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# OHIO LEGISLATIVE SERVICE COMMISSION

Wendy Zhan, Director

Office of Research  
and Drafting

Legislative Budget  
Office

**H.B. 194\***  
**133<sup>rd</sup> General Assembly**

## Occupational Regulation Report

[Click here for H.B. 194's Bill Analysis / Fiscal Note](#)

**Primary Sponsors:** Reps. Greenspan and Kelly

**Impacted Profession:** Sports gaming professionals

Joe McDaniels, Attorney/Division Chief

REVISED VERSION \*\*

Eric Makela, Economist

LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.<sup>1</sup>

## SUMMARY OF PROPOSED REGULATIONS

The bill legalizes sports gaming in Ohio and establishes a regulatory framework controlling the participants, places, and manner in which it is conducted. Until recently, all U.S. states other than Delaware, Montana, Oregon, and Nevada were prohibited from authorizing, regulating, and taxing sports gaming by the federal Professional and Amateur Sports Protection Act of 1992 (PASPA). However, in 2018 the U.S. Supreme Court overturned PASPA on the ground that it violates states' rights under the 10<sup>th</sup> Amendment to the U.S. Constitution.<sup>2</sup>

The Ohio Constitution generally prohibits "lotteries" in Ohio but allows the General Assembly to authorize state-conducted lotteries in which prizes are awarded by chance and the

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\*This report addresses the "As Introduced" version of H.B. 194. It does not account for changes that may have been adopted after the bill's introduction.

\*\* This version incorporates a description of the Ohio Constitution's general prohibition against lotteries.

<sup>1</sup> R.C. 103.26, not in the bill.

<sup>2</sup> *Murphy v. National Collegiate Athletic Association*, 584 U.S. \_\_\_\_ (2018).

entire net proceeds of the lottery are paid into a fund for the support of certain education programs. The Constitution also includes exceptions for charitable bingo and gaming at four casino facilities.<sup>3</sup> The bill classifies sports gaming as part of the Ohio lottery to be conducted in Ohio casinos, racinos (horse racetracks with video lottery terminals), and certain veteran’s and fraternal organizations.

## Sports gaming licenses

The bill creates three new occupational licenses, collectively called “sports gaming licenses,” for persons involved in the sports gaming industry. The licenses are obtained through an application process administered by the Commission. The Commission is also empowered to penalize, limit, condition, restrict, suspend, revoke, deny, or refuse to renew a sports gaming license. The basic characteristics, qualifications, and conditions associated with each sports gaming license are described in the table below. Please see [LSC’s analysis](#) of the bill for more detailed descriptions.

Sports Gaming Licenses			
	Sports gaming agent	Management service provider	Occupational license
<b>Description</b>	Permitted to offer sports gaming at a designated facility.	Permitted to contract with a sports gaming agent to conduct sports gaming or share revenue from sports gaming.	Permitted to engage in sports gaming activities as an employee of a sports gaming agent or management service provider.
<b>Background check</b>	Required.	Required.	Required.
<b>Qualifications</b>	Available only to casino operators and video lottery sales agents.	Established by Commission rule.	Established by Commission rule.
<b>Other conditions</b>	Enter into an agreement with the Commission requiring a capital investment and a commitment to employing a specified number of persons.	Contract with the sports gaming agent must be submitted to the Commission for approval.	—

<sup>3</sup> Ohio Constitution, Article XV, Section 6.

Sports Gaming Licenses			
	Sports gaming agent	Management service provider	Occupational license
<b>Application fees</b>	\$100,000 plus fee for background check.	\$1,000 plus fee for background check.	\$100 (may be paid by employer) plus fee for background check (must be paid by employer).
<b>Post-licensure requirements</b>	<p>Display license or make available for inspection upon request of law enforcement.</p> <p>Submit to annual audit of financial transactions.</p> <p>Adopt and publish house rules establishing details such as amounts paid on winning wagers and the effect of schedule changes.</p>	<p>Display license or make available for inspection upon request of law enforcement.</p>	<p>Prominently display an indicator of licensure when present at a sports gaming facility.</p>
<b>Annual renewal fees</b>	\$100,000 or 1% of the agent's handle in the preceding year.	\$1,000.	\$100.

If an applicant for a sports gaming agent or management service provider license is a business entity, the Commission must evaluate all persons who control the entity (e.g., affiliates, persons holding a proprietary interest in the applicant, and key personnel) in determining whether to issue the license. The Commission is prohibited from granting a license to any applicant that:

- Knowingly made a false statement of material fact to the Commission;
- Has been suspended from operating a gambling game, gaming device, or gaming operation, or had a license revoked by any government;
- Has been convicted of a crime of moral turpitude, a gambling-related offense, or a theft or fraud offense, or has otherwise demonstrated a lack of respect for law and order;
- Has been directly employed by any offshore wagering market that serviced the U.S. or otherwise accepted illegal wagers from individuals located in the U.S.

Other terms and conditions of licensure will be established by rules adopted by the Commission under the Administrative Procedure Act. The bill expressly requires the Commission to deny a sports gaming agent license to any applicant, reprimand any sports gaming agent, or suspend or revoke a sports gaming license if the applicant or licensee (1) does

not demonstrate sufficient financial responsibility, (2) has not disclosed the existence or identity of other persons who have an ownership interest in the business, or (3) sells assets (other than those sold in the ordinary course of business) or more than 5% of voting stock in the business to a person that has not already been determined by the Commission to meet the qualifications of a licensee.<sup>4</sup>

## **Bond requirement**

The bill requires sports gaming agents to give a surety bond to the state to ensure that the agent can make all payments required by law. The amount of the surety bond is established by the Commission.

