition event, any motor race event, any horse race, or any other special event the Commission authorizes for sports gaming.

- States the General Assembly’s intention to introduce comprehensive legislation governing wagering on esports events.
- Prohibits betting on any sport or athletic event for primary or secondary school students that is conducted or sponsored by a primary or secondary school or by any other person.
- Prohibits betting on an event that involves athletes or participants who are under 18, unless the Commission authorizes the event for sports gaming.

### **Sports gaming licenses**

- Requires the Ohio Casino Control Commission to license sports gaming proprietors to offer sports gaming in Ohio under type A, type B, and type C licenses.
- Requires the Commission also to license management services providers, who may contract with a sports gaming proprietor to operate sports gaming; type C sports gaming hosts; employees who are involved in the operation of sports gaming; and sports gaming suppliers.

### **Sports gaming proprietors**

- Requires the Commission to license not more than 25 type A sports gaming proprietors to offer sports gaming through online sports pools and accompanying mobile applications.
- Requires the Commission to license not more than 40 type B sports gaming proprietors to offer sports gaming at sports gaming facilities.
- Sets a maximum number of sports gaming facilities that may be located in a county based on the county’s population.
- Requires the Commission to license at least three, and not more than 20, type C sports gaming proprietors to offer sports gaming through self-service terminals located at type C sports gaming hosts’ facilities.
- Specifies the process to apply for sports gaming proprietor licenses and the criteria the Commission must use in awarding licenses.

### **Management services providers**

- Allows a type A sports gaming proprietor that is a professional sports organization to contract with not more than one mobile management services provider to offer sports gaming on the proprietor’s behalf, and allows any other type A sports gaming proprietor to contract with not more than two mobile management services providers for that purpose.
- Allows a type B sports gaming proprietor to contract with one management services provider to offer sports gaming on the proprietor’s behalf.

- Requires a person that wishes to contract with both type A and type B sports gaming proprietors to obtain two separate licenses – a mobile management services provider license and a management services provider license.
- Provides processes to obtain and renew those licenses.
- Specifies a process for a sports gaming proprietor that is prohibited by a league, association, or organization from operating sports gaming to appoint a management services provider and to establish a firewall between the proprietor and the management services provider in order to ensure the integrity of sporting events and of sports gaming.
- Requires the Commission to approve the contract between a sports gaming proprietor and a management services provider.
- Requires the Commission to adopt a rule setting a maximum number of contracts a mobile management services provider may have with type A sports gaming proprietors and a maximum number of contracts a management services provider may have with type B sports gaming proprietors.

### **Type C sports gaming hosts**

- Allows the owner of a facility with a D-1, D-2, or D-5 liquor permit to apply to the Commission for a type C sports gaming host license to offer sports gaming through a type C sports gaming proprietor using self-service terminals located at the facility.
- Specifies the process to obtain and renew such a license.
- Provides requirements concerning agreements between type C sports gaming proprietors and their hosts.

### **Sports gaming occupational licenses**

- Requires an individual with sports gaming related duties with a sports gaming proprietor to receive a sports gaming occupational license.
- Specifies the process to apply for an initial or renewed sports gaming occupational license.

### **Sports gaming suppliers**

- Requires a person or entity that provides sports gaming equipment or related services to a sports gaming proprietor or management services provider to have a sports gaming supplier license.
- Specifies the process to apply for an initial or renewed sports gaming supplier license.

### **Denial, suspension, and revocation of sports gaming licenses**

- Requires all applicants for sports gaming related licenses issued under the bill to establish their suitability by clear and convincing evidence and to meet certain criteria.

- Specifies additional criteria for sports gaming proprietors, management services providers, and their parent companies.
- Allows the Commission to deny, suspend, or revoke a license if the criteria are not met.

### **Display of sports gaming license**

- Requires sports gaming licensees to display their licenses or make them available for inspection.

### **Changes to sports gaming license information**

- Requires sports gaming licensees to report any material change in their information to the Commission, and requires the Commission to determine what it considers to be material.

## **Online sports gaming**

- Allows a type A sports gaming proprietor to operate one or more online sports pool websites and accompanying mobile applications, and requires each website and mobile application to include the name or logo of the sports gaming proprietor and any management services provider in a conspicuous manner.
- Requires the sports gaming proprietor to accept wagers only from individuals who are at least 21 and who are physically located in Ohio, and to use location based technology to prohibit individuals who are not physically present in Ohio from participating in sports gaming through the online sports pool.
- Requires the server responsible for accepting wagers through the online sports pool to be located in a secure facility in Ohio.
- Allows a type A sports gaming proprietor to accept a wager through an online sports pool only using a sports gaming account tied to the individual's legal name.

## **In person sports gaming**

### **Sports gaming facilities**

- Allows a type B sports gaming proprietor to operate one sports gaming facility per license, at which the sports gaming proprietor accepts wagers on sporting events from individuals who are at least 21 and who are physically present in the sports gaming facility, either in person or using self-service sports gaming terminals.
- Requires a type B sports gaming proprietor to accept a wager only using a registration tied to the individual's legal name, unless the wager does not exceed a dollar limit determined by the Commission by rule.
- Prohibits any person under 21 from entering a sports gaming facility, with certain exceptions.
- Allows an employee of a sports gaming proprietor who is 18, 19, or 20 to be present in a sports gaming facility, so long as the employee's duties are not related to sports gaming.

- Permits an individual who is under 21 to enter a sports gaming facility in order to pass to another area where sports gaming is not being conducted, but only if the individual is personally escorted by an employee of the sports gaming proprietor who remains in close proximity to the individual at all times in accordance with the Commission's rules.

### **Terminals at bars and restaurants**

- Allows a type C sports gaming proprietor to accept wagers on sporting events that are made in person through self-service terminals located at one or more type C sports gaming hosts' facilities only from individuals who are at least 21 and who are physically present in the facility.
- Allows no more than two terminals to be located in any host facility.
- Specifies requirements for the terminals, including limits on the type and amount of wagers and a requirement that all financial transactions be electronic.
- Requires the State Lottery Commission, in consultation with the Ohio Casino Control Commission, to work with type C sports gaming proprietors and hosts to implement and promote their sports gaming, and allows the State Lottery Commission to adopt rules under the Administrative Procedure Act for that purpose.

### **Persons who may not participate in sports gaming**

- Specifies several categories of individuals who are not permitted to participate in sports gaming, including individuals who are on an exclusion list, who are associated with a sports gaming proprietor or with the Commission, or who are involved in a sporting event.
- Requires a sports gaming proprietor to employ commercially reasonable methods to prevent those individuals from placing bets with the proprietor.

### **Permitted and prohibited sports wagers**

- Provides that "sports gaming" with a type A or type B sports gaming proprietor (online or at a sports gaming facility) includes exchange wagering, parlays, spreads, over-under, moneyline, in-game wagering, single-game bets, teaser bets, in-play bets, proposition bets, pools, pari-mutuel sports wagering pools, straight bets, or any other type of wagering on sporting events approved by the Commission.
- Limits "sports gaming" with a type C sports gaming proprietor to spread, over-under, and moneyline wagering on sporting events, as approved by the Commission, on terminals in bars and restaurants.
- Allows the Commission, independently or at the request of any person, including a sports governing body, to prohibit or restrict wagers on a particular sporting event or to prohibit or restrict a particular type of wager.
- Provides a process for a sports governing body to formally request the Commission to prohibit or restrict wagers on a particular sporting event or to prohibit or restrict a particular type of wager.

## **Sports gaming proprietor operating requirements**

- Lists several requirements concerning sports gaming proprietors' operations, including financial controls, integrity monitoring, recordkeeping, and requirements regarding promotional gaming credits and unclaimed winnings.
- Allows a sports gaming proprietor to manage risk associated with wagers by rejecting or pooling one or more wagers or by laying off one or more wagers with another sports gaming proprietor.
- Permits a sports gaming proprietor to employ a system that offsets loss or manages risk in the operation of sports gaming under the bill through the use of a liquidity pool in another jurisdiction, so long as certain requirements are met.

## **Official league data**

- Requires a sports gaming proprietor, at the request of the appropriate sports governing body, to use official league data to determine the outcomes of proposition bets.
- Allows the Commission to exempt a proprietor from that requirement if the official league data are not available to the proprietor on commercially reasonable terms.

## **Ohio Casino Control Commission oversight**

- Gives the Ohio Casino Control Commission jurisdiction over all persons conducting or participating in the conduct of sports gaming authorized under the bill.

### **Administrative rules**

- Requires the Commission to adopt all rules regarding sports gaming in accordance with the Administrative Procedure Act.
- Allows the Commission to adopt new regulatory restrictions under the bill during the first year after the bill's effective date, without simultaneously removing two or more other existing regulatory restrictions.
- Specifies several types of rules that the Commission must adopt governing sports gaming proprietors' operations, including financial requirements, consumer protections, advertising guidelines, and the necessary capital investments in sports gaming facilities.

### **Approving equipment and forms of sports gaming**

- Requires the Commission to approve all sports gaming equipment and each form, variation, or composite of sports gaming to be used by sports gaming proprietors.

### **Integrity monitoring**

- Requires the Commission to monitor all sports gaming conducted in Ohio, or contract with an independent integrity monitoring provider for that purpose, in order to identify any unusual betting activities or patterns that may indicate a need for further investigation.

- Permits a sports governing body that believes the integrity of one of its sporting events is in question to formally request the Commission to make anonymized sports gaming data concerning the sporting event available to the sports governing body through the monitoring system, as soon after each bet is placed as is commercially reasonable.

### **Confidentiality of licensee information**

- Requires the Commission to keep confidential certain categories of information provided to the Commission by an applicant for a sports gaming license.
- Specifies that certain information regarding sports gaming proprietors is subject to disclosure under the Public Records Law.

### **Civil penalties**

- Requires the Commission to levy and collect fines for noncriminal violations of the bill and of the Commission's rules adopted under the bill.

### **Enforcement**

- Requires the Commission, law enforcement agencies, prosecutors, and sports governing bodies to cooperate in investigating potential violations of the bill or the Commission's rules.
- Gives the Attorney General a civil cause of action to restrain any violation of the bill or of rules adopted under the bill.

## **Withholding amounts from sports gaming winnings**

- Requires sports gaming proprietors to withhold state and certain municipal income taxes from patrons' winnings whenever federal income tax withholding is required.
- Requires a sports gaming proprietor also to withhold any past due child or spousal support and any debts owed to the state or a political subdivision from any sports gaming winnings that meet or exceed the Internal Revenue Service federal income tax withholding threshold.

## **State revenue from sports gaming**

### **Tax on sports gaming**

- Imposes a 10% tax on a sports gaming proprietor's net revenue from sports gaming.
- Requires that the sports gaming tax be administered in much the same way as the state's existing tax on casino revenue.

### **Distribution of state sports gaming revenue**

- Creates the Sports Gaming Revenue Fund in the state treasury and requires that revenue from the tax imposed on sports gaming receipts, sports gaming proprietor and management services provider licensing fees, and certain fines collected by the Ohio Casino Control Commission be deposited in the fund.

- Requires that 98% of the money in the Sports Gaming Revenue Fund, after deductions for tax refunds and administrative costs, be transferred to the Sports Gaming Profits Education Fund and 2% be transferred to the Problem Sports Gaming and Addiction Fund.
- Requires that the money in the Sports Gaming Profits Education Fund be used for the support of public and nonpublic K-12 education, with one-half used to support K-12 interscholastic athletics and other extracurricular activities.

### **Commercial activity tax on sports gaming proprietors**

- Specifies that sports gaming proprietors must pay commercial activity tax only on their net receipts from sports gaming, not on gross receipts.

### **Sharing of confidential tax information**

- Allows the Department of Taxation to share sports gaming tax information with the Ohio Casino Control Commission.

### **Criminal prohibitions regarding sports gaming**

- Sets out a number of criminal prohibitions related to the operation of sports gaming.

### **Shipments of gambling devices**

- States that all shipments of gambling devices, including any sports gaming equipment, to sports gaming licensees in Ohio are legal shipments of gambling devices into Ohio, as long as the supplier registers, records, and labels the equipment in accordance with the federal Gambling Devices Act of 1962.

### **Select Committee on Sports Gaming and Problem Gambling**

- Creates the Select Committee on Sports Gaming and Problem Gambling, which must study certain issues related to the distribution of the money in the Sports Gaming Revenue Fund and compulsive and problem gambling prevention.
- Specifies the process for appointing the members of the Select Committee and requirements for its operation.
- Requires the Select Committee to submit a report of its findings to the General Assembly not later than January 1, 2022, and to cease to exist after it submits the report.

## **Casinos**

### **Withholding amounts from casino winnings – similar provisions enacted in H.B. 110**

- Modifies the threshold and deadlines in the current law that requires a casino operator to withhold the amount of any past due child or spousal support from a patron's casino winnings, if the winnings meet or exceed a certain threshold.

- Requires a casino operator to withhold the amount of any debt a patron owes to the state or a political subdivision from the patron's casino winnings, if the winnings exceed the IRS reporting threshold, in addition to any past due child or spousal support required under continuing law.

### **Institutional investors**

- Changes the definition of an institutional investor to include a listed type of person or entity, such as a bank or investment firm, that owns 5% or more, but *less than 25%*, instead of 15%, of an ownership interest in a casino facility, casino operator, management company, or holding company.

## **Ohio Lottery**

### **Withholding amounts from lottery prize awards – similar provisions enacted in H.B. 110**

- Changes the threshold amounts in the laws requiring the State Lottery Commission to withhold state income tax, past due child or spousal support, and debts to the state or a political subdivision from lottery prize awards that meet or exceed the threshold.

### **Select Committee on iLottery**

- Creates the Select Committee on iLottery, which must study the potential effects of online lottery ticket sales (known as iLottery) on retail lottery ticket sales in Ohio.
- Specifies the process for appointing the members of the Select Committee and requirements for its operation.
- Requires the Select Committee to submit a report of its findings to the General Assembly not later than January 1, 2022, and to cease to exist after it submits the report.

## **Technical changes related to the Fresh Start Act**

- Makes technical corrections to several sections of the Casino Law in order to accommodate the requirements of the Fresh Start Act, H.B. 263 of the 133<sup>rd</sup> General Assembly, which takes effect October 9, 2021.

## **Charitable bingo – similar provisions enacted in H.B. 110**

### **Electronic instant bingo**

- Establishes electronic instant bingo as a separate type of bingo, along with traditional bingo, raffles, and instant bingo, but largely regulates the operation of electronic instant bingo in the same manner as instant bingo.
- Requires the Attorney General to begin to accept applications for license to conduct electronic instant bingo on January 1, 2022, and to begin to issue those licenses on April 1, 2022.

## **Definitions**

- Defines “electronic instant bingo” as a form of bingo that consists of an electronic or digital representation of instant bingo and that meets a series of requirements.
- Defines an “electronic instant bingo system” as a mechanical, electronic, digital, or video device that is used to play electronic instant bingo and any associated equipment or software used to conduct, manage, monitor, or document any aspect of electronic instant bingo.
- Includes requirements designed to prevent an electronic instant bingo system from resembling or operating like a slot machine.

## **Charitable organizations conducting electronic instant bingo**

- Allows a veteran’s or fraternal organization to offer electronic instant bingo in the same way as instant bingo, so long as it qualified as such an organization on or before June 30, 2021, has an appropriate status under the Internal Revenue Code, and has not conducted a raffle in violation of the Revised Code using an electronic raffle machine at any time after January 1, 2022.
- Allows an eligible organization to offer electronic instant bingo under a single license on a maximum of seven electronic instant bingo systems at one location specified on the license.
- Requires electronic instant bingo proceeds to be distributed in the same manner as instant bingo proceeds are distributed under continuing law.
- Applies the same recordkeeping and operating requirements to electronic instant bingo as currently apply to instant bingo.

## **Attorney General rules**

- Requires the Attorney General to adopt rules under the Administrative Procedure Act to ensure the integrity of electronic instant bingo, and lists several topics that must be covered under those rules.

