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**136<sup>th</sup> General Assembly**

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Dovilla and Manning

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### SUMMARY

#### Video lottery terminals (VLTs)

- Expands the State Lottery Commission's (LOT's) operation of VLTs to retail locations operated by lottery sales agents.
- Limits each establishment to three retailer VLTs in the first year after the bill takes effect, then to five retailer VLTs thereafter.
- Requires a retailer VLT player to be at least 21.
- Requires LOT to administer the retailer VLT program in conjunction with the Ohio Casino Control Commission (CAC).
- Requires CAC to license retailer VLT operators, establishments, distributors, and manufacturers in consultation with LOT, and provides for the certification of service employees.
- Requires 35% of retailer VLT proceeds to be deposited in the Lottery Profits Education Fund and generally requires the operator and the establishment to split the remainder of the proceeds between themselves.
- Provides requirements for the certification, maintenance, placement, operation, and monitoring of retailer VLTs.
- Limits advertising for retailer VLTs to certain print and indoor advertising and requires LOT to adopt rules to ensure that advertisements are in good taste and do not negatively impact or affect the integrity of the industry.
- Requires retailer VLT operators to withhold state and municipal income tax from patrons' winnings over a certain threshold.

- Exempts certain retailer VLT-related records from disclosure under the Public Records Law.
- Prohibits certain activities related to retailer VLTs and similar devices.
- Prohibits local regulations of retailer VLTs.

## **Electronic instant bingo (ebingo)**

- Expands ebingo in Ohio by allowing a 501(c)(3) nonprofit organization to offer ebingo at a bar or restaurant (an “instant bingo host,”) similar to how a 501(c)(3) currently may offer instant bingo.
- Allows a 501(c)(3) to contract with an instant bingo host that has an A-1-A, A-1c, or class D liquor permit to offer ebingo on behalf of the 501(c)(3) to customers who are 18 or older on up to seven ebingo terminals at the host’s location.
- Requires the 501(c)(3) to retain 26.5% of the proceeds, with 6% going to the host as a commission, 32.5% going to the distributor, and 35% paid to the state by the distributor in the form of a tax.
- States that the tax revenue must be used for the purposes of supporting arts projects and programs, supporting construction and renovation of major sports facilities and minor league sports facilities throughout Ohio for the benefit of the state, and supporting veterans.
- Requires an instant bingo host to comply with certain bingo-related prohibitions that currently apply to charitable organizations that conduct bingo.
- Clarifies that a charitable organization may lease bingo equipment from a licensed distributor for a reasonable rental rate instead of owning that equipment.
- Adds a requirement that a bingo distributor keep records for at least three years that include the nonrepeating serial numbers of all ebingo deals the distributor sells, in addition to the serial numbers of all instant bingo deals as under current law.
- Exempts the sale of ebingo plays from state and local sales tax when sold by an instant bingo host or a veteran’s or fraternal organization.
- Exempts the sale of ebingo deals by licensed distributors from state and local sales tax, when the distributor sells a deal to a 501(c)(3) or a veteran’s or fraternal organization.
- Expands the hours during which a veteran’s or fraternal organization may offer ebingo or a veteran’s, fraternal, or sporting organization may offer instant bingo.

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## DETAILED ANALYSIS

### Video lottery terminals (VLTs)

#### Expansion to retail

The bill expands the State Lottery Commission’s (LOT’s) operation of VLTs to retail locations operated by lottery sales agents. Currently, VLTs are authorized only at Ohio’s seven horse racetracks, often called “racinos.” The bill requires a retailer VLT player to be at least 21. Each retail establishment may have up to three retailer VLTs during the first year after the bill takes effect, or up to five thereafter, subject to LOT rules.

Under current LOT rules, a racino VLT player also must be 21, but that minimum age does not appear in the Revised Code. The law does not limit the number of VLTs at a racino.

The bill defines a “retailer VLT” as an electronic video game machine that utilizes a microprocessor and is, upon the insertion of money, capable of playing or simulating the play of video poker, keno, blackjack, spinning reel, and any other similar game authorized by LOT by rule. A retailer VLT must, by chance, allow the player to receive free games or credits that are redeemable for money. A retailer VLT must not directly dispense money or tokens. “Retailer VLT” does not include a VLT at a racino.<sup>1</sup>

### **Administrative oversight**

Under the bill, LOT, in conjunction with the Ohio Casino Control Commission (CAC), must administer the retailer VLT program. LOT must adopt administrative rules under the Administrative Procedure Act in consultation with the Executive Director of CAC to implement the program. Rules adopted by LOT under the bill are not subject to the general limits on agencies’ regulatory restrictions.<sup>2</sup>