## **Process regulations**

The bill restricts the places where sports gaming may occur, the manner in which it is conducted, and the persons that may participate. Many of the restrictions – such as those concerning the maximum wager on a sports event and advertising restrictions – will be established by Commission rules. Others are expressly prescribed by the bill. For example, the bill permits sports gaming only in a “sports gaming facility,” which is defined as an area of a casino or racino, or an eligible veteran’s or fraternal organization that has a sports gaming terminal. Only persons age 21 or older may participate in sports gaming. It must be conducted in person within the sight and control of licensed employees of a sports gaming agent or management service provider. Each sports gaming agent is required to adopt house rules that must be submitted to the Commission for approval and posted in the sports gaming facility.<sup>5</sup>

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# **LEAST RESTRICTIVE REGULATION COMPARISON**

## **Ohio’s general regulatory policy**

The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from “present, significant, and substantiated harms that threaten health, safety, or welfare[,]” the state’s expressed intent is to enact the “least restrictive regulation that will adequately protect consumers from such harms.”<sup>6</sup>

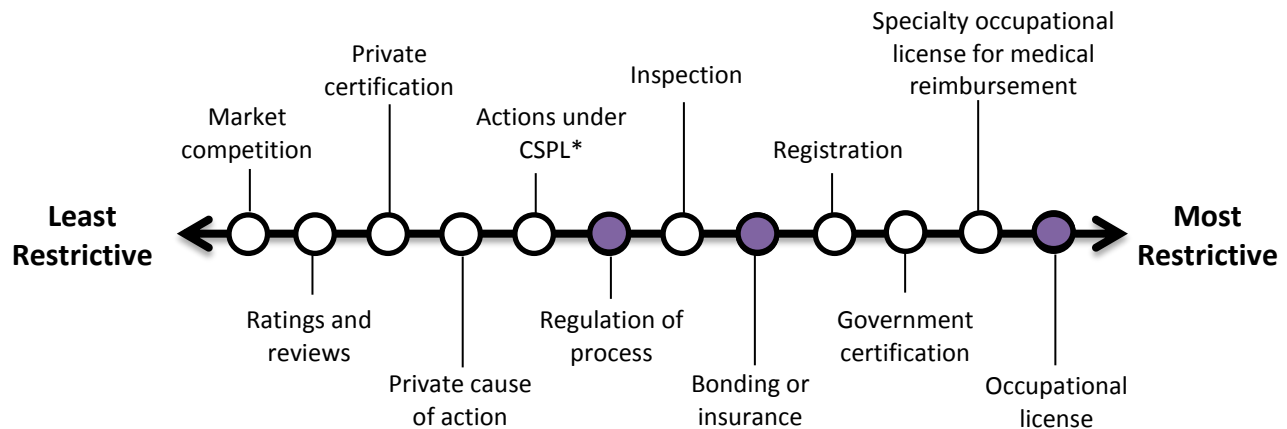
The degree of “restrictiveness” of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state’s policy by least to most restrictive:

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<sup>4</sup> R.C. 109.572 and 3770.30 through 3770.37.

<sup>5</sup> R.C. 3770.30, 3770.31, 3770.33(D), 3770.37, and 3770.38.

<sup>6</sup> R.C. 4798.01 and 4798.02, not in the bill.



\*CSPL – The Consumer Sales Practices Law

## Necessity of regulations

The bill's sponsors did not expressly identify public health, safety, or welfare concerns that led to the bill's regulations. However, several concerns can be gleaned from committee testimony, research, reporting, and other literature on sports gaming. Some common concerns associated with unregulated sports gaming are problem gambling, economic impact on low-income households, integrity of athletic competitions, and crime.

### Problem gambling

Several interested parties submitted testimony suggesting that legalizing sports gaming will increase the prevalence and severity of gambling disorders in Ohio.<sup>7</sup>

### Economic impact

Other interested parties expressed concerns about the economic impact of sports gaming on low-income Ohioans. According to *Market Watch* (cited in committee testimony), Americans spent \$107 billion on legal gambling in 2017. That number was expected to increase to \$118.5 billion in 2018.<sup>8</sup> In Ohio, total lottery sales in FY 2018 were \$3.2 billion.<sup>9</sup> Ohio casinos and racinos collected \$1.86 billion in revenue during the 2018 calendar year.<sup>10</sup> According to a recent study (also cited in committee testimony), individuals in the lowest socioeconomic

<sup>7</sup> See, e.g., Barry Sheets, *House Bill 194 Opponent Testimony*, May 30, 2019.

<sup>8</sup> Les Bernal, *House Bill 194 Opponent Testimony*, May 30, 2019, and Quentin Fottrell, *This is how much Americans Lost on State-Sanctioned Gambling Last Year*, *Market Watch*, May 15, 2018, available at: <https://www.marketwatch.com/story/this-is-how-much-americans-lost-on-state-sanctioned-gambling-last-year-2018-05-15>.

<sup>9</sup> Ohio Lottery Commission, *Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2018*, 21, available at: [https://www.ohiolottery.com/assets/pdf/about/CAFR\\_FY18\\_lowrez.pdf](https://www.ohiolottery.com/assets/pdf/about/CAFR_FY18_lowrez.pdf).