## **Distributor and manufacturer licensing**

- Requires a licensed distributor or manufacturer of bingo supplies to obtain an electronic instant bingo endorsement to the distributor’s or manufacturer’s license in order to distribute or manufacture electronic instant bingo systems.
- Requires any individual who installs, maintains, updates, or repairs an electronic instant bingo system to hold an appropriate and valid occupational license issued by the Ohio Casino Control Commission.
- Specifies requirements for a distributor or manufacturer to receive an endorsement, including passing a criminal records check, providing a surety bond, and paying the appropriate fee.

- Allows the Attorney General to suspend or revoke an endorsement for violations of Ohio's gambling laws or rules.

### **Regulation of electronic instant bingo systems**

- Requires a manufacturer of an electronic instant bingo system first to submit the system to an independent testing laboratory and to the Attorney General for approval.
- Requires every electronic instant bingo system in use in Ohio to meet certain monitoring, recordkeeping, and verification requirements.
- Allows the Attorney General to establish by rule an annual fee to be paid by electronic instant bingo system distributors to cover the cost of monitoring and inspecting systems under the bill.

### **Prohibitions regarding electronic instant bingo**

- Prohibits several types of conduct related to the operation of electronic instant bingo and the sale of electronic instant bingo systems and imposes a criminal penalty for a violation of the bill or the Attorney General's rules.

## **Bingo licenses, generally**

### **Denial or suspension**

- Allows the Attorney General to deny a bingo license to an organization, or suspend an organization's bingo license for up to five years, if the Attorney General has good cause to believe that any director or officer of the organization has breached the director's or officer's fiduciary duty to the organization.
- Allows the Attorney General to deny, suspend, or limit a bingo distributor or manufacturer license if the Attorney General has good cause to believe that the distributor or manufacturer, or certain partners, officers, or owners, have committed a breach of fiduciary duty, theft, or other misconduct related to a charitable organization that has a bingo license.

### **Youth athletic park organizations**

- Eliminates a requirement that a youth athletic park organization's playing fields have been used for nonprofit youth athletic activities for at least 100 days during a given year in order for the organization to obtain a bingo license.

### **License type**

- Requires a bingo license to indicate whether it is a Type I, Type II, or Type III license.

### **Technical changes**

- Makes numerous stylistic and technical changes to the section of law governing bingo licenses in order to incorporate "Type I," "Type II," and "Type III" license terminology, to clarify that an organization does not need a license to conduct a raffle, and generally to make the section easier to read.

## **Punch boards and seal cards**

- Clarifies that punch boards and seal cards are types of instant bingo games and may be played under an instant bingo license.

## **Minors playing traditional bingo**

- Makes a technical correction to clarify the penalty that applies to a charitable organization if it permits a person the organization knows, or should have known, is under 18 to play traditional bingo.

## **Bingo Law enforcement**

### **Charitable organizations**

- Allows the Attorney General or a law enforcement agency to examine the accounts and records of any officer, agent, trustee, member, or employee of a charitable organization with a bingo license.
- Permits the Attorney General to impose a civil fine on an organization for failure to comply with the Bingo Law or related rules.

### **Manufacturers and distributors**

- Permits the Attorney General or a law enforcement agency to investigate a bingo distributor or manufacturer or any officer, agent, trustee, member, or employee of the bingo distributor or manufacturer in relation to violations of the Bingo Law.
- Permits the Attorney General to impose a civil fine on a distributor or manufacturer for failure to comply with the Bingo Law or related rules.

## **Compensation for name, image, or likeness - enacted in H.B. 110**

- Allows intercollegiate athletes to earn compensation from their name, image, or likeness (NIL).
- Prohibits an institution of higher education, athletic association, conference, or other group or organization with authority over intercollegiate athletics from taking specified actions regarding an intercollegiate athlete who earns, or obtains representation in relation to earning, compensation from the athlete's NIL.
- Includes limitations with respect to contracts that provide compensation to an intercollegiate athlete for the use of the athlete's NIL.

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## DETAILED ANALYSIS

Several provisions of the bill, as noted below in the appropriate headings, have since been enacted in identical or similar form in H.B. 110 of the 134<sup>th</sup> General Assembly (the main operating budget act), and take effect September 30, 2021. If H.B. 29 is enacted in its current form, the H.B. 29 versions of any conflicting provisions will supersede the H.B. 110 versions.

### **Veterans identification cards and recording of discharge records**

The bill authorizes counties that have a veterans identification card program to issue veterans identification cards to individuals who have served with the U.S. Public Health Service or the National Oceanic and Atmospheric Administration, in addition to other uniformed services, as under continuing law.

Under existing law, a board of county commissioners may allow the county recorder or county veterans service office to issue an Ohio veterans identification card to an individual who presents an armed forces discharge record, provides two forms of current and valid identification, and pays a fee if a fee has been established. Under federal law, the armed forces include the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard, the national guard of any state, or any other reserve components of those forces. The bill expands eligibility for veterans identification cards to veterans of the “uniformed services,” meaning the armed forces listed above, as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Commissioned Corps of the Public Health Service, any reserve components of those forces, and any other service designated by Congress.

Similarly, the bill requires a county auditor, upon request, to record the discharge record of a discharged member of the uniformed services, instead of only the armed forces of the United States.<sup>1</sup>

### **Sports gaming**

#### **Overview**

The bill legalizes and regulates sports gaming (betting) in Ohio through sports gaming proprietors licensed and regulated by the Ohio Casino Control Commission to offer sports gaming online, at sports gaming facilities, and through terminals located in establishments with class D liquor permits, such as bars and restaurants (see **COMMENT**). Participants must be at least 21 and must be physically present in Ohio. The bill requires the Commission to begin accepting license applications on January 1, 2022, and to begin issuing licenses on April 1, 2022.<sup>2</sup>

Currently, the Revised Code generally prohibits any person from engaging in bookmaking (the business of receiving or paying off bets), and defines a bet as the hazarding of

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<sup>1</sup> R.C. 317.24 and 317.241.

<sup>2</sup> R.C. Chapter 3775 and Section 3 of the bill.

anything of value upon the result of an event, undertaking, or contingency, except for a bona fide business risk. As a result, under existing law, any person who takes and pays off bets on the outcomes of sporting events is guilty of illegal gambling. The bill retains that prohibition, but makes an exception for the forms of sports gaming permitted under the bill.<sup>3</sup>

The federal Professional and Amateur Sports Protection Act of 1992 (PASPA) generally prohibits the states from legalizing sports betting. However, in 2018, the U.S. Supreme Court overturned PASPA on the ground that it violates the states' rights under the 10<sup>th</sup> Amendment to the U.S. Constitution. Consequently, that law no longer prevents Ohio from legalizing and regulating sports betting.<sup>4</sup>

### **Permitted sporting events for betting**

Under the bill, "sports gaming" means the business of accepting wagers on sporting events. To "wager" or "bet" means to risk a sum of money or thing of value on an uncertain occurrence. "Sports gaming" does not include casino gaming, fantasy contest entry fees, pari-mutuel horse racing wagering, or lottery games, which are all regulated separately under continuing law.

A "sporting event" that may be bet on under the bill is any of the following, the individual performance statistics of athletes or participants of any of the following, or a combination:

- **A professional sport or athletic event**, meaning an event at which two or more persons participate in sports or athletic events and receive compensation, or the potential for compensation based on their performance, in excess of actual expenses for their participation in the event;
- **A collegiate sport or athletic event**, meaning a sport or athletic event offered, sponsored by, or played in connection with a public or private post-secondary educational institution;
- **An Olympic or international sports competition event**;
- **A motor race event**;
- **A horse race**, other than pari-mutuel horse racing wagering regulated by the State Racing Commission;
- **Any other special event** the Ohio Casino Control Commission authorizes for sports gaming.

Additionally, the bill states that the General Assembly intends to introduce comprehensive legislation governing wagering on esports events, meaning organized video

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<sup>3</sup> R.C. 2915.01(A).

<sup>4</sup> R.C. 2915.02, not in the bill, and *Murphy v. National Collegiate Athletic Association*, 138 S.Ct. 1461 (2018).

game competitions that are regulated by a sports governing body and that are held between professional players who play individually or as teams.

The bill prohibits betting on any sport or athletic event for primary or secondary school students that is conducted or sponsored by a primary or secondary school or by any other person, or on the individual performance statistics of athletes or participants in such a sport or athletic event. For example, betting on high school sports is not allowed under the bill.

The bill also prohibits betting on an event that involves athletes or participants who are under 18 or on the individual performance statistics of athletes or participants in such an event, unless the Commission authorizes the event for sports gaming.

As is discussed below under “**Permitted and prohibited wagers**,” the bill allows the Commission to prohibit or restrict certain wagers by rule.<sup>5</sup>

### **Sports gaming licenses**

The bill requires the Ohio Casino Control Commission to license sports gaming proprietors to offer sports gaming in Ohio under type A, type B, and type C licenses. As used in the bill, “sports gaming proprietor” means a person licensed by the Commission under a type A, type B, or type C license.<sup>6</sup> The bill also requires the Commission to license management services providers, who may contract with a sports gaming proprietor to operate sports gaming; type C sports gaming hosts; employees who are involved in the operation of sports gaming; and sports gaming suppliers.

#### **Type A sports gaming proprietors**

A type A sports gaming proprietor license authorizes a proprietor to offer sports gaming through one or more online sports pools and accompanying mobile applications. “Online sports pool” means sports gaming in which a wager on a sporting event is made through a computer or mobile device and accepted through an online gaming website.

The bill requires the Commission to license not more than 25 type A sports gaming proprietors at any one time. A type A sports gaming proprietor also must (1) operate a sports gaming facility under a type B sports gaming proprietor license, or (2) maintain at least one place of business in Ohio, including a secure facility to house the servers responsible for accepting wagers through the proprietor’s online sports pools.

The Commission must adopt by rule a procedure allowing the Commission to revoke a type A sports gaming proprietor license if the proprietor does not offer sports gaming to patrons under the license for a continuous period of one year or more.<sup>7</sup>

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<sup>5</sup> R.C. 3772.01 and 3775.01 and Section 7 of the bill.

<sup>6</sup> R.C. 3775.01(Q).

<sup>7</sup> R.C. 3775.01(F) and (U) and 3775.04(A).

## **Type B sports gaming proprietors**

A type B sports gaming proprietor license authorizes a proprietor to offer sports gaming at one sports gaming facility at a location specified on the license. “Sports gaming facility” means a designated area of a building or structure in which patrons may place wagers on sporting events with a type B sports gaming proprietor either in person or using self-service sports gaming terminals.

The bill requires the Ohio Casino Control Commission to license not more than 40 type B sports gaming proprietors at any one time, and sets a maximum number of sports gaming facilities that may be located in a county based on the county’s population as determined by the 2010 federal census, as follows:

- No sports gaming facility in a county with a population of less than 100,000;
- One sports gaming facility in a county with a population of 100,000 to 399,999 (Allen, Ashtabula, Butler, Clark, Clermont, Columbiana, Delaware, Fairfield, Greene, Lake, Licking, Lorain, Mahoning, Medina, Miami, Portage, Richland, Stark, Trumbull, Warren, Wayne, and Wood counties);
- Three sports gaming facilities in a county with a population of 400,000 to 799,999 (Lucas, Montgomery, and Summit counties);
- Five sports gaming facilities in a county with a population of 800,000 or more (Cuyahoga, Franklin, and Hamilton counties).

The Commission may issue an initial type B sports gaming proprietor license only to a person who conducts significant economic activity in the county in which the sports gaming facility is to be located. The bill requires the Commission to consult the Development Services Agency in making that determination.<sup>8</sup>

## **Type C sports gaming proprietors**

A type C sports gaming proprietor license authorizes a proprietor to offer sports gaming through self-service terminals located at one or more type C sports gaming hosts’ facilities. A type C sports gaming host is a person licensed by the Commission who has a class D liquor permit for the facility (see “**Type C sports gaming host licenses**,” below).

The Commission must license at least three, and not more than 20, type C sports gaming proprietors at any one time.<sup>9</sup>

## **Application for sports gaming proprietor license**

An applicant for an initial or renewed type A, type B, or type C sports gaming proprietor license must do all of the following:

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<sup>8</sup> R.C. 3775.01 (N) and (V) and 3775.04(B). See also Ohio Department of Development, [Ohio 2010 Census Population For Counties](#).

<sup>9</sup> R.C. 3775.01(W) and (X) and 3775.04(C).

- Submit a written application on a form furnished by the Ohio Casino Control Commission;
- Pay a nonrefundable application fee in an amount prescribed by the Commission by rule;
- Submit two complete sets of fingerprints to the Commission for the purpose of conducting a criminal records check through the Ohio Bureau of Criminal Identification and Investigation (BCII) and pay the BCII fee for the check;
- Submit an audit of the applicant's financial transactions and the condition of the applicant's total operations for the previous fiscal year prepared by a certified public accountant in accordance with generally accepted accounting principles and state and federal laws;
- Satisfy any other requirements for licensure under the bill and under the Commission's rules, as discussed below.

If the application is for an initial type B sports gaming proprietor license, the application must specify the intended location of the sports gaming facility or, at a minimum, the county in which the facility is to be located if the license is granted. If the application is for a renewed type B sports gaming proprietor license, the application must specify the location of the sports gaming facility or, if the applicant intends to relocate the facility, the intended new location or, at a minimum, the county in which the facility is to be located if the renewal is granted.<sup>10</sup>

### **Process for awarding sports gaming proprietor licenses**

#### ***Preference***

In issuing initial and renewed type A and type B sports gaming proprietor licenses, the bill requires the Commission to give preference to applicants that are professional sports organizations, casino operators, or video lottery sales agents (operators of video lottery terminals at horse racetracks, known as racinos), subject to the suitability factors described below. The Commission must give equal preference among professional sports organizations, casino operators, and video lottery sales agents.

A "professional sports organization" is any of the following:

- The owner of a professional sports team in Ohio that is a member of the National Football League, the National Hockey League, Major League Baseball, Major League Soccer, or the National Basketball Association;
- The owner of a sports facility in Ohio that hosts an annual tournament on the Professional Golf Association Tour;

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<sup>10</sup> R.C. 109.572, 3775.03(B), and 3775.04(D).

- A promoter of a National Association for Stock Car Auto Racing national touring race conducted in Ohio.

If a sports gaming proprietor license was issued or renewed because of a preference, and the sports gaming proprietor ceases to qualify as a professional sports organization (for example, if the team leaves Ohio) or ceases to be a casino operator or video lottery sales agent, as applicable, the Commission must revoke the license.<sup>11</sup>

### ***Suitability factors for type A, type B, and type C licenses***

In issuing initial and renewed type A, type B, and type C sports gaming proprietor licenses, the Commission must consider all of the following factors, in addition to all other requirements for licensure specified under the bill and in the Commission's rules:<sup>12</sup>

- The reputation, experience, and financial integrity of the applicant and any person that controls the applicant, as determined under the bill (see "**Denial, suspension, and revocation of sports gaming licenses**," below);
- The total amount of taxable income the applicant pays, or will pay, to its employees in Ohio;
- The financial ability of the applicant to purchase and maintain adequate liability and casualty insurance and to provide an adequate surety bond;
- The past and present compliance of the applicant and its affiliates or affiliated companies with gambling-related licensing requirements in Ohio or any other jurisdiction, including whether the applicant has a history of noncompliance with those requirements;
- Whether the applicant has been charged with, indicted for, or convicted of any felony or misdemeanor criminal offense under the laws of any jurisdiction, not including any traffic violation;
- Whether the applicant has filed, or had filed against it, a proceeding for bankruptcy, or has ever been involved in any formal process to adjust, defer, suspend, or otherwise work out the payment of any debt;
- Whether the applicant has been served with a complaint or other notice filed with any public body regarding a payment of any tax required under federal, state, or local law that has been delinquent for one or more years;
- Whether the applicant is or has been a defendant in litigation involving its business practices;

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<sup>11</sup> R.C. 3775.01(A), (H), and (Y), 3775.041(A), and 3775.09(D).

<sup>12</sup> R.C. 3775.041(B).

- Whether awarding a license would undermine the public's confidence in the sports gaming industry in Ohio.