### **Licensing**

The bill requires CAC to license retailer VLT operators, establishments, distributors, and manufacturers in consultation with LOT. CAC must issue a license to an applicant who meets the applicable qualifications, unless any of the following are true:

- The applicant has been convicted of a felony in Ohio or another state, unless at least ten years have passed since the satisfactory completion of the sentence or probation.
- The person has been convicted of violating the bill or any rule adopted under the bill.
- The person is an officer, employee, or a member of the immediate family of an officer or employee of CAC or LOT. “Immediate family” means a parent, grandparent, brother, sister, spouse, son, daughter, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.
- The person has knowingly made a false statement of material fact to CAC or LOT.
- The person already holds a different type of retailer VLT license.
- The person is the state or a political subdivision or any instrumentality of the state or a political subdivision.

A license issued under the bill is valid for two years. A licensee may renew a license by applying to CAC within 90 days of the expiration date. Licenses are transferable to “any other certified retailer video lottery terminal” without the payment of any additional fee, upon notification of “the commission.”<sup>3</sup>

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<sup>1</sup> R.C. 2915.02, 3770.31, and 3770.32. See also R.C. 3770.21, not in the bill, and Ohio Administrative Code (O.A.C.) 3770:2-7-01.

<sup>2</sup> R.C. 3770.33 and 3770.40.

<sup>3</sup> R.C. 3770.33, 3770.34, and 3770.38.

## **Operators**

A retailer VLT operator is the person who actually owns the machine. The bill exempts sales of retailer VLTs from state and local sales tax beginning January 1, 2026.

An applicant for an operator license must do all of the following:

- Demonstrate to CAC's satisfaction that the applicant has sufficient funding to pay the annual license renewal fee.
- File a surety bond with CAC, payable to the state, in the amount of \$100,000, issued by a bonding company licensed in Ohio. The bond must be conditioned upon the operator's compliance with the bill and rules adopted under the bill.
- Submit to initial and continuing background investigations conducted by CAC under rules adopted by CAC and LOT. If the applicant is a partnership, CAC may investigate every partner. If the applicant is an association, CAC may investigate every member. If the applicant is a corporation, CAC may investigate every director or officer and every stockholder holding 5% or more stock in the applicant.

An operator must pay CAC an initial license fee of \$50,000 and a renewal fee of \$10,000. LOT also must set an operator fee by rule.<sup>4</sup>

## **Establishments**

A retailer VLT establishment must be owned or managed by a person who is a lottery sales agent or is eligible for a lottery sales agent license. CAC must collect an initial and renewed license fee of \$500 for an establishment.<sup>5</sup>

## **Distributors**

To be eligible for a license, a distributor must have maintained, for at least five years immediately before applying for the license, a distribution center that included warehouse, service, and parts facilities. CAC must collect an initial license fee of \$75,000 and a renewal fee of \$10,000.<sup>6</sup>

## **Manufacturers**

CAC must collect a fee of \$100,000 for an initial manufacturer license and a \$25,000 renewal fee.<sup>7</sup>

## **Service employee certification**

Each operator must provide training approved by CAC in the service and repair of each type of retailer VLT the operator sells or distributes. When a service employee completes the

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<sup>4</sup> R.C. 3770.31, 3770.33, 3770.38, and 5739.02; Section 2 of the bill.

<sup>5</sup> R.C. 3770.31 and 3770.38.

<sup>6</sup> R.C. 3770.34 and 3770.38.

<sup>7</sup> R.C. 3770.38.

training program, the operator must certify the employee's name to CAC. Each service employee must submit to a criminal background check in order to complete the training. Only a certified service employee may service or repair a retailer VLT.<sup>8</sup>

### **Placement in establishment; division of proceeds**

An operator who wishes to place retailer VLTs in an establishment must enter into a written contract with the establishment and file a copy of the contract with CAC. The contract must be for a term of at least five years, as specified in the contract, and must require the operator to share the proceeds with the establishment as described below. The bill prohibits an establishment from accepting any premiums, gifts, equipment, discounts, rebates, kickbacks, or loans of money, merchandise, or other items of value from any person, and prohibits any person from giving such a thing to an establishment, based on the installation, use, or sale of a retailer VLT or for any other reason in connection with a retailer VLT.

Each operator must pay LOT 35% of the net retailer VLT income from each retailer VLT (the amount put into the retailer VLT by players minus the amount paid out to winners). The operator must place the money in a separate bank account and transmit the funds electronically to LOT pursuant to LOT rules. From the amount that remains after paying LOT, the operator must pay out any computer and telephone line or service charges attributable to the retailer VLT, then pay 50% of the remainder to the establishment and retain the other 50%.