<sup>10</sup> Rich Exner, *Ohio Gambling Revenue Totals Record \$1.86 Billion in 2018 at Casinos, Racinos*, *Cleveland.com*, January 11, 2019, available at: <https://www.cleveland.com/datacentral/2019/01/ohio-gambling-revenue-totals-record-186-billion-in-2018-at-casinos-racinos.html>.

quintile exhibit the highest rate of lottery gambling. The study also suggests that persons of lower income are more likely to exhibit characteristics of problem gambling.<sup>11</sup>

### **Integrity of athletics**

Until recently, the major U.S. professional and amateur sports leagues and associations universally opposed the widespread legalization of sports gaming. Today, the leagues are split in terms of their favored approach to sports gaming.<sup>12</sup> There are a number of highly publicized examples of sports gaming scandals in professional and amateur athletics. However, there is not a substantial base of empirical data on the subject.

### **Crime**

Other interested parties expressed concerns about the usefulness of a sports gaming operation to a person laundering money obtained through criminal activity.<sup>13</sup> Sports gaming is a cash-heavy business that combines money from many different sources.

### **Restrictiveness of regulations**

Whether the bill's regulations – three new occupational licenses, a bond requirement for sports gaming agents, and several process regulations concerning sports gaming – are the least restrictive measures sufficient to protect the public is a policy judgment. However, some insight into this question can be garnered by comparing the bill's regulatory system to the objective guidance included in the state's regulatory policy.

### **Licensure requirement**

Licensure is the most restrictive of all regulatory options identified within the state's continuum of regulations. Accordingly, the state's policy prescribes a narrow range of situations in which required licensure is appropriate; specifically, when all of the following circumstances are present: (1) the occupation involves providing a service regulated by both state and federal law, (2) the licensing framework allows individuals licensed in other states and territories to practice in Ohio, and (3) the licensing requirement is based on uniform national laws, practices, and examinations that have been adopted by at least 50 U.S. states and territories.<sup>14</sup>

Sports gaming is regulated by both state and federal law. However, the bill does not grant reciprocity to persons licensed to conduct sports gaming activities in other states. Furthermore, it does not appear to be modeled after any uniform national law.

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<sup>11</sup> Grace M. Barnes et al., *Gambling on the Lottery: Sociodemographic Correlates Across the Lifespan*, *Journal of Gambling Studies* (2011), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4103646/>.

<sup>12</sup> Wayne Parry, *US Sports Leagues Split on How to Monetize Sports Betting*, Associated Press, February 4, 2019, available at: <https://www.apnews.com/86888142961d45a191cf00d1f026f302>; NCAA, *Sports Wagering*, available at: <http://www.ncaa.org/enforcement/sports-wagering>.

<sup>13</sup> Eric Schippers, *House Bill 194 Opponent Testimony*, May 23, 2019.

<sup>14</sup> R.C. 4798.02, not in the bill.

A broad national consensus on the details of sports gaming licensure is not yet possible because the profession remains illegal in most states. With the exception of New Mexico, all states that allow sports gaming have enacted comprehensive regulations that include licensure requirements. The bill's licensure requirements for Ohio are neither the least nor the most restrictive among these states (see **APPENDIX** below).

### **Bond requirement**

The state's policy provides that a bond requirement is appropriate when the intention of the regulation is to protect against externalities such as damages to third parties that are not the buyer or the seller. The purpose of the surety bond required by the bill is to "guarantee the licensee faithfully makes all payments in accordance with this chapter and rules adopted under this chapter."<sup>15</sup> This purpose appears to be consistent with the state's policy.

### **Regulations of process**

The state's policy does not provide specific guidance as to when a regulation of process is the best means of protecting the health, safety, and welfare of consumers. However, the policy as a whole suggests that regulations of process are the most preferred method of regulation when market competition, ratings and reviews, private certifications, private causes of actions, and actions under the state's Consumer Sales Practices Law (CSPL) do not provide sufficient protection.

The sufficiency of private remedies in Ohio is a policy judgment. Nearly all other states that allow sports gaming have adopted a system of regulations to supplement the consumer protections afforded by private remedies. Even New Mexico, which has no statutory sports gaming regulations, is not an unfettered sports gaming market. In that state, a series of gambling compacts allow tribal casinos to engage in sports gaming activities without authorization under state law. It remains illegal for other parties to conduct sports gaming.<sup>16</sup>

### **Other regulatory policies**

The Ohio Constitution generally prohibits lotteries and, where gambling is permitted, statutory law prescribes a comprehensive regulatory framework. This suggests that the state favors an approach that strictly constrains the gambling industry. However, Ohio does not have a general policy addressing the state's intent in regulating individuals employed by that industry.

Under the bill, the State Lottery Commission is responsible for licensing and regulating sports gaming professionals. The mission of the Commission is to "offer entertaining games that

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<sup>15</sup> R.C. 3770.33(D).