### ***Additional suitability factors for type A licenses***

In the case of a type A sports gaming proprietor license, the Commission also must consider all of the following:<sup>13</sup>

- The nature of the applicant's current or intended physical presence in Ohio, including any expenditures for physical infrastructure;
- The length of time, if any, for which the applicant has been doing any kind of business in Ohio;
- Whether the total taxable income the applicant pays to its employees in Ohio each year has been, or will be, at least \$10 million;
- The applicant's current or intended local and statewide economic involvement in Ohio;
- The applicant's other current or intended contributions to Ohio, including promoting tourism.

### ***Additional suitability factor for type B licenses***

In the case of a type B sports gaming proprietor license, the Commission also must consider whether the current or proposed locations of sports gaming facilities are distributed equitably among all regions of Ohio.<sup>14</sup>

### ***No preference for state contractors***

Finally, the bill prohibits the Commission from giving preference to an applicant for a sports gaming proprietor license on the basis that the applicant, a person that has control over the applicant, or a person over which the applicant has control, currently contract, or have contracted, with the State Lottery Commission or any other state agency.<sup>15</sup>

### **Sports gaming proprietor license term and fees**

A type A, type B, or type C sports gaming proprietor license is valid for a term of three years. When the license expires, the proprietor may apply to renew the license in the same manner as for an initial license, unless the license is suspended or revoked or the Commission determines that the proprietor is not in compliance with the bill or with the Commission's rules.

Upon receiving a sports gaming proprietor license, the proprietor must give to the state a surety bond, in an amount and in the form approved by the Commission, to guarantee that

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<sup>13</sup> R.C. 3775.041(C).

<sup>14</sup> R.C. 3775.041(D).

<sup>15</sup> R.C. 3775.041(E).

the applicant faithfully makes all payments required by the bill and by the Commission’s rules during the period of the license.

The proprietor also must pay the following nonrefundable license fee or fees in each three-year license term, as applicable. The sports gaming proprietor license fees are deposited in the Sports Gaming Revenue Fund discussed below.<sup>16</sup>

License type	Fee when issued	Fee after first year	Fee after second year
<b>Type A</b>			
- Professional sports organization (initial or renewal)	\$500,000	\$250,000	\$250,000
- All others (initial or renewal)	\$1 million	\$500,000	\$500,000
<b>Type B</b>			
- Initial	\$100,000	None	None
- Renewal	\$25,000	None	None
<b>Type C</b>			
- Initial	\$100,000	None	None
- Renewal	\$25,000	None	None

## Management services providers

### *Generally*

The bill creates two categories: “mobile management services providers,” which may contract with type A sports gaming proprietors, and “management services providers,” which may contract with type B sports gaming proprietors. A person that wishes to contract with both type A and type B sports gaming proprietors must obtain two separate licenses.

Under the bill, a type A sports gaming proprietor that is a professional sports organization may contract with not more than one mobile management services provider to offer sports gaming on the proprietor’s behalf, in a manner authorized under the contract. Any other type A sports gaming proprietor may contract with not more than two mobile management services providers for that purpose.

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<sup>16</sup> R.C. 3775.04(E) and (F).

Similarly, a type B sports gaming proprietor may contract with one management services provider to offer sports gaming at a sports gaming facility on the sports gaming proprietor's behalf, in a manner authorized under the contract. A type C sports gaming proprietor may not contract with a mobile management services provider or a management services provider.

The Commission must adopt a rule setting a maximum number of contracts a mobile management services provider may have with type A sports gaming proprietors and a maximum number of contracts a management services provider may have with type B sports gaming proprietors.

The remainder of this analysis refers to management services providers as a single type of entity because the bill's requirements with respect to them are the same.<sup>17</sup>

### ***League members***

The bill specifies that a type A or type B sports gaming proprietor that is a member of a league, association, or organization that prevents the proprietor from being subject to the regulatory control of the Commission or from otherwise operating under the license may contractually appoint a management services provider for all aspects of Commission oversight and operating under the proprietor's license. The sports gaming proprietor must not have control over the management services provider, and the management services provider must not have control over the sports gaming proprietor.

The sports gaming proprietor and the management services provider must not exchange any information that may compromise the integrity of sporting events or of sports gaming. The Commission must adopt by rule procedures for the sports gaming proprietor and the management services provider to follow to ensure the integrity of sporting events and of sports gaming, including procedures to prevent any exchange of information or conflict of interest between the sports gaming proprietor and the management services provider.

For example, if a sports gaming proprietor is the owner of a sports team, the team's league might prohibit the team from operating sports betting with respect to that sport. The bill would allow the proprietor to assign all of its sports gaming activities to a management services provider that operates behind a firewall, preventing any inside wagering information from affecting game play, and preventing any inside team information from affecting wagering.<sup>18</sup>

### ***Licensing process***

An applicant for an initial or renewed management services provider license must meet all requirements for licensure established by the Commission, pay a nonrefundable application fee in an amount determined by the Commission by rule, and submit two complete sets of

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<sup>17</sup> R.C. 3775.01(D), 3775.05, and 3775.051.

<sup>18</sup> R.C. 3775.05(A)(2) and 3775.051(A)(2).

fingerprints to the Commission for the purpose of conducting a criminal records check through BCII and pay the BCII fee for the check.

The Commission may accept another jurisdiction's license, if the Commission determines it has similar licensing requirements, as evidence that the applicant meets the requirements for the license.

A management services provider license is valid for a term of three years. When the license expires, the management services provider must apply for a renewed license in the same manner as for an initial license.

Management services providers must pay the following nonrefundable license fees in each three-year license term, as applicable. The license fees are deposited in the Sports Gaming Revenue Fund discussed below.<sup>19</sup>

License type	Fee when issued	Fee after first year	Fee after second year
<b>Mobile management services provider</b>			
- If contracting with a professional sports organization (initial or renewal)	\$1 million	\$1 million	\$1 million
- All others (initial or renewal)	\$1 million	\$500,000	\$500,000
<b>Management services provider</b>			
- Initial	\$100,000	None	None
- Renewal	\$25,000	None	None

### ***Contract requirements***

A management services provider may offer sports gaming only in accordance with the bill, the Commission's rules, and the nature of the proprietor's license. The Commission must approve a written contract between the sports gaming proprietor and the management services provider, and must give advance approval of any material change to the contract. The sports gaming proprietor or the management services provider may not assign, delegate, subcontract, or transfer the management services provider's duties and responsibilities under the contract to a third party.

The provisions of the bill that apply to a sports gaming proprietor apply to its management services provider with respect to all rights, duties, and liabilities of the proprietor assigned, delegated, subcontracted, or transferred to the management services provider as though the management services provider were a sports gaming proprietor. Unless the context

<sup>19</sup> R.C. 3775.05 and 3775.051.

requires otherwise, references in the bill to a sports gaming proprietor apply to a management services provider to the extent that the management services provider is acting on behalf of the sports gaming proprietor pursuant to the contract.<sup>20</sup>

### **Type C sports gaming hosts**

The owner of a facility with a D-1, D-2, or D-5 liquor permit may apply to the Commission for a type C sports gaming host license to offer sports gaming through a type C sports gaming proprietor using self-service sports gaming terminals located at the facility. The Department of Commerce's Division of Liquor Control typically issues D-1, D-2, and D-5 liquor permits to bars and restaurants that sell alcohol for on-premises consumption.

A type C sports gaming host may enter into an agreement with a type C sports gaming proprietor, specifying the terms under which the host will offer sports gaming through the proprietor, such as terms requiring the proprietor and the host to share the proceeds of sports gaming conducted at the host's facility. The proprietor may adapt existing self-service lottery terminals the proprietor owns or operates also to serve as sports gaming terminals, subject to the rules of the Ohio Casino Control Commission and the State Lottery Commission. The bill prohibits the proprietor from requiring a host or the State Lottery Commission to pay any portion of the cost of acquiring, installing, operating, adapting, or maintaining any self-service sports gaming terminal in a host's facility.

The Commission must issue a type C sports gaming host license to a person or entity that meets the requirements of the bill and the Commission's rules. An applicant for an initial or renewed license must apply on a form prescribed by the Commission, pay a nonrefundable application fee in an amount determined by the Commission by rule, and submit two complete sets of fingerprints to the Commission for the purpose of conducting a criminal records check through BCII and pay the BCII fee for the check. The application must identify the type C sports gaming proprietor through which the applicant intends to offer sports gaming.

Upon receiving the license, the applicant must pay a nonrefundable license fee of \$2,000. The license is valid for three years, and the licensee may apply for renewal in the same manner as for an initial license. Subject to the terms of the host's agreement with the proprietor, the host may offer sports gaming through a different proprietor during the period of the license, so long as it notifies the Commission in advance, in accordance with the rules of the Commission.

The Commission must revoke a type C sports gaming host license if the licensee ceases to hold a valid class D liquor permit for the facility.<sup>21</sup>

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<sup>20</sup> R.C. 3775.05 and 3775.051.

<sup>21</sup> R.C. 3775.07, 3775.09(D)(2), and 3775.13(C). See also Ohio Department of Commerce, Division of Liquor Control, [Permit Classes](#).

## **Sports gaming occupational licenses**

### ***Who must be licensed***

The bill requires an individual whose duties with a sports gaming proprietor include any of the following to hold an appropriate and valid sports gaming occupational license issued by the Ohio Casino Control Commission at all times:

- Accepting wagers on sporting events on behalf of a sports gaming proprietor;
- Handling money as part of operating sports gaming on behalf of a sports gaming proprietor, including a cashier, change person, count team, or coin wrapper;
- Providing security for the operation of sports gaming by a sports gaming proprietor, including a guard or observer, other than providing general security at a type C sports gaming host's facility;
- Performing other duties such that the individual has the ability to alter material aspects of sports gaming conducted by a sports gaming proprietor.

An individual is not required to have a sports gaming occupational license if the individual's duties are related solely to nongaming activities such as entertainment, maintenance, or preparing or serving food or beverages, including an individual who is, or is employed by, a type C sports gaming host.

A sports gaming occupational license permits the licensee to be employed in the capacity the Commission designates for the three-year duration of the license. The Commission may establish by rule job classifications with different requirements.<sup>22</sup>

### ***Licensing process***

An applicant for an initial or renewed sports gaming occupational license must do all of the following:

- Submit a written application on a form furnished by the Ohio Casino Control Commission;
- Pay a nonrefundable application fee of \$100. The Commission may annually increase the amount of the application fee in an amount that does not exceed the percentage increase in the Consumer Price Index for the previous year, as necessary to cover the cost of processing the application.
- Submit two complete sets of fingerprints to the Commission for the purpose of conducting a criminal records check through BCII and pay the BCII fee for the check.

Upon receiving the license, the applicant must pay a nonrefundable license fee of \$50. The applicant's employer may pay any or all of the fees on behalf of the applicant.

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<sup>22</sup> R.C. 3775.06.

If an applicant for a sports gaming occupational license currently holds a casino or video lottery license, the Commission's rules must not require the applicant to satisfy any additional requirement for the sports gaming occupational license that is substantially similar to any requirement the applicant previously has satisfied in order to obtain or renew the casino or video lottery license.

Further, the Commission may adopt rules allowing an individual who holds a sports gaming occupational license from another jurisdiction to be licensed in Ohio by reciprocity, so long as that jurisdiction's requirements to receive the license and the activities authorized by the license are substantially similar to the requirements for the Ohio license the individual seeks.<sup>23</sup>

## **Sports gaming suppliers**

### ***Who must be licensed***

The bill requires a person or entity that provides sports gaming equipment or related services to a sports gaming proprietor or management services provider, including providing services, directly or indirectly, that are necessary to create a betting market or to determine bet outcomes, to hold an appropriate and valid sports gaming supplier license issued by the Ohio Casino Control Commission.

A sports gaming supplier that provides sports gaming equipment or services to be used through a sports gaming proprietor or management services provider is not considered a sports gaming proprietor or management services provider solely on that basis. And, a sports governing body that provides official league data concerning its own sporting event is not considered a sports gaming supplier solely on that basis. (A "sports governing body" is a regional, national, or international organization having ultimate authority over the rules and codes of conduct with respect to a sporting event and the participants in the sporting event.)

"Sports gaming equipment" means any of the following that directly relate to or affect, or are used or consumed in, the operation of sports gaming:<sup>24</sup>

- Any mechanical, electronic, or other device, mechanism, or equipment, including a self-service sports gaming terminal;
- Any software, application, components, or other goods;
- Anything to be installed or used on a patron's personal device.

### ***Licensing process***

An applicant for an initial or renewed sports gaming supplier license must do all of the following:

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<sup>23</sup> R.C. 3775.06.

<sup>24</sup> R.C. 3775.01(M), (S), and (T) and 3775.08.

- Submit a written application on a form prescribed by the Ohio Casino Control Commission;
- Pay a nonrefundable application fee of \$10,000. The Commission may annually increase the amount of the application fee in an amount that does not exceed the percentage increase in the Consumer Price Index for the previous year, as necessary to cover the cost of processing the application.
- Submit two complete sets of fingerprints to the Commission for the purpose of conducting a criminal records check through BCII and pay the BCII fee for the check.

If an applicant for a sports gaming supplier license currently holds a casino or video lottery license, the Commission's rules must not require the applicant to satisfy any additional requirement for the sports gaming supplier license that is substantially similar to any requirement the applicant previously has satisfied in order to obtain or renew the casino or video lottery license.

Further, the Commission may accept another jurisdiction's license, if the Commission determines it has similar licensing requirements, as evidence that the applicant meets the requirements for an Ohio sports gaming supplier license.

Upon receiving the initial or renewed license, the applicant must pay a nonrefundable license fee of \$15,000. The license is valid for three years.<sup>25</sup>

## **Denial, suspension, and revocation of sports gaming licenses**

### ***Generally***

Under the bill, an applicant for a sports gaming license must establish the applicant's suitability for the license by clear and convincing evidence. "Sports gaming license" includes all sports gaming related licenses issued under the bill, including sports gaming proprietors, management services providers, type C sports gaming hosts, sports gaming occupational licenses, and sports gaming supplier licenses.

The Commission must conduct a complete investigation of each applicant for an initial or renewed license. The Commission also may initiate an additional licensing investigation or adjudication or reopen an existing licensing investigation or adjudication at any time. The bill allows the Commission, in an adjudication conducted under the Administrative Procedure Act, to penalize, limit, condition, restrict, suspend, revoke, deny, or refuse to renew any sports gaming license. The Commission may take into account any relevant aggravating or mitigating factors without in any manner limiting the Commission's authority to impose the level and type of discipline the Commission considers appropriate.

The Commission must not grant a sports gaming license to an applicant if evidence satisfactory to the Commission exists that the applicant has done any of the following:

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<sup>25</sup> R.C. 3775.08.

- Knowingly made a false statement to the Commission;
- Been suspended from operating a gambling game, gaming device, or gaming operation, or had a license revoked by any governmental unit of a national, state, or local body exercising governmental functions;
- Been convicted of a disqualifying offense, as determined by the Commission;
- Been directly involved in or employed by any offshore wagering market that illegally serviced the U.S. or otherwise accepted illegal wagers from individuals located in the U.S. on or after April 16, 2015.

The Commission also must not grant a sports gaming license to a nonprofit corporation or organization, to an individual who is under 21, or to an employee of the Commission.<sup>26</sup>

### ***Sports gaming proprietors and management services providers***

The Commission may deny a sports gaming proprietor or management services provider license to an applicant, reprimand a sports gaming proprietor or management services provider, or suspend or revoke a sports gaming proprietor or management services provider license if any of the following are true:

- The applicant or licensee has not demonstrated to the Commission's satisfaction financial responsibility sufficient to adequately meet the requirements of the enterprise;
- The applicant or licensee is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business;
- The applicant or licensee is a corporation that sells more than 5% of its voting stock, or more than 5% of the voting stock of a corporation that controls the applicant or licensee, or sells its assets, other than those bought and sold in the ordinary course of business, or any interest in the assets, to any person who has control of the applicant or licensee and who has not already been determined by the Commission to have met the applicable licensing qualifications.