The state's proceeds from retailer VLTs must be deposited in the Lottery Profits Education Fund. The proceeds of all other lottery games are first deposited in the State Lottery Gross Revenue Fund, and the amount that remains after other costs are met, such as LOT's administrative costs, is later transferred to the Lottery Profits Education Fund. In effect, the bill prohibits LOT from using any of the state's proceeds from retailer VLTs to cover LOT's operating costs or for any other purpose.<sup>9</sup>

### **Terminal and establishment requirements**

LOT's rules must include a requirement that each retailer VLT be certified by a state-certified inspection upon placement and at least biannually thereafter. LOT must specify by rule the fees a retailer VLT manufacturer or other person who seeks approval of a retailer VLT must pay for the examination of the prototype. The fee must cover the actual cost of assessing a prototype, and the applicant must pay any additional amount required to cover that cost. The applicant is entitled to a refund if the fee exceeds the actual cost.

An operator must ensure that each retailer VLT meets all of the following requirements:

- The retailer VLT is certified and maintained under the bill.
- The establishment holds a current license under the bill.

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<sup>8</sup> R.C. 3770.35.

<sup>9</sup> R.C. 3770.06, 3770.35, 3770.37, and 3770.38.

- The retailer VLT has no means of manipulation that affect the random probabilities of winning.
- The retailer VLT has one or more mechanisms that accept money in the form of bills and that are designed to prevent obtaining credits without paying by doing any of the following:
  - Attaching string or other material to a coin or bill with the object of retrieving the coin or bill after it has been inserted into the retailer VLT;
  - Slamming, rocking, or tilting the retailer VLT;
  - Drilling into the retailer VLT;
  - By any other means.
- The retailer VLT is removed from use or reset if it has been physically tampered with.
- The retailer VLT has nonresettable meters housed in a readily accessible locked area of the retailer VLT that maintains a permanent record of all money inserted into the retailer VLT, all refunds of winnings made by the retailer VLT's printer, credits played for games, and credits won by players.
- The retailer VLT is capable of printing a ticket voucher that contains all of the following:
  - The value of the prize for the player at the completion of the game;
  - The time of day in a 24-hour format showing the hours and minutes;
  - The date;
  - The serial number of the machine;
  - The sequential number of the ticket vouchers;
  - An encrypted validation number from which the validity of the prize may be determined.
- The retailer VLT allows a player to wager not more than \$4 in a single game and awards free games or credit not to exceed \$2,500.
- The retailer VLT has a payback value of one credit equaling a minimum of 80%.
- The operator prominently displays the retailer VLT's certification.
- The operator keeps a list of all prizes awarded during each game conducted on each retailer VLT, the total prizes awarded from each game by serial number, and the name, address, and Social Security number of all persons who are winners of prizes of \$600 or more in value (see **"Withholding income tax from retailer VLT winnings,"** below).

The bill requires CAC, not later than nine months after the bill takes effect, to implement and maintain a central communication system to provide an auditing program for each retailer VLT in the state and to link every retailer VLT to the system. CAC must ensure that the system is

able to communicate with each retailer VLT lawfully operated in Ohio. However, a retailer VLT is not required to be in constant communication with the system or to be online. The bill requires LOT to adopt rules regarding the central communication system.

Additionally, each establishment must do all of the following:<sup>10</sup>

- Pay out retailer VLT ticket vouchers only through a self-service device that is linked to the central communication system. LOT rules must require the device, upon authorization by the system, to redeem a ticket voucher in the form of cash.
- Maintain all retailer VLTs within an area segregated from the general area of the establishment and within sight of personnel at all times;
- Have a key employee certified by CAC trained in recognizing underage and problem gaming onsite at all times while the establishment is open to the public;
- Operate a video surveillance system that meets all of the following requirements and make the footage available to the operator upon the operator's request:
  - It monitors each retailer VLT;
  - It keeps the footage for 30 days, then deletes it;
  - It does not use any facial recognition technology or software.

## **Advertising**

The bill prohibits any operator, establishment, manufacturer, or distributor from advertising any matter related to retailer VLTs or the retailer VLT industry by any of the following methods:

- Printed signs, marquees, permanent or portable signs, billboards, or any other means of lighted, printed, or pictorial outdoor advertising;
- Flyers or other types of hand-out materials advertising retailer VLTs or the industry to the general public;
- Radio or television;
- Through the use of any advertisement that refers to payoff percentages.