<sup>16</sup> Will Webber, *Early Line Indicates New Mexico Sportsbooks Good for Casinos*, Santa Fe New Mexican, April 20, 2019, available at: [https://www.santafenewmexican.com/news/local\\_news/early-line-indicates-new-mexico-sportsbooks-good-for-casinos/article\\_c001c7e8-809a-53b8-996e-e352684c256b.html](https://www.santafenewmexican.com/news/local_news/early-line-indicates-new-mexico-sportsbooks-good-for-casinos/article_c001c7e8-809a-53b8-996e-e352684c256b.html).

maximize profits for K-12 public education.”<sup>17</sup> The Commission also purports to ascribe to the following values:

- Adhere to all legal and ethical standards of the state;
- Protect the integrity of the lottery;
- Honor its commitment to K-12 public education;
- Offer players only games that are fair and ethical;
- Promote the accessibility of lottery games;
- Evaluate retailers with consideration for the location and population served rather than based only on revenue generated;
- Maximize revenues over expenses; and
- Be worthy of the public’s trust and respect.<sup>18</sup>

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## STATE BY STATE COMPARISON

Four states (Nevada, Oregon, Delaware, and Montana) allowed sports gaming before PASPA and were permitted to continue doing so after its enactment by Congress. In the wake of the *Murphy* decision overturning the law, 10 additional states have legalized sports gaming in some capacity. In some instances, the states enacted new legislation. In others, previously pre-empted laws were activated by PASPA’s demise. 27 other states (including Ohio) have introduced legislation that would allow sports gaming.<sup>19</sup>

All U.S. states but New Mexico have either subjected sports gaming to a comprehensive regulatory framework or prohibited it altogether. See the **APPENDIX** for a comparison of the sports gaming laws in Indiana, Nevada, New Jersey, Pennsylvania, and West Virginia.

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## IMPACT STATEMENT

### Opportunities for employment

Under current law, sports wagering is illegal in Ohio, so there is no opportunity to legally engage in employment in the field. The bill’s regulations limit opportunities for employment in operating newly legalized sports gaming to those who qualify for and obtain an occupational license. The qualifications have been discussed above and are also detailed in the [ORD bill analysis](#). They include requirements for the licensee to be at least 21 years of age, pass a

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<sup>17</sup> Ohio Lottery Commission, Mission, available at: <https://www.ohiolottery.com/About/Index/Mission>, (last accessed June 19, 2019).

<sup>18</sup> *Id.*

<sup>19</sup> S.B. Nation, *The State of Sports Betting*, available at: <https://www.sbnation.com/a/sports-betting-gambling-state-legislation-tracker>.



background check, which must be paid for by the employer, and pay an annual fee of \$100, which may be paid by the employer. The regulations also limit the number of employers in the industry to casino operators and video lottery sales agents who become licensed sports gaming agents and licensed management services providers who contract with them.

### **Market competition**

Again, there is no legal market for sports gaming in Ohio under current law. The bill's regulations limit entry into the newly legalized sports gaming industry to operators of Ohio's four casinos and seven racinos, and certain fraternal and veterans organizations that contract with a sports gaming agent to offer sports gaming on a single terminal in their facilities.

### **Consumer choice**

Once again, under current law, Ohio consumers are not permitted to legally engage in sports gaming within the state. The bill's regulations limit consumers of Ohio's newly legalized sports gaming to Ohio's four casinos, seven racinos, and certain fraternal and veterans organizations that contract with a sports gaming agent to offer sports gaming on a single terminal in their facilities.

### **Cost to government**

For the costs of the bill to government, please see the [LBO fiscal note](#).

## APPENDIX

Regulation of the Sports Gaming Industry					
State	Year legalized	Notable characteristics	Occupational licenses	Selected qualifications	Fees
Indiana <sup>20</sup>	2019	Prohibits wagering on e-sports, limits the locations at which sports gaming may occur, and requires the Indiana Gaming Commission to adopt further regulations.	<p>Certificate of authority.</p> <p>Sports wagering service provider (contracts with certificate-holder to conduct sports gaming).</p>	<p>Must be a licensed owner of a riverboat casino, a licensed operating agent contracted by a licensed owner to conduct gambling activities on the owner's behalf, a permit holder authorized to conduct pari-mutuel wagering on horse racing, or a gambling game facility.</p> <p>Established by rule of the Indiana Gaming Commission.</p>	<p>\$100,000 initial fee. A \$50,000 annual administrative fee is required in subsequent years.</p> <p>\$10,000 application fee.</p>

<sup>20</sup> Ind. Code Ann. § 4-38-1-1 *et seq.*

Regulation of the Sports Gaming Industry					
State	Year legalized	Notable characteristics	Occupational licenses	Selected qualifications	Fees
Nevada <sup>21</sup>	1949	Prohibits the acceptance of out-of-state sports wagers.	Nonrestricted gaming license.	Must obtain approval of the premises at which gaming will be offered, provide proof of adequate financing and a surety bond, establish good character, have a reputable background, and show adequate business competence.	\$500 application and investigation fee. Annual fees based on number of “games” operated and based on a percentage of gross revenue derived from the license (ranging from 3.5-6.75%).
New Jersey <sup>22</sup>	2018	Allows online sports gaming as well as self-service wagering stations.	Sports wagering license.	Must be a casino or gambling house in Atlantic City or a horse racetrack.	\$100,000 initial fee and “reasonable” renewal fee (minimum \$100,000).
Pennsylvania <sup>23</sup>	2017	Conditioned upon federal authorization for states to permit and regulate sports gaming. Other regulations adopted by the Pennsylvania Gaming Control Board.	Sports wagering license.	Must be a licensed “brick and mortar” casino.	\$10 million license fee and \$250,000 annual renewal fee.

<sup>21</sup> Nev. Rev. Stat. §§ 463.160, 463.380, and 463.383; Nev. Gaming Comm. §§ 3.010, 3.050, 3.090, 4.070, 22.020, 22.145, and 22.150.