Additionally, each person who has control of an applicant for a sports gaming proprietor or management services provider license must meet the qualifications for the applicable license. For purposes of the bill, any of the following persons are considered to have control of an applicant:

- If the applicant is a corporation, a person associated with the applicant, including any corporate holding company, parent company, or subsidiary company of the applicant, that has the ability to control the activities of the applicant or elect a majority of its board of directors, other than any bank or other licensed lending institution that holds a mortgage or other lien acquired in the ordinary course of business;

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<sup>26</sup> R.C. 3772.02, 3775.01(O) and (P), 3775.02, 3775.03, and 3775.09. See also R.C. 9.79, not in the bill.

- If the applicant is not a corporation, a person associated with the applicant that directly or indirectly holds a beneficial or proprietary interest in the applicant's business operation or that the Commission otherwise determines has the ability to control the applicant;
- Key personnel of the applicant, including any executive, employee, or agency, having the power to exercise significant influence over decisions concerning any part of the applicant's business operation.

No member of the Commission may have any affiliation with a sports gaming proprietor or management services provider.<sup>27</sup>

### **Display of sports gaming license**

A sports gaming proprietor or management services provider must display its license conspicuously in its place of business or have the license available for inspection by any agent of the Commission or any law enforcement agency.

Each holder of a sports gaming occupational license must have an indicator of licensure prominently displayed when present in a sports gaming facility at all times, in accordance with the rules of the Commission.

Each type C sports gaming host must display its license conspicuously in its place of business.<sup>28</sup>

### **Changes to sports gaming license information**

The bill requires a sports gaming licensee to give the Commission written notice within ten days of any material change to any information provided in the licensee's application for a license or renewal. The Commission must specify by rule which changes it considers to be material.<sup>29</sup>

### **Online sports gaming**

The bill allows a type A sports gaming proprietor to operate one or more online sports pool websites and accompanying mobile applications. Each website and mobile application must include the name or logo of the proprietor and any management services provider in a conspicuous manner.

The proprietor may accept wagers only from individuals who are at least 21 and who are physically located in Ohio. The proprietor must use location based technology (sometimes called geofencing) to prohibit individuals who are not physically present in Ohio from participating in sports gaming through the online sports pool. The server responsible for

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<sup>27</sup> R.C. 3772.02, 3775.03, and 3775.09.

<sup>28</sup> R.C. 3775.03(D).

<sup>29</sup> R.C. 3775.03(E).

accepting wagers through the online sports pool also must be located in a secure facility in Ohio.

A proprietor may accept an online wager from an individual only using the individual's sports gaming account. A sports gaming account is an electronic account that an individual establishes for the purpose of sports gaming, including making deposits and withdrawals, wagering amounts, and receiving payouts on winning wagers. The sports gaming account must be in the individual's full legal name, and must not be in the name of any beneficiary, custodian, joint trust, corporation, partnership, or other organization or entity. An individual may establish and fund a sports gaming account in person through employees or sales agents of a sports gaming proprietor or, pursuant to the Commission's rules, over the internet through a proprietor's website or mobile application in a manner that complies with the proprietor's internal controls.<sup>30</sup>

## **In person sports gaming**

### **Sports gaming facilities**

The bill allows a type B sports gaming proprietor to operate one sports gaming facility per license, at which the proprietor accepts wagers on sporting events from individuals who are at least 21 and who are physically present in the sports gaming facility, either in person or using self-service sports gaming terminals.

In general, before accepting any wager on a sporting event, the bill specifies that a type B sports gaming proprietor must require the individual to register with the proprietor, provide the individual's full legal name and any other information required by the Commission or requested by the proprietor, and place all wagers on sporting events placed with the proprietor through that registration. But, a type B sports gaming proprietor may accept an anonymous wager from an individual, so long as the amount of the wager does not exceed a dollar limit determined by the Commission by rule.

The bill generally prohibits any person under 21 from entering a sports gaming facility. However, an employee of a sports gaming proprietor who is 18, 19, or 20 may be present in a sports gaming facility, so long as the employee's duties are not related to sports gaming. (An employee must be 21 in order to receive a sports gaming occupational license.)

An individual who is under 21 may enter a sports gaming facility in order to pass to another area where sports gaming is not being conducted, but only if the individual is personally escorted by an employee of the sports gaming proprietor who remains in close proximity to the individual at all times in accordance with the Commission's rules.<sup>31</sup>

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<sup>30</sup> R.C. 3775.04(A) and 3775.11.

<sup>31</sup> R.C. 3775.04(B) and 3775.12.

## Terminals at bars and restaurants

The bill allows a type C sports gaming proprietor to accept wagers on sporting events that are made in person through self-service terminals located at one or more type C sports gaming hosts' facilities only from individuals who are at least 21 and who are physically present in the facility.

All of the following apply to the self-service terminals:

- No more than two terminals may be located in any host facility.
- If individuals under 21 may be present in the host facility, all terminals must be located within an area of the facility with clearly marked boundaries designed to prevent those individuals from entering the area, in accordance with the rules of the Ohio Casino Control Commission.
- A terminal may offer only spread, over-under, and moneyline wagering on sporting events, as approved by the Commission.
- A terminal must not accept cash wagers, and must accept wagers only by credit or debit card or electronic payment account.
- A terminal must not accept wagers aggregating more than \$200 in a day that are paid using the same credit or debit card or electronic payment account.
- The type C sports gaming proprietor must pay out all winnings to patrons on wagers made through a terminal through the patron's credit or debit card or electronic payment account, without involving the host in any financial transaction.

Under the bill, the State Lottery Commission, in consultation with the Ohio Casino Control Commission, must work with type C sports gaming proprietors and hosts to implement and promote their sports gaming. If a proprietor owns or operates self-service lottery terminals, the proprietor may adapt those terminals also to serve as sports gaming terminals, subject to the rules of the Ohio Casino Control Commission and the State Lottery Commission.

The State Lottery Commission may adopt rules under the Administrative Procedure Act for those purposes. The bill allows the Commission to adopt new regulatory restrictions under the bill during the first year after the bill's effective date, without simultaneously removing two or more other existing regulatory restrictions, as generally required under existing law. The new regulatory restrictions must be added to the Commission's base inventory as soon as practicable for purposes of complying with ongoing requirements that the Commission, like other agencies, reduce its overall number of regulatory restrictions.<sup>32</sup>

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<sup>32</sup> R.C. 3775.13 and Section 4 of the bill. See also R.C. 121.95, not in the bill.

## **Persons who may not participate in sports gaming**

The bill specifies several categories of individuals who are not permitted to participate in sports gaming, and requires a sports gaming proprietor to employ commercially reasonable methods to prevent those individuals from placing bets with the proprietor.

### **Proxy betting**

Under the bill, each sports gaming proprietor must employ commercially reasonable methods to prevent any person from placing a wager with the proprietor on behalf of another person.<sup>33</sup>

### **Exclusion lists**

The bill allows the Ohio Casino Control Commission to exclude any individual from entering a sports gaming facility or its grounds or from participating in the play or operation of sports gaming. The Commission must keep a list of all excluded individuals and make the list available to each sports gaming proprietor.

A sports gaming proprietor also may exclude any individual from entering a sports gaming facility, or the grounds of a sports gaming facility, that is under the control of the proprietor and may exclude any individual from participating in the play or operation of sports gaming conducted by the proprietor. The proprietor must keep a list of all excluded individuals. If a proprietor excludes an individual because the proprietor determines that the individual engaged or attempted to engage in any sports gaming related activity that is prohibited under the bill or under the Commission's rules, the proprietor must report that fact to the Commission.

A person who is on the Ohio Casino Control Commission's voluntary exclusion list for casino gaming also may not participate in the play or operation of sports gaming.<sup>34</sup>

### **Industry insiders**

No sports gaming proprietor, no director, officer, agent, or employee of a proprietor, no other person who has a financial interest in a proprietor, and no person living in the same household as any of those persons, may engage in any sports gaming conducted by the proprietor, other than as part of operating sports gaming or as part of the employee's employment. A sports gaming proprietor must employ commercially reasonable methods to prevent those persons, and any other person who has access to confidential information held by the proprietor, from engaging in sports gaming conducted by the proprietor.

No member or employee of the Ohio Casino Control Commission may knowingly participate in sports gaming in Ohio or participate in sports gaming outside Ohio with any person or entity that is directly or indirectly owned or operated by an Ohio sports gaming proprietor.

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<sup>33</sup> R.C. 3775.14(G).

<sup>34</sup> R.C. 3775.14.

Finally, a sports gaming proprietor must employ commercially reasonable methods to prevent any person involved in a sporting event with respect to which sports gaming is permitted from engaging in any sports gaming with the proprietor, based on publicly available information and any information provided by a sports governing body.

A sports governing body is a regional, national, or international organization having ultimate authority over the rules and codes of conduct with respect to a sporting event and the participants in the sporting event. A person is considered to be involved in a sporting event if the person is an athlete, participant, coach, referee, team owner, or sports governing body with respect to the sporting event; any agent or employee of such an athlete, participant, coach, referee, team owner, or sports governing body; and any agent or employee of an athlete, participant, or referee union with respect to the sporting event.

The Commission must adopt rules specifying a procedure for a sports governing body to provide to the Commission a list of persons who are involved in sporting events, including those persons' full legal names, dates of birth, and Social Security numbers, for the purpose of preventing them from engaging in sports gaming. The Commission must make the list available to each sports gaming proprietor. The information in the list is not a public record, and the Commission and each proprietor must keep it confidential.<sup>35</sup>

### **Permitted and prohibited sports wagers**

For purposes of wagering with a type A or type B sports gaming proprietor (online or in a sports gaming facility), "sports gaming" includes exchange wagering, parlays, spreads, over-under, moneyline, in-game wagering, single-game bets, teaser bets, in-play bets, proposition bets, pools, pari-mutuel sports wagering pools, straight bets, or any other type of wagering on sporting events approved by the Commission. As is mentioned above, type C sports gaming proprietors may offer only spread, over-under, and moneyline wagering on sporting events, as approved by the Commission, on terminals in bars and restaurants.<sup>36</sup>

The bill allows the Commission, independently or at the request of any person, including a sports governing body, to adopt rules to prohibit or restrict wagering on a particular sporting event or to prohibit or restrict a particular type of wager. The Commission also must adopt rules prescribing a process by which the Commission may impose such a prohibition or restriction on a temporary emergency basis instead of by rule.

A sports governing body may formally request the Commission to prohibit or restrict wagering on a particular sporting event or to prohibit or restrict a particular type of wager. The sports governing body must submit the formal request in the form and manner prescribed by the Commission. Upon receiving the request, the Commission promptly must send written

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<sup>35</sup> R.C. 3772.03, 3775.01(R), 3775.14, and 3775.15(A)(2).

<sup>36</sup> R.C. 3775.01(L). For explanations of several common types of sports wagers, see Vegas.com, [Sports Betting](#), and Online Gambling Sites, [How to Bet on Sports – Guide to the Different Types of Wagers](#).

notice of the request to every sports gaming proprietor and must consider any timely response submitted by a sports gaming proprietor.

If the Commission determines that the sports governing body has shown good cause through its formal request to grant the prohibition or restriction, the Commission promptly must grant it. If the Commission determines that the sports governing body has not shown good cause, the Commission promptly must provide the sports governing body with notice and an opportunity for a hearing to offer further evidence in support of granting the prohibition or restriction.<sup>37</sup>

### **Sports gaming proprietor operating requirements**

Under the bill, a sports gaming proprietor must do all of the following:

- Conduct all sports gaming activities and functions in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Ohio;
- Adopt comprehensive house rules for game play governing sports gaming transactions with its patrons, including rules that specify the amounts to be paid on winning wagers and the effect of schedule changes, and submit them to the Ohio Casino Control Commission for approval before implementing them. The proprietor must publish its house rules as part of its minimum internal control standards, must display the house rules, together with any other information the Commission considers appropriate, conspicuously in each sports gaming facility and in any other place or manner prescribed by the Commission, and must make copies of its house rules readily available to patrons.
- Keep current in all payments and obligations to the Commission;
- Provide a secure location for the placement, operation, and use of sports gaming equipment;
- Prevent any person from tampering with or interfering with the operation of sports gaming;
- Employ commercially reasonable methods to prevent the proprietor and its agents and employees from disclosing any confidential information in the possession of the proprietor that could affect the conduct of sports gaming;
- Maintain the confidentiality of any confidential information provided to the proprietor by a sports governing body, except as otherwise required by law or by order of the Commission;
- Ensure that sports gaming conducted at a sports gaming facility is within the sight and control of designated employees of the proprietor and that sports gaming is conducted under continuous observation by security equipment in conformity with the Commission's specifications and requirements;

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<sup>37</sup> R.C. 3775.02(C).

- Ensure that sports gaming occurs only in the locations and manner approved by the Commission;
- Ensure that all sports gaming is monitored in accordance with the bill (see “**Integrity monitoring**,” below);
- Use official league data to determine the outcomes of certain proposition bets (see “**Official league data**,” below);
- Maintain sufficient funds and other supplies to conduct sports gaming at all times;
- Maintain daily records showing the proprietor’s sports gaming receipts and timely file with the Commission any additional reports required by rule or by other provisions of the Revised Code;
- Withhold all required amounts from patrons’ sports gaming winnings, including state income tax and, in the case of winnings at a sports gaming facility, municipal income tax; past due child support or spousal support; and debts to the state or a political subdivision (see “**Withholding amounts from sports gaming winnings**,” below);
- Submit to the Commission, each fiscal year, an audit of the sports gaming proprietor’s financial transactions and the condition of the proprietor’s total operations prepared by a certified public accountant in accordance with general accepted accounting principles and applicable state and federal laws.

The bill requires a sports gaming proprietor immediately to report to the Commission any information in the proprietor’s possession related to any of the following:

- Any wager in violation of the bill, the Commission’s rules, or federal law;
- Abnormal sports gaming activity or patterns that may indicate a concern regarding the integrity of a sporting event;
- Suspicious wagering activities;
- Any conduct that corrupts a wagering outcome of a sporting event for purposes of financial gain;
- Any criminal or disciplinary proceedings commenced against the proprietor by any person other than the Commission in connection with the proprietor’s operations.

A sports gaming proprietor may manage risk associated with wagers by rejecting or pooling one or more wagers or by laying off one or more wagers with another sports gaming proprietor. A proprietor also may employ a system that offsets loss or manages risk in the operation of sports gaming under the bill through the use of a liquidity pool in another jurisdiction in which the proprietor or an affiliate or other third party also is licensed, provided that at all times, adequate protections are maintained to ensure sufficient funds are available to pay patrons.

The bill allows a sports gaming proprietor to provide promotional gaming credits to patrons, subject to oversight by the Commission. “Promotional gaming credit” means a credit, discount, or other similar item issued to a patron to enable the placement of, or increase in, a wager on a sporting event. As is explained below under “**Tax on sports gaming**,” the bill gives proprietors a partial tax deduction on the value of promotional gaming credits redeemed by patrons beginning in 2027.

If a sports gaming patron does not claim a winning wager from a proprietor within one year from the last day on which the sporting event is held, the proprietor’s obligation to pay the winnings expires, and the proprietor must remit the winnings to the Commission to be deposited in the Sports Gaming Revenue Fund discussed below.

Finally, the bill specifies that a sports gaming proprietor is not liable under the laws of Ohio to any party, including a patron, for disclosing information as required under the bill or for refusing to disclose information that is not required by law to be disclosed.<sup>38</sup>

### **Official league data**

The bill requires a sports gaming proprietor, at the request of the appropriate sports governing body, to use official league data to determine the outcomes of proposition bets. “Official league data” means statistics, results, outcomes, and other data related to a sporting event provided by the appropriate sports governing body or its designee. A proposition bet is a bet on a sporting event that is based in whole or in part on an outcome other than the final score or outcome of the sporting event. For example, a patron might place a proposition bet on the number of points a particular player scores in a game. If requested by the sports governing body, the sports gaming proprietor must use official league data concerning the player’s performance to determine whether the patron wins the bet, instead of relying on another source, such as a third-party data feed or a news article.