The following advertising methods are permitted under the bill:

- Client letter mailings, newsletters, business cards, and advertisements in the print media, provided that the advertisements are presented in good taste as determined by LOT by rule, and in a manner that will not have a negative impact or affect the integrity of the industry as determined by LOT by rule;
- Indoor advertising at an establishment, provided that the advertising is consistent with generally accepted indoor advertising and is in good taste as determined by LOT by rule,

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<sup>10</sup> R.C. 3770.33 and 3770.35.



so as not to compromise the morals of the public or affect the integrity of the industry as determined by LOT by rule.

However, no indoor advertising or retailer VLT may be placed directly in the windows or doors of an establishment. The advertisements and retailer VLTs must be placed in the establishment in a manner that a reasonable person would believe they are directed toward patrons on the premises and not passersby outside the establishment.<sup>11</sup>

### **Withholding income tax from retailer VLT winnings**

The bill requires a retailer VLT operator to withhold state and municipal income tax from a patron's retailer VLT winnings that exceed the Internal Revenue Service (IRS) reporting threshold, in the same manner as a VLT sales agent at a racino. The application of any municipal income tax depends on the location of the establishment. Under continuing law, municipal income tax is not withheld from other types of lottery winnings at retail establishments, but LOT must withhold state income tax and other amounts.

The bill does not require a retailer VLT operator to withhold any past due child or spousal support or past due debts to the state or a political subdivision from a patron's winnings. Continuing law requires racino VLT operators, LOT, casino operators, and sports gaming proprietors to do so. The Revised Code generally requires LOT to withhold those amounts from lottery prizes, but the bill does not specify whether winnings from a retailer VLT are considered a lottery prize.<sup>12</sup>

### **Public records exemption**

The bill exempts "information and records obtained under" the provisions of the bill regarding retailer VLTs and rules adopted under those provisions "of the State Lottery Commission and its officers, employees, and agents" from disclosure as public records. Those records are confidential and must not be disclosed except under court order or as permitted by LOT rules. The bill does not appear to apply that exemption to information or records obtained under the bill by CAC.<sup>13</sup>

### **Prohibitions**

The bill prohibits any person from doing any of the following and specifies that a violation is a third degree felony, except as otherwise noted below:

- Manufacturing, assembling, or producing a retailer VLT for sale in Ohio without a manufacturer license;
- Distributing or selling a retailer VLT in Ohio without a distributor license;

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<sup>11</sup> R.C. 3770.36.

<sup>12</sup> R.C. 718.031 and 5747.064. See also, for example, R.C. 3770.071 and 3770.073, not in the bill.

<sup>13</sup> R.C. 3770.33 and 3770.40.

- Owning, possessing, or operating a retailer VLT for use by players in Ohio without an operator license;
- Tampering with a retailer VLT with the intent to interfere with the proper operation of the retailer VLT or with the intent to manipulate the outcome, payoff, or operation of the retailer VLT;
- Playing a retailer VLT if under 21, or permitting any person under 21 to play a retailer VLT. A violation is a third degree misdemeanor.
- Operating or playing a retailer VLT in any place that is not a licensed establishment. A violation is a third degree misdemeanor.
- Being an operator and doing either of the following:
  - Owning, operating, or possessing a retailer VLT for use by players without prominently displaying a current certification of inspection. A violation is a third degree misdemeanor.
  - Knowingly submitting a false report or failing to report any amount due to LOT or an establishment.

A violation of any other provision of the bill regarding retailer VLTs for which no other penalty is provided is a third-degree misdemeanor.

LOT must adopt rules prescribing a schedule of fines for knowing violations of the bill by an establishment or operator, and must adopt procedures to suspend, revoke, or refuse a license or certification. The rules must include the reasons for and duration of any suspension or revocation and must ensure that the procedures comply with due process of law.

The bill requires LOT's Director, under LOT rules, to investigate any alleged violation of the bill according to procedures adopted by LOT. The rules must require any licensee to permit LOT and CAC to enter and inspect its place of business and its retailer VLT records during normal business hours. The Director may request the Attorney General (AG) or the county prosecutor to seek an injunction or prosecute a violation. Upon the Director's request, the AG must take whatever steps are necessary to initiate the action and prosecute the offender.<sup>14</sup>

### **Gray area devices**

The bill implements a new prohibition against "gray area devices," which the bill defines as an electrical or electro-mechanical video machine that is not licensed as a retailer VLT, is operated by the insertion of coins, cash, or tokens, plays or simulates the play of draw poker, keno, blackjack, spinning reel, or any other similar game that awards coins, cash, or credits, and contains a circuit component, meter, or switch capable of recording the removal of coins, cash, or credits earned or received by the player.