<sup>22</sup> N.J. Stat. §§ 5:12A-10 and 11.

<sup>23</sup> 4 Pa. Cons. Stat. Ann. §§ 13C11, 13C21, and 13C61; See also, House Committee on Appropriations, *Fiscal Note on House Bill No. 271*, available at: <https://www.legis.state.pa.us/WU01/LI/BI/FN/2017/0/HB0271P2652.pdf>, (last accessed June 20, 2019).

Regulation of the Sports Gaming Industry					
State	Year legalized	Notable characteristics	Occupational licenses	Selected qualifications	Fees
West Virginia <sup>24</sup>	2018	Allows the West Virginia Lottery Commission to enter into sports wagering agreements with other states to allow out-of-state wagering.	Operator.	Must be a casino located at the state's four horse racetracks and one "historic resort hotel."	\$100,000 application fee and \$100,000 renewal fee every five years.
			Management service provider.	Contract with the sports wagering operator is subject to the approval of the West Virginia Lottery Commission.	\$1,000 application fee and \$1,000 annual renewal fee.
			Occupational.		\$100 application fee and \$100 annual renewal fee.

OR-133-0001-1/mh

<sup>24</sup> W. Va. Code §§ 29-22D-2, 5, 6, 7, and 14.



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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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H.B. 194  
133rd General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Greenspan and Kelly

Emily E. Wendel, Attorney

### SUMMARY

#### Overview – legalization of sports gaming

- Legalizes, regulates, and taxes sports gaming (betting) in Ohio as a “sports gaming lottery” under the administrative authority of the State Lottery Commission.
- Allows casino operators and video lottery sales agents (operators of video lottery terminals (VLTs) at horse racetracks, commonly known as racinos) to apply to offer sports gaming.
- Permits certain veteran’s and fraternal organizations also to offer sports gaming through a casino operator or video lottery sales agent.
- Defines “sports gaming” as participating in the sports gaming lottery operated by the Commission through the business of accepting wagers on sporting events and other events, the individual performance statistics of athletes in a sporting event or other events, or a combination, by any system or method approved by the Commission.
- Allows sports gaming in relation to professional or collegiate sports and athletic events, motor races, and any other special event authorized by the Commission.

#### Sports gaming licenses

- Requires the Commission to issue three types of sports gaming licenses: sports gaming agent licenses, management services provider licenses, and occupational licenses.
- Requires the Commission to administer the sports gaming licensing system, and allows the Commission to penalize, limit, condition, restrict, suspend, revoke, deny, or refuse to renew any sports gaming license.
- Provides general eligibility requirements for sports gaming licenses and requires applicants to undergo a criminal records check through the Bureau of Criminal Identification and Investigation (BCII).

- Requires sports gaming licensees to display their licenses while operating sports gaming.
- Requires a sports gaming licensee to give the Commission written notice within 30 days of any change to any information provided in the licensee's application for a license or renewal.
- Allows a casino operator or a video lottery sales agent to apply for a sports gaming agent license and specifies the process and requirements to receive or renew a sports gaming agent license.
- Allows a sports gaming agent to contract with a management services provider to conduct its sports gaming, and requires the management services provider to be licensed as provided under the bill.
- Requires an individual who is employed to be engaged directly in sports gaming-related activities, or otherwise to conduct or operate sports gaming, to hold an appropriate and valid occupational license, and specifies the application and renewal requirements for the license.

### **Conducting sports gaming**

- Allows a sports gaming agent to accept wagers on sports events and other authorized events only from individuals who are at least 21 and who are physically present in an authorized sports gaming facility.
- Allows a veteran's or fraternal organization to contract with a sports gaming agent to offer sports gaming through the agent on a single terminal located in the organization's facility, and specifies the requirements for such a contract.
- Provides several duties for sports gaming agents, including requirements that sports gaming agents comply with minimum internal control standards and conduct sports gaming in compliance with the Commission's rules.
- Exempts shipments of sports gaming devices and materials into Ohio from a federal law that generally prohibits that practice but allows states to exempt themselves.

### **State Lottery Commission**

- Increases the membership of the Commission from nine to eleven members.
- Requires three members of the Commission to have gaming experience.
- Requires the Commission to adopt several types of sports gaming rules.
- Allows the Commission to make anonymized sports gaming data available to professional and collegiate sports leagues as the Commission determines necessary to ensure the integrity of sports gaming.
- Creates the Sports Gaming Advisory Board to advise the Commission and to study and develop recommendations for the Commission's sports gaming rules.

- Requires the Director of the Commission to employ a monitoring system to identify abnormal irregularities in volume or odds swings that could signal suspicious activities that require further investigation.
- Requires the Director promptly to report any facts or circumstances relating to the operations of a sports gaming licensee that constitute a violation of state or federal law and immediately to report any suspicious wagering.

### **Taxation of sports gaming**

- Imposes a 10% tax on a sports gaming agent'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.
- Requires sports gaming agents to withhold state and municipal income taxes from patrons' winnings whenever federal income tax withholding is required.
- Specifies that operators must pay commercial activity tax only on their net receipts from sports gaming, not on gross receipts.