The requirement to use official league data applies only when the appropriate sports governing body has notified the Ohio Casino Control Commission that it wishes to enforce the requirement with respect to the events it regulates. The sports governing body must do so on a form prescribed by the Commission, and the Commission may, by rule, require a sports governing body to pay a filing fee or to meet other qualifications before submitting a notice. The sports governing body may revoke the notice at any time by submitting a written revocation on a form prescribed by the Commission. The Commission must transmit a copy of each notice or revocation to each sports gaming proprietor, along with an explanation of the bill’s requirements, not later than five days after receiving the notice or revocation.

Beginning on the 60<sup>th</sup> day after receiving a notice from a sports governing body, each sports gaming proprietor must use official league data to determine the outcomes of proposition bets on sporting events that are subject to the notice and for which the necessary

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<sup>38</sup> R.C. 3775.01(I) and 3775.10.

data are available. A proprietor may begin using official league data later than that deadline pursuant to an agreement with the sports governing body.

A sports gaming proprietor may apply to the Commission in writing for an exemption from the requirement to use official league data if the proprietor demonstrates that the sports governing body or its designee does not make the official league data available to the proprietor on commercially reasonable terms. A requirement that an agreement between a proprietor and a sports governing body for the use of official league data be for a term of longer than two years is not commercially reasonable.

The Commission must grant or deny the exemption within 60 days after the request is filed. In determining whether the terms are commercially reasonable, the Commission may consider any of the following factors, along with any other factor it considers appropriate:

- The quantity and quality of the official league data, including their accuracy and reliability and the speed with which they arrive, as compared to similar data available from other sources;
- The qualities and complexity of the process used to collect and distribute the official league data, as compared to similar data available from other sources;
- The availability of the official league data to the proprietor and the terms under which they are available;
- Whether the official league data are available to the proprietor from more than one authorized source;
- The price and other terms under which similar data are available to proprietors in Ohio and in other jurisdictions;
- Whether proprietors in Ohio or other jurisdictions have entered into agreements to receive the same or similar official league data on the same or similar terms, particularly in jurisdictions in which proprietors are not required to use official league data or are required to do so only if they are available on commercially reasonable terms.

The proprietor is not required to use official league data for the sporting events that are subject to a notice from a sports governing body if the Commission grants the exemption or while the proprietor's request for an exemption is pending with the Commission.<sup>39</sup>

### **Ohio Casino Control Commission oversight**

The bill gives the Ohio Casino Control Commission jurisdiction over all persons conducting or participating in the conduct of sports gaming authorized under the bill, including

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<sup>39</sup> R.C. 3775.01(E), (J), and (S) and 3775.101.

the authority to license, regulate, investigate, and penalize those persons in a manner that is consistent with the Commission's authority with respect to casino gaming.<sup>40</sup>

### **Administrative rules**

In all cases in which the bill requires or allows the Commission to make administrative rules, the Commission must do so in accordance with the Administrative Procedure Act. The bill allows the Commission to adopt new regulatory restrictions under the bill during the first year after the bill's effective date, without simultaneously removing two or more other existing regulatory restrictions, as generally required under existing law. The new regulatory restrictions must be added to the Commission's base inventory as soon as practicable for purposes of complying with ongoing requirements that the Commission, like other agencies, reduce its overall number of regulatory restrictions.

Under the bill, the Commission must adopt rules that include all of the following:

- Procedures for a sports gaming proprietor to accept wagers on a sporting event or series of sporting events;
- The types of wagering tickets proprietors are to use;
- The manner in which proprietors are to issue tickets;
- The type of records sports gaming licensees must keep;
- The system to be used to place a wager;
- The manner in which proprietors must verify that their patrons are at least 21;
- Protections for a player placing a wager;
- Measures to promote responsible sports gaming;
- Penalties and fines for violating the bill or rules adopted under the bill;
- Restrictions to ensure that proprietors' advertisements for sports gaming meet all of the following requirements:
  - They do not target individuals under 21, other individuals who are ineligible to participate in sports gaming, problem gamblers, or other vulnerable individuals;
  - They disclose the identity of the proprietor;
  - They provide information about how to access resources related to problem gambling;
  - They are not false, misleading, or deceptive to a reasonable consumer.

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<sup>40</sup> R.C. 3772.03 and 3775.02(A).

- Requirements concerning the size, furnishings, and equipment of a sports gaming facility and the minimum capital investment in a sports gaming facility that is necessary to ensure that it generates strong economic development;
- Any other procedure or thing the Commission determines necessary to ensure the integrity of sports gaming regulated by the Commission.

Further, the Commission must adopt rules establishing minimum internal control standards for the administration of sports gaming proprietors' operations, sports gaming equipment, systems, or other items used by proprietors to conduct sports gaming, and the maintenance of proprietors' financial records and other required records. The Commission may approve minimum internal control standards proposed by sports gaming proprietors.<sup>41</sup>

### **Approving equipment and forms of sports gaming**

The Commission must approve all sports gaming equipment and each form, variation, or composite of sports gaming to be used by sports gaming proprietors. Before approving a piece of sports gaming equipment or a form, variation, or composite of sports gaming, it must undergo scientific testing or technical evaluation, as the Commission determines appropriate.

The Commission may require the testing or evaluation to be conducted at the expense of the sports gaming supplier or proprietor, as applicable, by an independent testing laboratory certified by the Commission. The Commission may certify an independent testing laboratory if it is competent and qualified to perform those functions and if it is not affiliated with a sports gaming proprietor, management services provider, sports gaming supplier, or sports governing body. The Commission must adopt rules prescribe the certification standards, fees, and duties that apply to a certified independent testing laboratory.

The Commission's rules must require sports gaming licensees and sports gaming facilities to use only approved sports gaming equipment acquired from a licensed sports gaming supplier and to use only approved forms, variations, or composites of sports gaming.<sup>42</sup>

### **Integrity monitoring**

Under the bill, the Ohio Casino Control Commission must monitor all sports gaming conducted in Ohio, or contract with an independent integrity monitoring provider for that purpose, in order to identify any unusual betting activities or patterns that may indicate a need for further investigation. The Commission must require each sports gaming proprietor to participate in the monitoring system as part of its minimum internal control standards.

The information in the monitoring system is not a public record. The Commission may disclose the information in the system only as necessary for investigate or law enforcement purposes, to a sports governing body as permitted under the bill, or pursuant to a court order.

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<sup>41</sup> R.C. 3775.02 and Section 4 of the bill. See also R.C. 121.95, not in the bill.

<sup>42</sup> R.C. 3775.02(E).

If a sports governing body believes that the integrity of one of its sporting events is in question, the sports governing body may formally request the Commission to make anonymized sports gaming data concerning the sporting event available to the sports governing body through the monitoring system, as soon after each bet is placed as is commercially reasonable. If the Commission determines that the sports governing body has shown good cause to believe that the integrity of the sporting event is in question, the Commission must make that data available to the sports governing body, provided that the Commission is not required to provide any information to a sports governing body that would jeopardize an ongoing criminal investigation.<sup>43</sup>

### **Confidentiality of licensee information**

The bill provides that, notwithstanding any contrary provision of the Public Records Law, the Ohio Casino Control Commission must not disclose to the public any of the following information or documents concerning a person who has applied for or been issued a sports gaming license or the person's spouse, dependent, or employee, unless the person authorizes the Commission to disclose the information:

- A Social Security number, passport number, or federal tax identification number;
- A home address, telephone number, or electronic mail address;
- A birth certificate;
- A driver's license or state identification card number;
- The name or address of a previous spouse;
- A date or place of birth;
- Any personal financial information or records, including personal tax returns and information and records of criminal proceedings;
- Any information concerning a minor child;
- Any information concerning a person the Commission has reason to know is a victim of domestic violence, sexual assault, or stalking;
- Any trade secret, medical records, or patents or exclusive licenses;
- 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;
- Any other information that the Commission receives from another jurisdiction relating to an applicant who holds, held, or has applied for a sports gaming license;

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<sup>43</sup> R.C. 3775.02(I).

- Any other information that is exempt from disclosure under the Public Records Law.

The Commission may disclose the above information to the State Lottery Commission or to the Inspector General, a prosecutor, a law enforcement agency, or any other appropriate governmental entity or licensing agency, provided that the recipient must not disclose the information and documents to the public.

However, the bill specifies that all of the following information, other than the information listed above, is subject to disclosure as a public record under the Public Records Law:<sup>44</sup>

- The information a sports gaming proprietor or management services provider or an applicant for a sports gaming proprietor or management services provider license has submitted to the Commission as part of applying for or renewing a license;
- The name, place of employment, job title, and gaming experience of a person who has applied for or been issued a sports gaming license;
- The Commission's reasons for denying or revoking a sports gaming license or for taking other disciplinary action under the bill;
- The information in a return a sports gaming proprietor files with the Tax Commissioner concerning sports gaming receipts.

### **Civil penalties**

The bill requires the Ohio Casino Control Commission to levy and collect fines for noncriminal violations of the bill and of the Commission's rules adopted under the bill.<sup>45</sup>

### **Enforcement**

The Executive Director of the Ohio Casino Control Commission promptly must report to the Commission any facts or circumstances related to the operation of a sports gaming licensee that constitute a violation of state or federal law, and immediately must report any suspicious wagering to the appropriate state or federal authorities.

The Commission must cooperate with any investigation conducted by a law enforcement agency or sports governing body, including by providing, or facilitating the provision of, wagering information and audio or video files related to persons placing wagers, provided that the Commission is not required to provide any information to a sports governing body that would jeopardize an ongoing criminal investigation.

A sheriff, chief of police, or prosecutor must furnish to the Commission, on forms prescribed by the Commission, any information obtained concerning any apparent violation of the bill or the Commission's rules. If the information is considered a confidential law

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<sup>44</sup> R.C. 3775.15 and 5753.04(D).

<sup>45</sup> R.C. 3775.02(G).

enforcement investigatory record under the Public Records Law, the Commission must not disclose the information to the public.

The bill gives the Attorney General a civil cause of action to restrain any violation of the bill or of rules adopted under the bill. Upon the request of the Commission or its Executive Director, the Attorney General must commence and prosecute such an action to completion. The court must give the action priority over all other civil actions. Such an action does not preclude an administrative or criminal proceeding on the same facts. The Attorney General may enter into an agreement with a state or local law enforcement agency to carry out those duties.<sup>46</sup>

## **Withholding amounts from sports gaming winnings**

### **Income tax**

Under continuing law, individuals are subject to federal, state, and municipal income tax on their gambling winnings. The bill provides that, when the amount of a patron's winnings must be reported to the Internal Revenue Service (IRS) for federal income tax purposes (generally, if the winnings are \$600 or more), a sports gaming proprietor must withhold state income tax and, if the bet is made at a sports gaming facility, any applicable municipal income taxes on a person's winnings. Similar requirements already apply to the withholding of taxes on an individual's casino and lottery winnings.<sup>47</sup>

### **Past due child and spousal support**

The bill requires a sports gaming proprietor to use a real time data match program implemented by the Department of Job and Family Services to withhold the amount of any past due child or spousal support from a patron's payout of sports gaming winnings, if the winnings meet or exceed the IRS reporting threshold. The proprietor must transmit the amount to the Department within 14 days. The Department currently operates a similar data match program for withholding amounts from lottery and casino winnings.<sup>48</sup>

### **Debts to the state or a political subdivision**

The bill also requires a sports gaming proprietor to withhold the amount of any debt a patron owes to the state or a political subdivision from the patron's sports gaming winnings if they meet or exceed the IRS reporting threshold, similar to the current procedure for lottery winnings.

Under the bill, the Attorney General must develop and implement a real time data match program for sports gaming proprietors to use to determine whether patrons owe any debts to the state or a political subdivision that have become final, similar to the system the

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<sup>46</sup> R.C. 3775.02(J) and (K).

<sup>47</sup> R.C. 718.031, 5747.02, 5747.063, 5747.08, and 5747.20. See also Internal Revenue Service, [Publication 3908](#).

<sup>48</sup> R.C. 3123.90.

State Lottery Commission uses under continuing law and similar to the system the bill establishes with respect to casino operators. Before disbursing any winnings that meet or exceed the threshold, the sports gaming proprietor must check the program. If the program indicates that the patron owes any such amounts, the proprietor must withhold the amount of the debt from the winnings, up to the total amount of the winnings, and transmit it to Attorney General within 14 days.

If the patron also is in default under a child or spousal support order, the proprietor must withhold the past due amount and transmit it to the Department before transmitting any remaining amount to the Attorney General.

After receiving the money from the proprietor, the Attorney General must apply it toward the patron's debt to the state or a political subdivision. If the patron has multiple debts of that kind, the money must be applied against the debts in the following order of priority, which is the same order of priority that applies under continuing law concerning debts to be satisfied from lottery winnings:

- Personal liabilities for corporate tax debts;
- Amounts owed to the state;
- Amounts owed to political subdivisions.

The Attorney General may adopt rules under the Administrative Procedure Act to implement those requirements.<sup>49</sup>

## **State revenue from sports gaming**

### **Tax on sports gaming**

The bill levies a 10% tax on a sports gaming proprietor's net revenue from sports gaming. The tax is imposed on the sports gaming proprietor's "sports gaming receipts," which include the total amount received as wagers, less the total of the following:

- Cash paid as winnings;
- Voided wagers;
- Beginning in 2027, a portion of the value of any promotional gaming credits wagered by patrons, as follows:
  - Between January 1, 2027 and December 31, 2031, 10% of those promotional gaming credits;
  - On and after January 1, 2032, 20% of those promotional gaming credits.<sup>50</sup>

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<sup>49</sup> R.C. 3775.17.

<sup>50</sup> R.C. 5753.01.

The tax operates in much the same way as the state's tax on casino gaming revenue. The Department of Taxation administers the tax, and the same filing requirements, penalties, and refund and assessment procedures that apply to the casino gaming tax also apply to the sports gaming tax. As with the casino gaming tax, a sports gaming proprietor must file daily tax returns showing the sports gaming proprietor's sports gaming receipts and pay the tax due. Returns are to be filed electronically on each day that banks are open.

The bill specifies that, if a sports gaming proprietor has negative receipts for a particular day (if the winnings paid out exceed the amount wagered), the Tax Commissioner may allow the proprietor to carry forward the deficit to future tax returns until the proprietor's receipts are greater than zero. However, a deficit may not be carried back to a prior tax period, and no payment previously made may be refunded, unless the sports gaming proprietor surrenders its license and the sports gaming proprietor's last return reported a deficit. In that case, the Tax Commissioner must pay 10% of the deficit to the sports gaming proprietor.<sup>51</sup>

### **Distribution of state sports gaming revenue**

The bill creates the Sports Gaming Revenue Fund in the state treasury and requires most state revenues generated from sports gaming to be deposited in the fund. Those revenues include all of the following:

- Revenue from the 10% tax imposed on sports gaming proprietors' sports gaming receipts;
- The fees for sports gaming proprietor and management services provider licenses;
- Fines paid to the Ohio Casino Control Commission as penalties for noncriminal violations of the law governing sports gaming;
- Unclaimed winnings.

(Other license fees paid to the Commission are deposited in the Casino Control Commission Fund to support the Commission's operations.)<sup>52</sup>

After deducting from the Sports Gaming Revenue Fund any amounts needed to pay tax refunds and to cover the Department of Taxation's administrative expenses, the Director of Budget and Management must transfer the remainder in the Sports Gaming Revenue Fund on or before the 15<sup>th</sup> day of the month following the end of each calendar quarter. Of those

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<sup>51</sup> R.C. 5753.01, 5753.021, 5753.03, 5753.04, 5753.05, 5753.06, 5753.061, 5753.07, 5753.08, and 5753.10.

<sup>52</sup> R.C. 3775.02(G), 3775.04(D), 3775.05(B)(3), 3775.051(B)(3), 3775.10(F), and 5753.031. Unclaimed winnings include any winning wagers that a patron does not claim within one year from the last day on which the sporting event was held. If winnings are unclaimed after that date, the sports gaming proprietor is no longer obligated to pay out the winnings, and instead must remit the winnings to the state.

remaining moneys, 98% must go to the Sport Gaming Profits Education Fund, and 2% must go to the Problem Sports Gaming Fund to fund programs to alleviate problem sports gaming.