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<sup>14</sup> R.C. 3770.32, 3770.33, 3770.39, and 3770.99.

Under the bill, if a court finds that a person owns or operates a retailer VLT without a license or any other device, including any gray area device, designed or used for gambling that is not authorized by the Revised Code, the applicable law enforcement agency must seize and destroy the retailer VLT or device under the Forfeiture Law.

Existing law already prohibits the operation of any such device outside the parameters of legalized and regulated forms of gambling. Operating illegal gambling is a first degree misdemeanor on a first offense and a fifth degree felony on a subsequent offense, and any illegal gambling equipment may be seized and destroyed under the Forfeiture Law.<sup>15</sup>

### **No local regulation**

The bill specifies that the state, through LOT, must solely regulate persons licensed under the bill and the manner in which any licensee conducts business. Under the bill, “it is the intent of the General Assembly to preempt municipal corporations and other political subdivision from the regulation, licensing, or registration of, the establishment of rules or standards for, and the collection of any tax, fee, or assessments from persons licensed under” the bill, other than municipal income taxes.<sup>16</sup>

### **Electronic instant bingo (ebingo)**

The bill expands ebingo in Ohio by allowing a 501(c)(3) nonprofit organization to offer ebingo at a bar or restaurant, similar to how a 501(c)(3) currently may offer instant bingo. Under current law, ebingo is only available at facilities operated by veteran’s and fraternal organizations. The bill also makes a few other related changes to the Bingo Law.

### **Background on charitable bingo**

Under the Ohio Constitution, the General Assembly may authorize and regulate the operation of bingo to be conducted by charitable organizations for charitable purposes. The Revised Code defines “bingo” to include four types of games:

- **Traditional bingo** – A game in which a player purchases a five-column, five-row bingo card and the prize winner is determined by randomly drawing combinations of letters and numbers that correspond to spaces on the players’ cards to make a winning pattern;
- **Raffle** – A game in which players purchase tickets and then the prize winners’ ticket stubs are drawn at random from a container;
- **Instant bingo** – A game in which players purchase paper tickets from a “deal,” meaning a set of a given number of tickets in which some tickets are randomly pre-designated as prize winners. For example, a stack of 500 tickets sold for \$1 each might include three winning tickets that each win \$100. When all the tickets are sold, the organization pays out \$300 in prizes and keeps the remaining \$200. These tickets are often called pull tabs because the player pulls a tab on the ticket to reveal whether it is a winner.

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<sup>15</sup> R.C. 2915.01, 2915.02, 3770.31(A), and 3770.39(B). See also R.C. Chapter 2981, not in the bill.

<sup>16</sup> R.C. 3770.41.

- “Instant bingo” also includes certain games played using a punch board, seal card, or bingo blower.
- **Ebingo** – A version of instant bingo played on an electronic terminal. The terminal is pre-loaded with a deal of a given number of plays, some of which are randomly pre-designated as prize winners. When a player purchases a play, the terminal reveals the outcome of the play using graphics and animation. Using the example above, an ebingo terminal might be programmed with a deal of 500 total plays at \$1 each, with three of those plays each winning \$100. When all the plays in the deal are sold, the organization brings in \$500 and pays out \$300 in prizes, leaving \$200 remaining.

Under continuing law, not every type of charitable organization can operate every type of bingo game. The bill adds a provision of law that explicitly lists the organizations that may conduct each type of bingo, but it does not change those requirements other than with respect to ebingo conducted by a 501(c)(3), as discussed below.

Raffles are the least restricted type of bingo game and, unlike other forms of bingo, do not require a license issued by the AG. By contrast, ebingo is the most restricted type of bingo game and can only be offered by certain groups under certain conditions. Further, when a veteran’s, fraternal, or sporting organization operates instant bingo, or when a veteran’s or fraternal organization operates ebingo, it must donate a certain amount of the proceeds to a 501(c)(3) or a government entity.<sup>17</sup>

Authorized forms of charitable bingo				
Type of organization	Traditional bingo	Raffle	Instant bingo	Ebingo
501(c)(3) charitable nonprofit	✓	✓	✓	✓ (added by the bill)
Veteran’s organization	✓	✓	✓	✓
Fraternal organization	✓	✓	✓	✓
Sporting organization	✓	✓	✓	
Volunteer rescue service organization	✓	✓		
Volunteer firefighter’s organization	✓	✓		

<sup>17</sup> R.C. 2915.01, 2915.07, and 2915.101. See also R.C. 2915.08, not in the bill.