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

- Creates the Sports Gaming Revenue Fund in the state treasury and requires all state revenues generated from sports gaming to be deposited in the fund, including revenue from the tax imposed on sports gaming receipts and including all fees, fines, and other revenue collected by the State Lottery Commission in administering sports gaming.
- Creates several additional funds into which the Director of Budget and Management must transfer moneys from the Sports Gaming Revenue Fund in order to cover the expenses incurred by the State Lottery Commission, the Ohio Casino Control Commission, and the Department of Taxation in regulating and taxing sports gaming.
- Requires 98% of the remaining funds in the Sports Gaming Revenue Fund to be transferred to the Lottery Profits Education Fund and 2% to the Problem Sports Gaming and Addiction Fund created by the bill.

### **Prohibitions and enforcement**

- Prohibits any person from offering sports gaming in Ohio without first obtaining a sports gaming agent license, and prohibits a sports gaming agent from allowing another person to offer sports gaming on the agent's behalf, except as specifically permitted under the bill.
- Prohibits a sports gaming agent from accepting a wager from an individual who is under 21 or is not physically present in an authorized sports gaming facility.
- Prohibits any employee of a sports gaming agent from engaging in sports gaming at the employer's facility.

- Prohibits any employee of the State Lottery Commission from participating in sports gaming at a sports gaming facility in Ohio or at any out-of-state facility associated with an Ohio sports gaming agent.
- Allows the State Lottery Commission or a sports gaming agent to ban any individual from participating in sports gaming.
- Establishes several criminal prohibitions concerning sports wagering, including prohibitions concerning wagering by individuals under 21, unlicensed sports gaming operations, and corrupt practices intended to change the outcome of a sporting event.
- Requires the State Lottery Commission to levy civil penalties for noncriminal violations of the law governing sports gaming.
- Requires the Ohio Casino Control Commission to enforce the law governing sports gaming pursuant to an agreement with the Director of the State Lottery Commission.

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## DETAILED ANALYSIS

### Overview – legalization of sports gaming

The bill legalizes, regulates, and taxes sports gaming (betting) in Ohio as a “sports gaming lottery” under the administrative authority of the State Lottery Commission. Under the bill, casino operators and video lottery sales agents (operators of video lottery terminals (VLTs) at horse racetracks, commonly known as racinos) may apply to offer sports gaming, and certain veteran’s and fraternal organizations also may offer sports gaming through a casino operator or video lottery sales agent (see **COMMENT**).

Under the bill, “sports gaming” means participating in the sports gaming lottery operated by the Commission through the business of accepting wagers on sporting events and other events, the individual performance statistics of athletes in a sporting event or other events, or a combination of any of those by any system or method of gaming approved by the Commission. To “wager” means to purchase a sports gaming lottery ticket through which a sum of money or thing of value is risked on an uncertain occurrence. “Sports gaming” includes purchasing lottery tickets whose prize determinations are based on exchange wagering, parlays, over-under, moneyline, pools, pari-mutuel sports wagering pools, and straight bets.<sup>1</sup> But, “sports gaming” does not include casino gaming, fantasy contest entry fees, or pari-mutuel horse racing wagering, which are all regulated separately under continuing law.

The bill defines a “sports event” or “sporting event” as any professional sport or athletic event, any collegiate sport or athletic event, motor race event, or any other special event

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<sup>1</sup> For explanations of several common types of sports wagers, see Vegas.com, *Sports Betting*, available at <https://www.vegas.com/gaming/gaming-tips/sports-betting/> and Online Gambling Sites, *How to Bet on Sports – Guide to the Different Types of Wagers*, available at <https://www.onlinegamblingsites.com/betting/wagers-bets/>.

authorized by the Commission. A “professional sport or athletic event” is an event at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in the event. And, a “collegiate sport or athletic event” is a sport or athletic event offered, sponsored by, or played in connection with a public or private post-secondary educational institution.

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 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 form of sports gaming permitted under the bill.

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>2</sup>

## **Sports gaming licenses**

### **Licensing requirements, generally**

Under the bill, the State Lottery Commission must issue three types of licenses: sports gaming agent licenses, management services provider licenses, and occupational licenses. The bill refers generally to all of these licenses as “sports gaming licenses.” The Commission must determine a person’s eligibility to hold a sports gaming license, issue all licenses, and maintain records of licenses issued. Before the Commission has adopted rules governing sports gaming licenses, the bill requires the Commission to accept applications, evaluate applicants’ qualifications, and undertake initial review of licenses.

The bill also allows the Commission to penalize, limit, condition, restrict, suspend, revoke, deny, or refuse to renew any sports gaming license as part of an adjudication conducted under the Administrative Procedure Act. 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.

No State Lottery Commission employee may receive a sports gaming license. Each person applying for a sports gaming license must submit a complete set of fingerprints to the Bureau of Criminal Identification and Investigation (BCII) for the purpose of conducting a criminal records check and must pay any required fee for the check, provided that in the case of an occupational license, the applicant’s employer must pay the fee. The Commission may

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<sup>2</sup> R.C. 3770.30. See also R.C. 2915.02, not in the bill, and *Murphy v. National Collegiate Athletic Association*, 138 S.Ct. 1461 (2018).

require additional criminal records checks from a licensee applying to renew a sports gaming license.

The bill prohibits the Commission from granting a sports gaming license to an applicant if evidence satisfactory to the Commission exists that the applicant has done any of the following:

- Knowingly made a false statement of material fact to the Commission;
- Been suspended from operating a gambling game, gaming device, or gaming operation, or had a license revoked by any government;
- Been convicted of a disqualifying offense, meaning a crime of moral turpitude, a gambling-related offense, or a theft or fraud offense, or otherwise has demonstrated a lack of respect for law and order as demonstrated by the criminal records check;
- Been directly employed by any offshore wagering market that serviced the United States or otherwise accepted illegal wagers from individuals located in the United States.