The bill requires that the money in the Sports Gaming Profits Education Fund be used for the support of public and nonpublic K-12 education, as determined in appropriations made by the General Assembly, with half used to support K-12 interscholastic athletics and other extracurricular activities.

All interest generated by the gaming revenue-related funds created by the bill is credited back to those funds.<sup>53</sup>

### **Commercial activity tax on sports gaming proprietors**

Sports gaming proprietors are subject to Ohio's primary business tax, the commercial activity tax (CAT). That tax is levied on a business's gross receipts, which generally includes all amounts received by the business. However, continuing law provides that casinos are taxed only on their gross casino revenue (generally, amounts wagered less winnings paid).

The bill creates a similar exception for sports gaming receipts. Under the bill, a sports gaming proprietor is only required to pay the CAT on its sports gaming receipts (amounts wagered less winnings paid, as described above), not on the gross amount it receives from sports gaming.<sup>54</sup>

### **Sharing of confidential tax information**

Ongoing law requires that tax information provided to the Department of Taxation remain confidential, unless an exception applies. There are currently exceptions that allow the Department to share with the State Lottery Commission and the Ohio Casino Control Commission information relating to taxpayers' compliance with the casino gaming tax and withholding taxes.

The bill adds an exception that would also allow the Department to share sports gaming tax information with the Ohio Casino Control Commission.<sup>55</sup>

### **Criminal prohibitions regarding sports gaming**

The bill sets out a number of criminal prohibitions concerning sports gaming. See the table below for the continuing-law maximum prison or jail terms and fines for the various levels of criminal offenses the bill applies to those prohibitions.

The bill prohibits any person from knowingly doing any of the following, and makes those violations a first degree misdemeanor for a first offense and a fifth degree felony for a subsequent offense:

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<sup>53</sup> R.C. 3772.062 and 5753.031.

<sup>54</sup> R.C. 5751.01.

<sup>55</sup> R.C. 5703.21.

- Making a false statement on an application submitted to the Ohio Casino Control Commission;
- Permitting an individual under 21 to engage in sports gaming;
- Aiding, inducing, or causing an individual under 21 who is not an employee of the sports gaming proprietor to enter or attempt to enter a sports gaming facility;
- Entering or attempting to enter a sports gaming facility while under 21, except as permitted under the bill for employees of the sports gaming proprietor or for individuals who are being escorted to another area;
- Being a sports gaming proprietor or an employee of a sports gaming proprietor and participating in sports gaming offered by the proprietor, other than as part of operating sports gaming or as part of the employee's employment.

Further, the bill prohibits any person from knowingly doing any of the following, makes those violations a fifth degree felony for the first offense and a fourth degree felony for a subsequent offense, and specifies that if the violator is a sports gaming licensee, the Commission must revoke the license after the first offense:

- Offering, promising, or giving anything of value to anyone for the purpose of influencing the outcome of a sporting event or attempting to do so;
- Placing, increasing, or decreasing a wager after acquiring knowledge not available to the general public that anyone has been offered, promised, or given anything of value for the purpose of influencing the outcome of the sporting event upon which the wager is placed, increased, or decreased, or attempting to do so;
- Manufacturing, selling, or distributing any device that the person intends to be used to violate any law governing sports gaming in Ohio or another state;
- Placing a bet or aiding any other individual in placing a bet on a sporting event after unlawfully acquiring knowledge of the outcome on which winnings from that bet are contingent;
- Claiming, collecting, or taking anything of value from a sports gaming proprietor with intent to defraud, or attempting to do so, without having made a wager in which the amount or value is legitimately won or owed;
- Placing a wager using counterfeit currency or another counterfeit form of credit approved for wagering;
- Possessing any device intended to be used to violate the law governing sports gaming or any Commission rule governing sports gaming or any materials used to manufacture such a device. That prohibition does not apply to a sports gaming proprietor or to a proprietor's employee or agent who is acting in furtherance of the proprietor's interest.

- Changing or altering the normal outcome of any sports gaming conducted through an online sports pool, including any system used to monitor the online sports pool, or the way in which the outcome is reported to any patron;
- Operating sports gaming in a manner other than the manner required under the bill. Premises or any internet website used or occupied in violation of that provision constitute a nuisance subject to abatement under the Nuisance Law.

The bill prohibits any person from knowingly doing any of the following, makes those violations a third degree felony, specifies that if the person is a sports gaming licensee, Commission must revoke the person's license after the first offense, and specifies that if the person is a public servant or political party official, the person is forever disqualified from holding any public office, employment, or position of trust in Ohio:

- Offering, promising, or giving anything of value or benefit to a person who is connected with a sports gaming proprietor or the Commission or to an agent or employee of a sports gaming proprietor or the Commission, under an agreement to influence, or with the intent to influence, the actions of the person to whom the offer, promise, or gift is made in order to affect or attempt to affect the outcome of sports gaming conducted in Ohio or an official action of a member, agent, or employee of the Commission;
- Soliciting, accepting, or receiving a promise of anything of value or benefit while the person is connected with a sports gaming proprietor or the Commission or an agent or employee of a sports gaming proprietor or the Commission, 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 sports gaming conducted in Ohio or an official action of a member, agent, or employee of the Commission.

Finally, the bill prohibits any person from knowingly doing any of the following while participating in sports gaming or otherwise transacting with a sports gaming proprietor as permitted under the law governing sports gaming and makes those violations a fifth degree felony on the first offense and a fourth degree felony on a subsequent offense:

- Causing or attempting to cause a sports gaming proprietor to fail to file a report required under the federal Bank Secrecy Act of 1970, which requires financial institutions to keep records and file reports on certain financial transactions, or under the provision of Ohio law that requires financial institutions also to file those reports with the Attorney General;
- Causing or attempting to cause a sports gaming proprietor to fail to file a report or maintain a record required by an order issued under the Federal Deposit Insurance Act or under the federal law that applies similar reporting requirements to institutions that are not federally insured;
- Causing or attempting to cause a sports gaming proprietor to file a report under the Bank Secrecy Act of 1970 or the parallel provision of Ohio law, if the report contains a material omission or misstatement of fact;

- Causing or attempting to cause a sports gaming proprietor to file a report or maintain a record required by an order issued under the federal law that allows a bank to be relieved from liability for a loss resulting from a payment related to redeeming a savings bond or savings note, if the report or record contains a material omission or misstatement of fact;
- Causing or attempting to cause a sports gaming proprietor to maintain a record required under any regulation prescribed under the Federal Deposit Insurance Act or under the federal law that applies similar reporting requirements to institutions that are not federally insured, if the record contains a material omission or misstatement of fact;
- Structuring a transaction with one or more sports gaming proprietors, being complicit in structuring such a transaction, attempting to structure such a transaction, or being complicit in an attempt to structure such a transaction. For purposes of this provision, “structuring a transaction” has the same meaning as in the provisions of Ohio law that mirror the Bank Secrecy Act of 1970, which is dividing a transaction that otherwise would be reportable into two or more transactions that, if considered separately, would not be reportable.

(Essentially, the prohibitions described immediately above penalize a person who attempts to circumvent state and federal anti-money laundering laws.)<sup>56</sup>

The table below lists the continuing law maximum sentences for the various levels of criminal offenses the bill assigns to the offenses it creates.<sup>57</sup>

Continuing law maximum sentences for criminal offenses		
Level of offense	Prison or jail term	Fine
Third degree felony	3 years	\$10,000
Fourth degree felony	18 months	\$5,000
Fifth degree felony	1 year	\$2,500
First degree misdemeanor	6 months	\$1,000

### Shipments of gambling devices

The bill states that all shipments of gambling devices, including any sports gaming equipment, to sports gaming proprietors, management services providers, sports gaming suppliers, or type C sports gaming hosts in Ohio are legal shipments of gambling devices into Ohio, as long as the supplier registers, records, and labels the equipment in accordance with

<sup>56</sup> R.C. 3775.99.

<sup>57</sup> See R.C. 2929.14, 2929.18, 2929.24, and 2929.28, not in the bill.

the federal Gambling Devices Act of 1962. That act prohibits any person from knowingly transporting any gambling device into a state, but allows states and political subdivisions to pass laws exempting themselves from the prohibition.<sup>58</sup>

### **Select Committee on Sports Gaming and Problem Gambling**

Additionally, the bill creates the Select Committee on Sports Gaming and Problem Gambling, which must study all of the following:

- Whether a portion of the money in the Sports Gaming Revenue Fund created under the bill should be allocated to make grants to youth sports programs;
- Whether an appropriate amount of the money in the Sports Gaming Revenue Fund is allocated to the Problem Sports Gaming Fund;
- Whether sports gaming proprietors and the State Lottery Commission should be required to develop and implement compulsive and problem gambling plans with respect to sports gaming, similar to the plans casino operators develop and implement under the Casino Law;
- Whether the Attorney General should be required to develop and implement a compulsive and problem gambling program for Type II and Type III bingo license holders under the Bingo Law, as amended by the bill, to train and assist license holders in preventing, and educating participants about, problem gambling (see “**Charitable bingo,**” below).

The Select Committee consists of the following nine members, who must serve without compensation:

- Two members of the Senate appointed by the Senate President;
- One member of the Senate appointed by the Senate Minority Leader;
- Two members of the House of Representatives appointed by the Speaker of the House;
- One member of the House appointed by the House Minority Leader;
- One member of the public appointed by the Senate President;
- One member of the public appointed by the Speaker of the House;
- One member of the public appointed by the Governor.

The Select Committee must elect a chairperson from among its members. Vacancies on the Select Committee must be filled in the manner provided for original appointments.

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<sup>58</sup> R.C. 3775.16. See also 15 U.S.C. 1172.

Not later than January 1, 2022, the Select Committee must submit a report of its findings to the General Assembly. After it submits the report, the Select Committee ceases to exist.<sup>59</sup>

## **Casinos**

### **Withholding amounts from casino winnings – similar provisions enacted in H.B. 110**

#### **Past due child and spousal support**

The bill modifies the current law that requires a casino operator or management company to use a data match program implemented by the Department of Job and Family Services to withhold the amount of any past due child or spousal support from a patron's casino winnings, if the winnings meet or exceed the IRS reporting threshold. (That threshold is generally \$600, but is higher for some casino games.)

First, the bill clarifies that the withholding requirement applies when a patron receives a *payout* of winnings that meet or exceed the threshold, and not necessarily when a patron wins such an amount. For example, if a patron wins \$1,000 and the winnings are electronically credited to the patron's player card, but the patron then bets and loses \$500 before cashing out the remaining \$500, no withholding is required.

The bill also extends, from seven to 14 days, the time within which the casino operator or management company must transmit any amount withheld to the Department of Job and Family Services.<sup>60</sup>

#### **Debts to the state or a political subdivision**

The bill requires a casino operator to withhold the amount of any debt a patron owes to the state or a political subdivision from the patron's casino winnings, if the winnings exceed the IRS reporting threshold, in addition to any past due child or spousal support required under continuing law. This requirement is similar to the existing law requirement for lottery winnings.

Under the bill, the Attorney General must develop and implement a real time data match program for casino operators (along with sports gaming proprietors, as described above) to use to determine whether patrons owe any debts to the state or a political subdivision that have become final, similar to the system the State Lottery Commission uses under continuing law. Before disbursing any winnings that meet or exceed the threshold, the casino operator must check the program. If the program indicates that the patron owes any such amounts, the casino operator must withhold the amount of the debt from the winnings, up to the total amount of the winnings, and transmit it to Attorney General within 14 days.

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<sup>59</sup> Section 6 of the bill.

<sup>60</sup> R.C. 3123.90. See also Internal Revenue Service, [Publication 3908](#).

If the casino operator learns through the data match program operated by the Department of Job and Family Services under continuing law that the patron also is in default under a child or spousal support order, the casino operator must withhold the past due amount and transmit it to the Department before transmitting any remaining amount to the Attorney General.

After receiving the money from the casino operator, the Attorney General must apply it toward the patron's debt to the state or a political subdivision. If the patron has multiple debts of that kind, the money must be applied against the debts in the following order of priority, which is the same order of priority that applies under continuing law concerning debts to be satisfied from lottery winnings:

- Personal liabilities for corporate tax debts;
- Amounts owed to the state;
- Amounts owed to political subdivisions.

The Attorney General may adopt rules under the Administrative Procedure Act to implement those requirements.<sup>61</sup>

### **Institutional investors**

For purposes of the Casino Law, the bill changes the definition of an institutional investor to include a listed type of person or entity, such as a bank or investment firm, that owns 5% or more, but *less than 25%*, instead of 15%, of an ownership interest in a casino facility, casino operator, management company, or holding company.

Under continuing law, being classified as an institutional investor allows a person to be exempt from more restrictive regulation as a holding company that has control over a casino operator, management company, or gaming-related vendor.<sup>62</sup>

## **Ohio Lottery**

### **Withholding amounts from lottery prize awards – similar provisions enacted in H.B. 110**

For lottery winnings, the bill changes to \$600 the threshold that triggers the requirement that the State Lottery Commission withhold the amount of any past due child or spousal support from the participant's winnings and remit it to the Department of Job and Family Services. Under current law, the threshold is the IRS reporting threshold. As is mentioned above, that threshold is generally \$600, but is as high as \$5,000 for some lottery games.

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<sup>61</sup> R.C. 3772.37.

<sup>62</sup> R.C. 3772.01(O).

The bill also changes to \$600 the threshold that triggers the current requirement that the Commission withhold the amount of any debt to the state or a political subdivision from the participant's winnings and remit it to the Attorney General. Under existing law, that threshold is \$5,000.

Finally, the bill changes the threshold that triggers the requirement that the Commission withhold state income tax from a lottery prize award to match the IRS reporting threshold. The current threshold is \$5,000.

The Commission currently requires a participant who wins \$600 or more to submit a claim form and follow an administrative process to collect the winnings, instead of allowing the participant to collect the winnings from a lottery retailer.<sup>63</sup>

### **Select Committee on iLottery**

The bill creates the Select Committee on iLottery, which must study the potential effects of online lottery ticket sales (known as iLottery) on retail lottery ticket sales in Ohio. The Select Committee consists of the following nine members, who must serve without compensation:

- Two members of the Senate appointed by the Senate President;
- One member of the Senate appointed by the Senate Minority Leader;
- Two members of the House of Representatives appointed by the Speaker of the House;
- One member of the House appointed by the House Minority Leader;
- One member of the public appointed by the Senate President;
- One member of the public appointed by the Speaker of the House;
- One member of the public appointed by the Governor.

The Select Committee must elect a chairperson from among its members. Vacancies on the Select Committee must be filled in the manner provided for original appointments.

Not later than January 1, 2022, the Select Committee must submit a report of its findings to the General Assembly. After it submits the report, the Select Committee ceases to exist.<sup>64</sup>

### **Technical changes related to the Fresh Start Act**

The bill makes technical corrections to several sections of the Casino Law in order to accommodate the requirements of the Fresh Start Act, H.B. 263 of the 133<sup>rd</sup> General Assembly, which takes effect October 9, 2021. The Fresh Start Act places uniform requirements on state licensing authorities, including the Ohio Casino Control Commission, concerning the criminal

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<sup>63</sup> R.C. 3123.89 and 3770.071, 3770.073, and 5747.062. See also Internal Revenue Service, *Publication 3908*, and Ohio Lottery, *How to Claim*.