Authorized forms of charitable bingo				
Type of organization	Traditional bingo	Raffle	Instant bingo	Ebingo
Public school or chartered nonpublic school		✓		
501(c)(4) nonprofit social welfare organization		✓		
501(c)(6) nonprofit business league		✓		

## Ebingo at bars and restaurants

### Contract with host

Beginning January 1, 2026, the bill allows a 501(c)(3) charitable organization to contract with an instant bingo host that has an A-1-A, A-1c, or class D liquor permit (generally, a bar or restaurant) to offer ebingo to customers who are 18 or older on up to seven ebingo terminals at the host's location on behalf of the 501(c)(3). A 501(c)(3) is limited to one host location at any one time. A host location may contract with more than one 501(c)(3) but is limited to a total of seven terminals.

This arrangement is similar to the current law that allows a 501(c)(3) to contract with a business to sell instant bingo tickets on its behalf, except that a business is not required to have a liquor permit to sell instant bingo tickets. Under continuing law, bingo cannot be the primary source of retail income at the host's location.

The contract between the 501(c)(3) and the instant bingo host must identify the host and each location where ebingo will be conducted, require the host to comply with the prohibitions described below, and, in the case of ebingo, identify the distributor that will provide the deals to the 501(c)(3). Under continuing law, the host location also must be listed on the 501(c)(3)'s bingo license. The 501(c)(3) must give the AG a copy of the contract before beginning to operate under the contract.

Existing law requires a 501(c)(3) to notify the AG of any contract with an instant bingo host, but not to provide a copy. The 501(c)(3) promptly must notify the AG upon becoming aware of any conduct by the host that violates the Bingo Law, and also must notify the AG within 30 days after terminating any contract with a host.<sup>18</sup>

### Proceeds distribution and state tax

The bill requires the 501(c)(3), the host, the distributor, and the state to share the proceeds of ebingo conducted at a bar or restaurant as follows:

<sup>18</sup> R.C. 2915.093, 2915.094, and 2915.14; Section 4 of the bill.

- 26.5% to the 501(c)(3), to be used for the 501(c)(3)'s operations or given to another 501(c)(3) or a government entity;
- 6% to the instant bingo host to cover the host's expenses;
- 32.5% to the distributor as compensation for providing the deal;
- 35% to the state in the form of a tax (see "**Gambling and the Ohio Constitution**," below).

After the cost to the state of administering the tax is covered, the proceeds of the state tax on ebingo must be deposited in the Electronic Instant Bingo Profits Fund. The bill states that the money in the fund must be used for the purposes of supporting arts projects and programs, supporting construction and renovation of major sports facilities and minor league sports facilities throughout Ohio for the benefit of the state, and supporting veterans. Interest generated by the fund is credited to the fund.

Currently, the state does not tax organizations' bingo proceeds, except in the form of the sales tax. (The bill eliminates the sales tax on ebingo – see "**Ebingo sales tax**." See also "**Taxation of bingo winnings**," below.) The existing law also does not set the price that a distributor must charge for an ebingo or instant bingo deal.

The bill's formula does not apply to any instant bingo, and it does not apply to ebingo offered by veteran's and fraternal organizations. Continuing law requires veteran's and fraternal organizations to give a certain amount of the net profit of the proceeds of instant bingo or electronic instant bingo to a 501(c)(3) or government entity, based on how much the organization brings in.

Because the law governing veteran's and fraternal organizations uses a different distribution formula than the bill, and because some amounts are set by the distributor instead of by law, LSC cannot directly compare the revenue sharing from ebingo operated under the bill with ebingo conducted by a veteran's or fraternal organization. However, it appears that roughly the same amounts would go to a 501(c)(3) or government entity and to the distributor as a result of ebingo conducted under the bill versus ebingo at a veteran's or fraternal organization. The money that goes to the state as a tax on ebingo conducted under the bill generally would remain with a veteran's or fraternal organization if it were the one conducting the ebingo.<sup>19</sup>

### **Operating procedures**

The bill requires the 501(c)(3) to obtain each ebingo or instant bingo deal from a licensed distributor and provide the deal to the host. In the case of an ebingo deal, the 501(c)(3) must pay the distributor 67.5% of the ideal gross profit of the deal, of which the distributor keeps 32.5% of the ideal gross profit and remits 35% to the state as a tax. The "ideal gross profit" is the amount that will remain if all tickets are sold at the stated price and all prizes are paid out. The bill requires the distributor to pay the state tax on a monthly basis, similar to the procedures that currently

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<sup>19</sup> R.C. 2915.093, 2915.101, 5753.022, and 5753.032.

apply to sports gaming proprietors. The AG may suspend the distributor's license if the distributor fails to file a return or pay the tax within one year of its due date.