In the case of a sports gaming agent or a management services provider (that is, a sports gaming licensee that may be a business entity instead of an individual), an applicant also may not receive a sports gaming license until the Commission has determined that each person who has control of the applicant has met the qualifications for licensure. The following persons are considered to have control of an applicant:

- Each person associated with a corporate applicant, including any corporate holding company, parent company, or subsidiary company of the applicant that has the ability to control the corporate applicant's activities or elect a majority of the board of directors of that corporation, other than any bank or other licensed lending institution that holds a mortgage or lien acquired in the course of ordinary business;
- Each person associated with a noncorporate 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;
- The applicant's key personnel, including any executive, employee, or agency, having the power to exercise significant influence over decisions concerning any part of the applicant's business operation.

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

Finally, a sports gaming licensee must give the Commission written notice within 30 days of any change to any information provided in the licensee's application for a license or renewal.<sup>3</sup>

## **Sports gaming agents**

### **Generally**

The bill allows casino operators and video lottery sales agents to offer sports gaming in accordance with the bill. A casino operator or video lottery sales agent who is licensed to do so by the State Lottery Commission is considered a "sports gaming agent." Sports gaming agents may offer sports gaming only at sports gaming facilities, which include designated areas in casino facilities and in horse racetracks that have VLTs and designated areas in certain veteran's and fraternal organizations (see "**Conducting sports gaming**," below).

Under continuing law, a casino operator is an owner or lessee of one of Ohio's four constitutionally authorized casino facilities in Cincinnati, Cleveland, Columbus, and Toledo. Video lottery sales agents are persons who are authorized to conduct horse racing in Ohio and who also hold a license from the State Lottery Commission to sell video lottery games through VLTs at racetracks. VLTs are devices that allow customers to play lottery games and receive an immediate result on an electronic display, and are similar in appearance to slot machines. Those racetrack facilities are commonly called racinos.<sup>4</sup>

### **Licensing process**

The bill requires a casino operator or video lottery sales agent who wishes to be a sports gaming agent to submit an application to the State Lottery Commission, on a form furnished by the Commission. The applicant also must do all of the following:<sup>5</sup>

- Submit a nonrefundable \$100,000 fee;
- Agree to a minimum capital investment as approved by the Commission;
- Commit to employing a certain number of individuals on a full-time basis as approved by the Commission;
- Give the state a surety bond, in an amount and in the form approved by the Commission, to guarantee that the applicant faithfully makes all required payments;
- Submit an annual audit of the applicant's financial transactions and the condition of the applicant's total operations prepared by a certified public accountant in accordance with generally accepted accounting principles and state and federal laws;
- Satisfy any other conditions required under the bill or under Commission rules.

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<sup>3</sup> R.C. 109.572; 3770.30; 3770.31(C) and (E); 3770.32(B), (C), (D), and (E); 3770.36(A); and 3770.72(A).

<sup>4</sup> R.C. 3770.30. See also R.C. 3772.01(G), not in the bill, and Ohio Administrative Code 3770:2-2-01.

<sup>5</sup> R.C. 3770.33.

## Renewal

The term of a sports gaming agent license is for one year and must be concurrent with the term of the sports gaming agent's casino operator license or video lottery sales agent license, as applicable. Upon the expiration of the sports gaming agent license, the sports gaming agent may renew it, unless the license is suspended or revoked, the sports gaming agent's casino operator license or video lottery sales agent license is suspended or revoked, or the Commission determines that the sports gaming agent is not in compliance with the bill and with the Commission's rules.

The sports gaming agent must pay a nonrefundable renewal fee of the lesser of \$100,000 or 1% of the sports gaming agent's handle over the previous one-year license term. The sports gaming agent also must submit to the Commission an annual audit of the sports gaming agent's financial transactions and the condition of the sports gaming agent's total operations prepared by a certified public accountant in accordance with generally accepted accounting principles and applicable state and federal laws.<sup>6</sup>

## Denial or revocation

The bill allows the State Lottery Commission to deny a sports gaming agent license to any applicant, reprimand any sports gaming agent, or suspend or revoke a sports gaming agent license if any of the following are true:<sup>7</sup>

- The applicant or licensee has not demonstrated to the Commission's satisfaction financial responsibility sufficient to adequately meet the requirements of the proposed 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 a licensee's voting stock, or more than 5% of the voting stock of a corporation that controls the licensee, or sells a licensee's assets, other than those bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined by the Commission to have met the qualifications of a licensee.

## Management services providers

The bill allows a sports gaming agent to contract with a management services provider to conduct its sports gaming in accordance with the bill and with the State Lottery Commission's rules. Except for certain veteran's and fraternal organizations, discussed below, any person who shares in revenue from sports gaming, including any affiliate operating under a revenue sharing agreement, must be licensed as a management services provider.

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<sup>6</sup> R.C. 3770.33.

<sup>7</sup> R.C. 3770.36(B).

A person who meets the requirements in the Commission's rules, adopted under the Administrative Procedure Act, to be a management services provider may obtain a management services provider license from the Commission by paying a nonrefundable license and application fee of \$1,000. The Commission may accept licensing by another jurisdiction with similar licensing requirements as evidence that the applicant meets the requirements to be a management services provider. A management services provider who continues to meet the Commission's requirements may renew the provider's license annually by paying a nonrefundable renewal fee of \$1,000.