<sup>64</sup> Section 5 of the bill.

offenses that disqualify an individual for a license. The bill changes several references in the Casino Law as necessary to acknowledge the new requirements.<sup>65</sup>

## **Charitable bingo – similar provisions enacted in H.B. 110**

### **Background**

The Ohio Constitution allows the General Assembly to authorize and regulate bingo conducted by charitable organizations for charitable purposes. Charitable organizations that wish to conduct bingo games must apply for a license from the Attorney General and comply with the requirements of the Revised Code and of administrative rules adopted by the Attorney General, including requirements governing the places, times, and manner of holding bingo games.<sup>66</sup>

### **Types of bingo**

The Revised Code defines “bingo” to include four types of activities:<sup>67</sup>

- **Traditional bingo**, in which participants purchase a card with spaces arranged in a grid marked with letters, numbers, or other symbols, and cover the spaces as randomly selected numbers, letters, or symbols are called, with the goal being to win a prize by creating a line or other pattern;
- **Raffles**, in which participants purchase tickets and the ticket stubs are placed in a container and randomly selected, with the goal being to win a prize by having the participant’s ticket stub selected;
- **Instant bingo**, in which a participant purchases a paper ticket and then removes part of the ticket using a perforated pull tab to reveal whether the ticket is a winner. The prize amount and structure are predetermined for each “deal,” or set of tickets. In some instant bingo games, the winning numbers, letters, or symbols are determined by using a seal card to reveal predesignated winners or by using a bingo blower to randomly select the winners.
- **Punch boards**, in which the organization prepares a board with many holes with a randomly numbered slip of paper in each hole, and participants pay for the opportunity to draw slips of paper from the board, with the goal being to win a prize by drawing the slip with the winning number. The bill clarifies that punch boards are a type of instant bingo.

As explained below, the bill adds a new category for electronic instant bingo.

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<sup>65</sup> R.C. 109.572, 3772.01, and 3772.07. See also R.C. 9.79, not in the bill.

<sup>66</sup> Ohio Const., art. XV, sec. 6; R.C. Chapter 2915; and O.A.C. Chapter 109:1-4.

<sup>67</sup> R.C. 2915.01(O).

## **Charitable organizations**

For purposes of offering bingo games, continuing law defines a “charitable organization” as an organization that has been in continuous existence in Ohio for at least two years before applying for a bingo license and that either (1) is exempt from taxation under subsection 501(c)(3) of the federal Internal Revenue Code or (2) is a volunteer rescue service organization, volunteer firefighter’s organization, veteran’s organization, fraternal organization, or sporting organization that is exempt from taxation under subsection 501(c)(4), (7), (8), (10), or (19) of the Internal Revenue Code.<sup>68</sup>

### **Distribution of net profit**

#### ***Generally***

The proceeds of charitable bingo must be used for a charitable purpose. For all types of bingo other than instant bingo, continuing law requires the net profit of the game to be used by or given to one of the following:<sup>69</sup>

- A public charity, as determined under the Internal Revenue Code;
- A veteran’s organization that meets certain qualifications, provided that the net profit must be used for specified charitable purposes, used to award certain scholarships, donated to a governmental agency, used for nonprofit youth activities, used to donate U.S. or Ohio flags to nonprofit organizations, used for the promotion of patriotism, or used for disaster relief;
- A fraternal organization that has been in continuous existence in Ohio for 15 years and that uses the net profit exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, if such contributions would be considered deductible charitable contributions under the Internal Revenue Code;
- A volunteer firefighter’s organization that uses the net profit to provide financial support for a volunteer fire department or a volunteer fire company.

#### ***Instant bingo***

Under continuing law, a charitable organization other than a veteran’s, fraternal, or sporting organization must distribute 100% of the net profit from the proceeds of the sale of instant bingo to an organization listed above that may receive the net profit of other types of bingo, or to a department or agency of the federal government, the state, or any political subdivision.

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<sup>68</sup> R.C. 2915.01(H).

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

Continuing law requires a veteran's, fraternal, or sporting organization that conducts instant bingo to dispose of the first \$250,000 or less in net profit from the proceeds of the sale of instant bingo in a calendar year as follows:

- The organization must distribute at least 25% to an organization listed above that may receive the net profit of other types of bingo, or to a department or agency of the federal government, the state, or any political subdivision;
- The organization may retain not more than 75% to cover the organization's expenses in conducting instant bingo.

The organization must dispose of any net profit from the proceeds of the sale of instant bingo that exceeds \$250,000 in a calendar year as follows:

- The organization must distribute at least 50% to an organization listed above that may receive the net profit of other types of bingo, or to a department or agency of the federal government, the state, or any political subdivision;
- The organization may distribute 5% for the organization's own charitable purposes or to a community action agency;
- The organization may retain 45% to cover the organization's expenses in conducting instant bingo.

The Attorney General may, by rule, increase the \$250,000 threshold for changes in prices as measured by the Consumer Price Index and other factors affecting the organization's expenses in conducting bingo.

As discussed below, the bill regulates electronic instant bingo proceeds in the same manner as instant bingo proceeds.<sup>70</sup>

### **Electronic instant bingo**

The bill establishes electronic instant bingo as a separate type of bingo, along with traditional bingo, raffles, and instant bingo, but largely regulates the operation of electronic instant bingo in the same manner as instant bingo. The bill limits the ability to conduct electronic instant bingo to certain veteran's and fraternal organizations, as discussed below. The Attorney General must begin to accept applications for licenses to conduct electronic instant bingo on January 1, 2022, and must begin to issue those licenses on April 1, 2022.<sup>71</sup>

### **Definitions**

"Electronic instant bingo" is a form of bingo that consists of an electronic or digital representation of instant bingo in which a participant wins a prize if the participant's electronic

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<sup>70</sup> R.C. 2915.01(RR) and 2915.101.

<sup>71</sup> Section 3 of the bill.

instant bingo ticket contains a combination of numbers or symbols that was designated in advance as a winning combination, and to which all of the following apply:

- Each deal (set of electronic instant bingo tickets) has a predetermined, finite number of winning and losing tickets and a predetermined prize amount and deal structure, provided that there may be multiple winning combinations in each deal and multiple winning tickets;
- Each electronic instant bingo ticket within a deal has a unique serial number that is not regenerated;
- Each electronic instant bingo ticket within a deal is sold for the same price;
- After a participant purchases an electronic instant bingo ticket, the combination of numbers or symbols on the ticket is revealed to the participant;
- The reveal of numbers or symbols on the ticket may incorporate an entertainment or bonus theme, provided that the reveal does not include spinning reels that resemble a slot machine;
- The reveal theme, if any, does not require additional consideration or award any prize other than any predetermined prize associated with the electronic instant bingo ticket.

Further, electronic instant bingo must not include any of the following:

- Any game, entertainment, or bonus theme that replicates or simulates the gambling games of keno, blackjack, roulette, poker, craps, other casino-style table games, or horse racing;
- Any device operated by dropping one or more coins or tokens into a slot and pulling a handle or pushing a button or touchpoint on a touchscreen to activate one to three or more rotating reels marked into horizontal segments by varying symbols, where the predetermined prize amount depends on how and how many of the symbols line up when the rotating reels come to a rest;
- Any device that includes a coin tray or hopper and the ability to dispense coins, cash, tokens, or anything of value other than a credit ticket voucher.

Under the bill, an “electronic instant bingo system” is a mechanical, electronic, digital, or video device that is used to play electronic instant bingo and any associated equipment or software used to conduct, manage, monitor, or document any aspect of electronic instant bingo. The bill specifies that an electronic instant bingo system is not considered a slot machine or other prohibited scheme of chance under the Gambling Law or the Casino Law.<sup>72</sup>

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<sup>72</sup> R.C. 2915.01 and 3772.01(X).

## Charitable organizations conducting electronic instant bingo

### *License*

Continuing law allows the Attorney General to issue three categories of bingo licenses:

- **Type I** – Traditional bingo;
- **Type II** – Instant bingo conducted at a traditional bingo session;
- **Type III** – Instant bingo conducted other than at a traditional bingo session (at a retail location).

The bill allows a charitable organization that meets all of the following requirements to offer electronic instant bingo under a Type II or Type III license, in the same way as instant bingo:

- The organization is a veteran’s or fraternal organization and qualified as such an organization on or before June 30, 2021;
- The organization is a veteran’s organization described in subsection 501(c)(4) of the Internal Revenue Code or is a tax-exempt organization described in subsection 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code;
- The organization has not conducted a raffle in violation of the Revised Code using an electronic raffle machine, as described in *Ohio Veterans and Fraternal Charitable Coalition v. DeWine*, at any time on or after January 1, 2022.<sup>73</sup>

An eligible organization may offer electronic instant bingo under a single license at one location specified on the license. The organization may have a maximum of seven electronic instant bingo systems on the premises. By contrast, under continuing law, an organization may conduct paper-based instant bingo under more than one license and at multiple locations.<sup>74</sup>

The bill also makes some broader changes to bingo licensing, discussed below under **“Bingo licenses, generally.”**

### *Proceeds, records, and operations*

The bill requires electronic instant bingo proceeds to be distributed in the same manner as instant bingo proceeds are distributed under continuing law. (See **“Distribution of net profit,”** above.) The bill also applies the same recordkeeping and operating requirements to electronic instant bingo as currently apply to instant bingo.<sup>75</sup>

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<sup>73</sup> *Ohio Veterans and Fraternal Charitable Coalition v. DeWine*, Case No. 13-CV-13610 (C.P. Franklin Co. February 23, 2018).

<sup>74</sup> R.C. 2915.08, 2915.093, 2915.095, and 2915.14.

<sup>75</sup> R.C. 2915.01(V), 2915.09, 2915.10, 2915.101, and 2915.13.

### ***Game operators***

For purposes of electronic instant bingo, the bill defines a “bingo game operator” as any person involved in selling or redeeming electronic instant bingo tickets, credits, or vouchers or accessing an electronic instant bingo system other than as a participant. The term does not include security personnel or a person who is installing, maintaining, updating, or repairing an electronic instant bingo system.

Continuing law requires bingo game operators to be at least 18, prohibits them from having been convicted of a disqualifying offense, and restricts an organization’s ability to compensate them for operating a bingo game.<sup>76</sup>

### **Attorney General rules**

The bill requires the Attorney General to adopt rules under the Administrative Procedure Act to ensure the integrity of electronic instant bingo, including rules governing all of the following:<sup>77</sup>

- The requirements to receive a license or endorsement to conduct electronic instant bingo;
- The location and number of electronic instant bingo systems in use, which must not exceed seven in any one location;
- The times when electronic instant bingo may be offered;
- Signage requirements in facilities where electronic instant bingo is offered;
- Electronic instant bingo device and system specifications, including reveal features and game themes;
- Procedures and standards for reviewing, approving, inspecting, and monitoring electronic instant bingo systems, as discussed below;
- The fees to be paid by manufacturers and distributors for that purpose;
- Procedures and standards for the review and approval of any changes to technology, systems, or games;
- Procedures allowing the Attorney General to seek a summary suspension of a license to conduct electronic instant bingo or a license to manufacture or distribute electronic instant bingo systems if the Attorney General has good cause to believe that the person or organization has violated the relevant law.

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<sup>76</sup> R.C. 2915.01(Q) and 2915.09.

<sup>77</sup> R.C. 2915.14(C).

## Distributor and manufacturer licensing

Continuing law requires distributors and manufacturers of bingo supplies to be licensed by the Attorney General, and electronic instant bingo systems are considered bingo supplies under the bill. In addition to being licensed as a distributor or manufacturer, as applicable, the bill requires a distributor or manufacturer of electronic instant bingo systems to obtain an electronic instant bingo endorsement to the distributor's or manufacturer's license. An endorsement issued under the bill is good for the term of the underlying license.

The bill also requires any individual who installs, maintains, updates, or repairs an electronic instant bingo system, such as an employee of a distributor, to hold an appropriate and valid occupational license issued by the Ohio Casino Control Commission. The Commission issues casino gaming employee licenses and key employee licenses to individuals working in various aspects of the casino industry, including technicians who work on equipment such as slot machines.<sup>78</sup>

A manufacturer of electronic instant bingo systems may only sell, offer to sell, or otherwise provide or offer to provide electronic instant bingo systems that contain proprietary software owned by, or licensed to, the manufacturer. If the software is licensed to the manufacturer, the manufacturer must provide a copy of the license with its application for an endorsement.

To obtain an endorsement, a distributor or manufacturer must apply to the Attorney General, on a form prescribed by the Attorney General, submit fingerprints for a criminal records check, and pay any applicable fee charged by BCII. (No criminal records check is required to receive a distributor or manufacturer license, generally.)

The Attorney General must not issue the endorsement if the distributor or manufacturer, any partner or officer of the distributor or manufacturer, or any person who has an ownership interest of 10% or more in the distributor or manufacturer has violated any Ohio gambling law or rule or any existing or former law or rule of Ohio, any other state, or the U.S. that is substantially equivalent to any Ohio gambling law or rule.

The distributor or manufacturer also must provide the Attorney General with a surety bond in the amount of \$50,000 and maintain the bond as long as the distributor or manufacturer is licensed. The bond may be in the form of a rider to a larger blanket liability bond. The bond must run to the state and to any person who may have a cause of action against the distributor or manufacturer for any violation of the Bingo Law or related administrative rules.

For a manufacturer endorsement, the bill requires the Attorney General to establish by rule an application and renewal fee in an amount sufficient to cover the cost of processing applications and investigating applicants' suitability. If the cost of processing a particular application and investigating the applicant's suitability exceeds the amount of the application

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<sup>78</sup> R.C. 3772.131, not in the bill.

and renewal fee, the Attorney General may charge the applicant an additional fee as necessary to cover that cost. The Attorney General must not issue the endorsement until all fees are paid in full. (Distributors instead are subject to an annual monitoring and inspection fee, discussed below.)

The bill allows the Attorney General to deny or suspend an endorsement issued under the bill in the same manner as the Attorney General may deny or suspend a manufacturer or distributor license for violations of Ohio's gambling laws or rules (see "**Denial, suspension, and penalties**," below).<sup>79</sup>

### **Regulation of electronic instant bingo systems**

#### ***Approval***

Under the bill, a manufacturer of an electronic instant bingo system must submit the system to an independent testing laboratory before the manufacturer may sell, offer to sell, or otherwise provide or offer to provide the system to any person for use in Ohio. The laboratory must be certified under the Casino Law to inspect casino gaming equipment, and it must determine whether the system meets the requirements of the bill and of the Attorney General's rules. The manufacturer must pay all costs of that testing and evaluation.

If the laboratory certifies that the system meets the applicable requirements, the manufacturer then may submit the system to the Attorney General for review and approval, along with a copy of the laboratory's certification and a fee established by the Attorney General by rule.

The Attorney General must approve the system for use in Ohio if the Attorney General agrees that the system meets the bill's requirements and the Attorney General's rules. The bill requires the Attorney General to consult the Ohio Casino Control Commission for assistance in determining whether the system is prohibited for use on the ground that it is a slot machine.

Before being placed into service, a system must be verified and sealed by the Attorney General. The Attorney General or a designee must remove the seal if the system is removed from service. If the seal is removed at any other time, the system must be returned to an independent testing laboratory.<sup>80</sup>

#### ***Monitoring***

The bill requires every electronic instant bingo system in use in Ohio to have a central server located in Ohio, to include an internal report management system, and to allow the Attorney General or the Attorney General's designee to access the internal report management system, monitor the electronic instant bingo, and remotely deactivate the electronic instant bingo system or any aspect of it.<sup>81</sup>

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<sup>79</sup> R.C. 109.572, 2915.01(Z), (KK), and (LL), 2915.081, and 2915.082.

<sup>80</sup> R.C. 2915.15(A) and conforming changes in R.C. 2915.01, 2915.08, 2915.091, 2915.10, and 2915.12.

<sup>81</sup> R.C. 2915.15(B).

### ***Inspection***

The Attorney General may inspect any electronic instant bingo system in use in Ohio at any time to ensure that the system is in compliance with the bill and with the Attorney General's rules. If the Attorney General determines that any person or any system is in violation of the bill or of those rules, the Attorney General may order that the violation immediately cease and may deactivate the system or any aspect of it.<sup>82</sup>

### ***Fees***

The Attorney General may establish by rule adopted under the Administrative Procedure Act an annual fee to be paid by electronic instant bingo system distributors to cover the cost of monitoring and inspecting systems under the bill. Those fees must be deposited in the Charitable Law Fund and used for those purposes.<sup>83</sup>

### **Prohibitions regarding electronic instant bingo**

The bill prohibits several types of conduct related to electronic instant bingo. These prohibitions are similar to continuing-law prohibitions regarding instant bingo, but are more specific to electronic instant bingo.