Then, the distributor provides the deal to the host. (In the case of an instant bingo deal, the 501(c)(3) gives the physical deal to the host instead.) Before the host begins to sell tickets from a deal, the host must pay the 501(c)(3) an amount equal to 94% of the ideal gross profit of the deal. That is, the host pays the 501(c)(3) the full value of the deal under the assumption that the host will eventually sell all the tickets or plays. The host then retains all the money the host brings in from selling the deal, minus the value of any prizes. (If any prizes go unclaimed, the host must give those prizes to the 501(c)(3).) In other words, the host realizes the full 6% commission once the entire deal is sold. This is the same commission that a host currently earns from instant bingo.

The bill also clarifies that a provision of continuing law that generally prohibits a charitable organization from paying its bingo game operators does not prohibit a 501(c)(3) from giving the statutorily required commission to an instant bingo host.<sup>20</sup>

### **Prohibitions**

The bill modifies several prohibitions that currently apply to a charitable organization that conducts instant bingo so that those prohibitions also apply to an instant bingo host. Under the bill, an instant bingo host must not do any of the following:

- Sell an instant bingo ticket or ebingo play to a person under 18;
- Offer instant bingo or ebingo on behalf of any person other than a qualified 501(c)(3);
- Violate the terms of its contract with the 501(c)(3);
- Purchase or lease supplies from any person other than a licensed distributor;
- Sell instant bingo tickets and ebingo plays other than for the manufacturer's listed price;
- Fail to display the 501(c)(3)'s bingo license and the serial numbers of each deal at the host's premises;
- Allow a person to be a bingo game operator if the host knows or should have known that the person has been convicted of a felony or gambling offense in any jurisdiction. An instant bingo host or the host's employee is excluded from the definition of a "bingo game operator" if the person's duties are related solely to nongaming activities such as entertainment, maintenance, or preparing or serving food and beverages.
- Sell an instant bingo ticket or ebingo play to a bingo game operator or an employee of the host;

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<sup>20</sup> R.C. 2915.01, 2915.093, 2915.10, 5753.01, 5753.04, 5753.05, 5753.08, and 5753.12.

- Fail, once the host opens a deal of instant bingo tickets or ebingo plays, to continue to sell the tickets or plays in that deal until the tickets or plays with the top two highest tiers of prizes in the deal are sold.

A violation of any of those prohibitions is illegal instant bingo conduct, which is a first degree misdemeanor on a first offense and a fifth degree felony on a subsequent offense. Under continuing law, an instant bingo host that violates the Bingo Law also may have a state or local retail sales license, such as its liquor license, suspended, revoked, or otherwise penalized at the request of the AG.

The bill allows the AG or any law enforcement agency to investigate an instant bingo host and examine its accounts and records to ensure compliance with the Bingo Law and, if necessary, to bring an action in court to enforce the Bingo Law. Current law allows the AG and law enforcement agencies to do so with respect to charitable organizations, distributors, and manufacturers, but not hosts.<sup>21</sup>

### **Continuing regulation of ebingo**

Under continuing law, an organization that conducts ebingo must purchase or lease the equipment and supplies from a distributor that is licensed by the AG and has an appropriate ebingo endorsement to the distributor's license. (The bill clarifies that a charitable organization may lease bingo equipment from a licensed distributor for a reasonable rental rate, instead of owning that equipment. The existing law might be read to require the organization to own that equipment, such as an ebingo terminal, although other provisions of law already appear to authorize a lease.)

The bill adds a requirement that a distributor keep records for at least three years that include the nonrepeating serial numbers of all ebingo deals the distributor sells, in addition to the serial numbers of all instant bingo deals as under current law.

Continuing law requires the AG to adopt rules regulating and approving ebingo equipment and the conduct of ebingo. The AG also has remote monitoring access to ebingo systems to ensure compliance with the Bingo Law and related rules.<sup>22</sup>

### **Ebingo sales tax exemption**

The bill exempts the sale of ebingo tickets (plays) from state and local sales tax. This change applies to sales by both instant bingo hosts and veteran's and fraternal organizations. Additionally, the bill exempts the sale of ebingo deals by licensed distributors from state and local sales tax, when the distributor sells a deal to a 501(c)(3) or a veteran's or fraternal organization.<sup>23</sup>

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<sup>21</sup> R.C. 2915.01, 2915.09, 2915.091, 2915.094, and 2915.10.

<sup>22</sup> R.C. 2915.09(A)(1), 2915.10, 2915.14, and 2915.15. See also R.C. 2915.16, not in the bill.

<sup>23</sup> R.C. 5739.02.



## **Ebingo and instant bingo at veteran's and fraternal organizations**

Finally, the bill expands the hours during which a veteran's or fraternal organization may offer ebingo or a veteran's, fraternal, or sporting organization may offer instant bingo. Under the bill, such an organization may offer ebingo or instant bingo up to 16 hours a day, instead of 12 hours, and may begin sales as early as 8 a.m. instead of 10 a.m. Under continuing law, sales must end by 2 a.m. The bill does not limit the hours for ebingo or instant bingo operated by an instant bingo host.

Under continuing law, a veteran's or fraternal organization may have up to ten ebingo terminals at its principal place of business. As is mentioned above, the bill limits instant bingo hosts to seven ebingo terminals.<sup>24</sup>

## **Taxation of bingo winnings**

The continuing Bingo Law does not require an organization that conducts bingo to withhold any amounts from participants' bingo winnings. However, bingo winnings are subject to federal and state income tax in the same manner as any other gambling winnings. Federal law requires any person that conducts gambling, including a charity that offers bingo, to report any player's winnings payout over a certain amount to the Internal Revenue Service (IRS) on Form W-2G. The threshold for traditional bingo is \$1,200, and the threshold for instant bingo is \$600 and at least 300 times the amount of the wager. (All players must pay income taxes on their net gambling winnings for the year, but the IRS is only notified when a winnings payout meets the reporting threshold.)<sup>25</sup>

Because of the way the bill allows an organization to conduct ebingo, it might be difficult for the organization to fulfill its legal obligations to the IRS or for the state to determine whether an individual taxpayer owes state income tax on a large bingo prize. However, it appears that at least some distributors intentionally structure their games so that the top prize never meets the IRS threshold. If an organization chooses only those types of games, it appears that the organization would not be required to do any tax reporting or withholding.

## **Gambling and the Ohio Constitution**

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 then specifically permits three types of gambling: the state-run lottery to benefit education, "the operation of bingo to be conducted by charitable organizations for charitable purposes," and casino gaming at four locations.<sup>26</sup>

The Ohio Supreme Court has held that bingo is a type of "lottery" under the Constitution, meaning that the General Assembly may authorize bingo only when it is conducted by charitable

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<sup>24</sup> R.C. 2915.13.

<sup>25</sup> Internal Revenue Service, [Publication 3079](#) (PDF) at page 18, available at [irs.gov](https://www.irs.gov) under "Forms & Instructions."

<sup>26</sup> Ohio Constitution, Article XV, Section 6.

organizations for charitable purposes.<sup>27</sup> As a result, a reviewing court might consider whether the state can impose a tax on bingo proceeds in the manner the bill does, and whether the state can allow for-profit businesses to operate bingo on behalf of charities. It appears that Ohio's courts have not previously been called on to consider the meaning of "charitable organization" or "charitable purpose" under this provision of the Constitution.

The courts also have not ruled on whether the legislature may expand the state lottery to include games such as VLTs. In 2016, the Ohio Supreme Court declined to consider that question because it found that the plaintiffs lacked standing to challenge the law.<sup>28</sup>

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## HISTORY

Action	Date
Introduced	06-10-25

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ANHB0344IN-136/ar

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<sup>27</sup> *Ohio Boys Town, Inc. v. Brown*, 69 Ohio St.2d 1, 7 (1982). See also *Kraus v. Cleveland*, 89 Ohio App. 504 (8<sup>th</sup> Dist. Ct. App. 1950), appeal dismissed by *Kraus v. Cleveland*, 155 Ohio St. 98 (1951) "for the reason that no debatable constitutional question is involved"; *State ex rel. Ohio Roundtable v. Taft*, 2003-Ohio-3340 (10<sup>th</sup> Dist. Ct. App. 2003); *State ex rel. Gabalac v. New Universal Congregation of Living Souls*, 55 Ohio App. 2d 96 (9<sup>th</sup> Dist. Ct. App. 1977); *State v. St. Helen's Catholic Church*, 1976 Ohio App. LEXIS 6841 (11<sup>th</sup> Dist. Ct. App. 1976); *City of Toledo v. Pompili*, 1976 Ohio App. LEXIS 7197 (1<sup>st</sup> Dist. Ct. App. 1976); and *Marmon, Inc. v. City of Youngstown*, 1975 Ohio App. LEXIS 7825 (7<sup>th</sup> Dist. Ct. App. 1975).

<sup>28</sup> *State ex rel. Walgate v. Kasich*, 147 Ohio St.3d 1 (2016).