Under the bill, no charitable organization that conducts electronic instant bingo may do any of the following:

- Conduct electronic instant bingo unless that organization is eligible for an electronic instant bingo license, as discussed above;
- Possess an electronic instant bingo system that was not obtained in accordance with the bill or with Attorney General rules;
- Conduct electronic instant bingo on any day, at any time, or on any premises not specified on the organization's Type II or Type III license;
- Fail to display the charitable organization's bingo license or the serial number of each deal of electronic instant bingo tickets being sold;
- Permit any person the charitable organization knows, or should have known, to be under 18 to play electronic instant bingo;
- Sell or provide to any person an electronic instant bingo ticket for a price different from the price displayed on the game flare for the deal, except as a prize;
- Fail, once an electronic instant bingo deal is begun, to continue to sell tickets in that deal until all prizes have been awarded;

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<sup>82</sup> R.C. 2915.15(C).

<sup>83</sup> R.C. 109.32 and 2915.15(D).

- Permit any person whom the organization knows, or should have known, has been convicted of a felony or gambling offense in any jurisdiction to be a bingo game operator in the conduct of electronic instant bingo;
- Permit a bingo game operator to play electronic instant bingo;
- Pay compensation to a bingo game operator for conducting electronic instant bingo, except that an employee of a veteran's organization, fraternal organization, or sporting organization may redeem electronic instant bingo tickets or vouchers for the organization's members or invited guests, so long as no portion of the employee's compensation is paid from any bingo receipts;
- Pay consulting fees to any person in relation to electronic instant bingo.

The bill also prohibits any person from selling, offering to sell, or otherwise providing or offering to provide an unapproved electronic instant bingo system to any person for use in Ohio.

A person who knowingly violates any of those prohibitions is guilty of illegal electronic instant bingo conduct, which is a first degree misdemeanor for a first offense and a fifth degree felony for any subsequent offense. A person who knowingly violates a rule of the Attorney General concerning electronic instant bingo is subject to the same penalties.<sup>84</sup>

## **Bingo licenses, generally**

### **Denial or suspension**

Under the bill, the Attorney General may deny, suspend, or limit an organization's bingo license, if the Attorney General has good cause to believe that any director or officer of the organization has breached the director's or officer's fiduciary duty to the organization.

Similarly, the bill allows the Attorney General to deny, suspend, or limit a bingo distributor or manufacturer license if the Attorney General has good cause to believe that the distributor or manufacturer, any partner or officer of the distributor or manufacturer, or any person who has an ownership interest of 10% or more in the distributor or manufacturer, has committed a breach of fiduciary duty, theft, or other type of misconduct related to a charitable organization that has a bingo license.

Continuing law allows the Attorney General to deny or suspend a bingo license or a distributor or manufacturer license for certain other reasons involving dishonesty or violations of the Gambling Law.<sup>85</sup>

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<sup>84</sup> R.C. 2915.14.

<sup>85</sup> R.C. 2915.08(F)(3), 2915.081, and 2915.082.

## **Youth athletic park organizations**

The bill eliminates a requirement that a youth athletic park organization's playing fields have been used for nonprofit youth athletic activities for at least 100 days during a given year in order for the organization to obtain a bingo license. Under continuing law, such an organization must be a nonprofit organization that owns, operates, and maintains playing fields that are used for nonprofit youth athletic activities and that are never used to make a profit.<sup>86</sup>

### **License type**

The bill requires a bingo license to indicate whether it is a Type I, Type II, or Type III license, along with the other relevant information that must be included under continuing law.<sup>87</sup>

### **Technical changes**

Finally, the bill makes numerous stylistic and technical changes to the section of law governing bingo licenses in order to incorporate "Type I," "Type II," and "Type III" license terminology, in line with the terms the Attorney General uses; to clarify that an organization does not need a license to conduct a raffle; and generally to make the section easier to read. However, the bill does not change the requirements for the licenses, except as specified above.<sup>88</sup>

### **Punch boards and seal cards**

The bill clarifies that punch boards and seal cards are types of instant bingo games and may be played under an instant bingo license. Currently, the Attorney General regulates punch boards and seal cards in that manner, but the Revised Code refers to them separately from instant bingo in some places.<sup>89</sup>

### **Minors playing traditional bingo**

The bill makes a technical correction to clarify the penalty that applies to a charitable organization if it permits a person the organization knows, or should have known, is under 18 to play traditional bingo. Under continuing law, such a violation is a first degree misdemeanor on the first offense and a fourth degree felony on any subsequent offense.<sup>90</sup>

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<sup>86</sup> R.C. 2915.01(Y) and 2915.08(C)(10).

<sup>87</sup> R.C. 2915.08(I).

<sup>88</sup> R.C. 2915.08. See also R.C. 2915.092, not in the bill.

<sup>89</sup> R.C. 2915.01(O)(2), (S), (AA), and (DD).

<sup>90</sup> R.C. 2915.09(G).

## **Bingo Law enforcement**

### **Charitable organizations**

The bill allows the Attorney General or a law enforcement agency to examine the accounts and records of any officer, agent, trustee, member, or employee of a charitable organization with a bingo license, in addition to examining the charitable organization's accounts and records as permitted under continuing law.

The bill specifies that the Attorney General may impose a civil fine on an organization for failure to comply with the Bingo Law or related rules, according to a schedule of fines adopted under the Administrative Procedure Act.<sup>91</sup>

### **Distributors and manufacturers**

The bill also permits the Attorney General or a law enforcement agency to do any of the following with respect to a bingo distributor or manufacturer or any officer, agent, trustee, member, or employee of the bingo distributor or manufacturer:

- Investigate the person;
- Examine the person's accounts and records;
- Conduct inspections of the premises where bingo supplies are manufactured or distributed.

Under the bill, if a law enforcement agency has reasonable grounds to believe that a bingo distributor or manufacturer or an officer, agent, trustee, member, or employee of the bingo distributor or manufacturer has violated any provision of the chapter of the Revised Code governing gambling, the agency may commence a court action to enforce that chapter, so long as the agency gives the Attorney General written notice of the action.

The bill prohibits any person from destroying, altering, concealing, withholding, or denying access to any accounts or records of a bingo distributor or manufacturer that have been requested for examination. And, the bill prohibits any person from obstructing, impeding, or interfering with any inspection, audit, or observation of premises where bingo supplies are manufactured or distributed. Whoever violates those prohibitions is guilty of a first degree misdemeanor.

Continuing law gives the Attorney General and law enforcement agencies those powers with respect to charitable organizations that conduct bingo, but not with respect to bingo distributors or manufacturers.

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<sup>91</sup> R.C. 2915.08(F)(4) and 2915.10(H)(2).

The bill also specifies that the Attorney General may impose a civil fine on a distributor or manufacturer for failure to comply with the Bingo Law or related rules, according to a schedule of fines adopted under the Administrative Procedure Act.<sup>92</sup>

## **Compensation for name, image, or likeness – enacted in H.B. 110**

### **Prohibitions**

The bill prohibits an institution of higher education from upholding any rule, requirement, standard, or other limitation that prevents a student of that institution from fully participating in intercollegiate athletics because the student earns compensation as a result of the use of the student’s name, image, or likeness (NIL).<sup>93</sup>

It also prohibits an athletic association, conference, or other group or organization with authority over intercollegiate athletics, including the National Collegiate Athletic Association (NCAA) or its successor organization, (collectively “athletic authority”) from doing either of the following:

1. Preventing a student from fully participating in intercollegiate athletics because the student earns compensation as a result of the use of the student’s NIL;
2. Preventing an institution from fully participating in intercollegiate athletics because a student of that institution participating in intercollegiate athletics does either of the following:
  - a. Uses the student’s NIL;
  - b. Obtains professional representation in relation to contracts or legal matters regarding opportunities to earn compensation for use of the student’s NIL.<sup>94</sup>

Additionally, institutions and athletic authorities are prohibited from doing any of the following:

1. Providing a prospective student who intends to participate in intercollegiate athletics with compensation in relation to the prospective student’s NIL;
2. Preventing a student who participates in intercollegiate athletics (a student athlete) and resides in Ohio from obtaining professional representation in relation to contracts or legal matters regarding opportunities to be compensated for use of the student athlete’s NIL;
3. Interfering with or preventing a student athlete from fully participating in intercollegiate athletics because the student athlete obtains professional representation in relation to

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<sup>92</sup> R.C. 2915.081(H), 2915.082(H), and 2915.10(H), (I), and (J).

<sup>93</sup> R.C. 3376.02.

<sup>94</sup> R.C. 3376.03.

contracts or legal matters regarding opportunities to earn compensation for use of the student athlete's NIL.<sup>95</sup>

## **Scholarships**

Under the bill, a scholarship from an institution at which a student is enrolled is not considered compensation for use of the student's NIL.

Additionally, an institution cannot revoke or reduce a scholarship as a result of a student earning compensation for use of the student's NIL if the student earns that compensation in accordance with the bill. Earning compensation from the use of a student's NIL cannot affect the student's scholarship eligibility or renewal.<sup>96</sup>

## **Contracts with intercollegiate athletes**

### **Contract limitations**

Under the bill, an institution's contract with a student athlete cannot prevent the student from using the student athlete's NIL for a commercial purpose when the student is not engaged in official team activities. "Official team activities" means all games, practices, exhibitions, scrimmages, team appearances, team photograph sessions, sports camps sponsored by the institution, and other team-organized activities, regardless of whether the activity takes place on or off campus, including individual photograph sessions and news media interviews.

The bill prohibits a student athlete from entering into a contract providing compensation to the student athlete for use of the student's NIL (NIL contract) that requires the student athlete to display a sponsor's product, or otherwise advertise for a sponsor, during official team activities or any other time if that requirement is in conflict with a provision of a contract to which an institution is a party.

### **Disclosure and review**

An institution must designate an official to whom a student athlete who intends to enter into a verbal or written NIL contract must disclose the proposed contract for review. If an institution identifies a conflict between the proposed contract and any existing provisions of a contract to which the institution is a party, the institution has to communicate to the student athlete the relevant contract provision that is in conflict. The student athlete cannot enter into the proposed contract with a conflict, but the student athlete may negotiate a revision to the proposed contract to avoid the conflict. A revised proposed contract is subject to review by the institution to ensure compliance with the bill.

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<sup>95</sup> R.C. 3376.04.

<sup>96</sup> R.C. 3376.02 and 3376.05.

An institution may establish reasonable policies or standards to address a student athlete's failure to provide the required disclosure or any other failure to comply with the bill's requirements.<sup>97</sup>

### **Companies, brands, and types of contracts**

The bill allows an institution or athletic authority to prohibit a student athlete from entering into an NIL contract if under the contract the student athlete's NIL is associated with any of the following:

1. Any company that manufactures, markets, or sells, or brand that is associated with, a controlled substance, marijuana product, medical marijuana product, alcoholic product, tobacco product, electronic smoking device, vapor product, or product or device that consists of or contains nicotine that can be ingested into the body;
2. Any medical marijuana cultivator, processor, laboratory, or retail dispensary licensed under Ohio law<sup>98</sup> or the laws of another state;
3. Any business engaged in the sale, rental, or exhibition for any form of consideration of adult entertainment that is characterized by an emphasis on the exposure or display of sexual activity;
4. Any casino or entity that sponsors or promotes gambling activities;
5. Any other category of companies, brands, or types of contracts that are similar to those described above that the institution communicates to the student before the student enrolls at the institution.<sup>99</sup>

### **Exclusions**

The bill does not do any of the following:

1. Require an institution or athletic authority to identify, create, facilitate, negotiate, or otherwise enable opportunities for a student to earn compensation for use of the student's NIL;
2. Establish or grant to a student any right to use the name, trademarks, services marks, logos, symbols, or any other intellectual property, regardless of whether the intellectual property is registered with the appropriate authority, that belong to an institution or athletic authority to further the student's opportunities to earn compensation for use of the student's NIL;
3. Limit an institution's rights to establish and enforce any of the following:
  - a. Academic standards, requirements, regulations, or obligations for its students;

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<sup>97</sup> R.C. 3376.06.

<sup>98</sup> R.C. Chapter 3796

<sup>99</sup> R.C. 3376.07.

- b. Team rules of conduct or other rules of conduct;
- c. Standards or policies regarding the governance or operation of or participation in intercollegiate varsity athletics;
- d. Disciplinary rules and standards generally applicable to all students of the institution.<sup>100</sup>

### **Other NIL authority**

The bill's NIL provisions were enacted in H.B. 110 of the 134<sup>th</sup> General Assembly and take effect September 30, 2021. On June 28, 2021, Governor DeWine signed Executive Order 2021-10D to allow intercollegiate athletes enrolled at Ohio institutions of higher education to earn compensation from their NIL. The Order, which is similar to the NIL provisions, remains in effect until superseded by state or federal law.<sup>101</sup>

Additionally, on June 30, 2021, the NCAA's governance bodies adopted a uniform interim policy that suspends NCAA rules prohibiting intercollegiate athletes from earning compensation for their NIL. Under the policy, student athletes may engage in NIL activities that are consistent with the law of the state where the institution at which the student is enrolled is located without violating NCAA NIL rules.<sup>102</sup>

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## **COMMENT**

### **Constitutionality of sports gaming**

A reviewing court might examine whether the bill unconstitutionally expands gambling in Ohio. The Ohio Constitution states that, "Except as otherwise provided in this section, lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this State." That section of the Constitution then specifically permits three types of gambling: the state-run lottery to benefit education, charitable bingo, and casino gaming at four specified facilities.<sup>103</sup> Ultimately, the question is what *lotteries*, as prohibited under the Constitution, means. The Ohio Supreme Court has not directly ruled on this question, although it has discussed the issue somewhat in other contexts.

At least two different interpretations are possible:

1. "Lotteries" means gambling in general, and the three types of gambling listed in that section – the state lottery, bingo, and casinos – operate as exceptions to the general

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<sup>100</sup> R.C. 3376.08.

<sup>101</sup> Governor Mike DeWine, *Executive Order 2021-10D*, available [here](#).

<sup>102</sup> National Collegiate Athletic Association, *NCAA Adopts Interim Name, Image, and Likeness Policy*, available [here](#).

<sup>103</sup> Ohio Const., art. XV, sec. 6.

prohibition against lotteries. Ohio has long permitted betting on horse racing, but the courts have not directly considered whether that activity is unconstitutional.

2. “Lotteries” only means a specific type of gambling, and which is prohibited except for the state-run lottery to benefit education, and except for charitable bingo, which is a type of lottery. Casinos are specifically authorized in the Constitution, but the General Assembly may also legalize other types of gambling, such as betting on horse racing.

If a reviewing court followed interpretation 1, sports gaming would be permissible in Ohio only if it fell under one of the three categories of permitted gambling. A court might find that the legislature can make sports gaming part of the state-run lottery, especially if it holds that the term “lottery” is very general. The legislature also might be able to include sports gaming as a type of casino gaming, although that term is defined in the Constitution and might not be expansive enough to include sports gaming. But, interpretation 1 would appear to bar any sports gaming outside the context of the state lottery or casinos.

However, Ohio’s Ninth District Court of Appeals has followed interpretation 2,<sup>104</sup> and statements in two Ohio Supreme Court rulings suggest that the Ohio Supreme Court might follow interpretation 2 in the future.<sup>105</sup> Under that reading of the Constitution, the legislature would be able to legalize sports gaming even if it were not part of the lottery, charitable bingo, or casino gaming. The Ohio Supreme Court would not necessarily be required to embrace interpretation 2 if it were called on to answer the constitutional question directly.

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## HISTORY

Action	Date
Introduced	02-03-21
Reported, H. Armed Services & Veterans Affairs	03-04-21
Passed House (91-2)	03-10-21
Reported, S. Veterans & Public Safety	06-02-21
Passed Senate (31-0)	06-24-21
House refused to concur in Senate amendments (0-97)	06-28-21

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<sup>104</sup> *State ex rel. Gabalac v. New Universal Congregation of Living Souls*, 55 Ohio App.2d 96 (9<sup>th</sup> Dist. Ct. App. 1977).

<sup>105</sup> *Westerhaus Co. v. Cincinnati*, 165 Ohio St. 327, 338-339 (1956) and *Mills-Jennings of Ohio, Inc. v. Department of Liquor Control*, 70 Ohio St.2d 95, 99-101 (1982).