In order to permit a management services provider to offer sports gaming on behalf of a sports gaming agent, the bill requires the sports gaming agent and the management services provider to enter into a written contract that has been approved by the Commission. If the sports gaming agent and the management services provider wish to make a material change to the contract, the sports gaming agent first must submit the change to the Commission for its approval or rejection. The sports gaming agent 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 without the Commission's prior approval, and the third party must be licensed as a management services provider before providing those services.<sup>8</sup>

### **Occupational licenses**

The bill requires an individual who is employed to be engaged directly in sports gaming-related activities, or otherwise to conduct or operate sports gaming, to hold an appropriate and valid occupational license issued by the Commission at all times. An occupational license permits the licensee to be employed in the capacity the Commission designates during the duration of the license. Under the bill, the Commission may establish by rule job classifications with different requirements.

The Commission must issue an occupational license to an individual who meets the requirements of the bill and of the Commission's rules adopted under the Administrative Procedure Act. An applicant must apply on any required application form prescribed by the Commission and must pay a nonrefundable application fee of \$100, provided that the applicant's employer may pay the fee on the applicant's behalf.

Each holder of an occupational license must submit an annual renewal application on a form prescribed by the Commission and must pay the Commission a nonrefundable renewal fee of \$100 by the last day of June of each year. A licensee's employer may pay the fee on the licensee's behalf.<sup>9</sup>

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<sup>8</sup> R.C. 3770.33(C) and 3770.34.

<sup>9</sup> R.C. 3770.35.

## Conducting sports gaming

### Generally

The bill allows a sports gaming agent to accept wagers on sports events and other events authorized under the bill only from individuals who are at least 21 and who are physically present in an authorized sports gaming facility. The bill defines a “sports gaming facility” as a designated area on the premises of a casino or a horse racetrack that has VLTs or, as discussed below, a veteran’s or fraternal organization facility with an approved sports gaming terminal. See “**Prohibitions and enforcement**,” below, for information about who may not place sports wagers and about gaming practices that are prohibited under the bill.<sup>10</sup>

### Veteran’s and fraternal organizations

Under the bill, the State Lottery Commission must adopt rules to permit a veteran’s or fraternal organization to contract with a sports gaming agent to offer sports gaming through the agent on a single terminal in the organization’s facility. The bill defines those organizations in the same way as under the law governing charitable bingo. The provisions of the bill authorizing veteran’s and fraternal organizations to do so and requiring the Commission to adopt those rules takes effect one year after the bill’s general effective date.

The Commission’s rules must do all of the following:

- Require the organization to permit only its members to participate in sports gaming offered by the organization;
- Require the organization to pay a nonrefundable application fee of \$1,000;
- Require the organization to hold a D-class liquor permit for the facility;
- Establish the compensation due to the organization, which must be substantially similar to the compensation percentages paid to lottery sales agents (currently, lottery sales agents receive a 5.5% commission on every sale, plus an additional percentage up to 1.5% for cashing in winning tickets);<sup>11</sup>
- Provide for any other procedure or thing the Commission determines necessary to complete its duties concerning sports gaming at veteran’s and fraternal organizations.

A contract between a veteran’s or fraternal organization and a sports gaming agent must be for a term of one year. If the Commission determines that the organization and the sports gaming agent are in compliance with the bill and the Commission’s rules, the

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<sup>10</sup> R.C. 3770.39(A).

<sup>11</sup> Ohio Lottery, *Retailer Benefits*, available at <https://www.ohiolottery.com/Retailers/Retailer-Central/Retailer-Benefits>.

organization and the sports gaming agent may renew the contract. Upon renewing the contract, the organization must pay a nonrefundable renewal fee of \$1,000.<sup>12</sup>

### **Sports gaming agent duties**

The bill requires a sports gaming agent to 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 must submit them to the State Lottery Commission for approval before implementing them. The sports gaming agent 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 must make copies of its house rules readily available to patrons.

A sports gaming agent also must do all of the following:<sup>13</sup>

- 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;
- Assist the Commission in maximizing sports gaming revenue;
- Keep current in all payments and obligations to the Commission;
- Acquire sports gaming equipment and provide a secure location for the placement, operation, and play of the equipment;
- Prevent any person from tampering with or interfering with the operation of sports gaming;
- Ensure that sports gaming conducted at a sports gaming facility is within the sight and control of the sports gaming agent's designated employees and that sports gaming is conducted under continuous observation by security equipment in conformity with the Commission's specifications and requirements;
- Ensure that sports gaming occurs only in the sports gaming facilities approved by the Commission and is relocated or offered only in accordance with the Commission's rules;
- Ensure that all sports gaming is conducted through a centralized lottery gaming system operated by the Commission;
- Ensure that all sports gaming equipment owned or operated by the sports gaming agent is connected to and operates through a centralized lottery gaming system operated by the Commission;
- Conspicuously post a sign at each sports gaming facility, indicating the maximum and minimum wagers permitted, and comply with those limits;

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<sup>12</sup> R.C. 3770.331 and Section 3 of the bill. See also R.C. 2915.01, not in the bill.

<sup>13</sup> R.C. 3770.37 and 3770.38.



- Maintain sufficient cash and other supplies to conduct sports gaming at all times;
- Maintain daily records showing the sports gaming agent's sports gaming receipts and timely file with the Commission any additional reports required by rule or by other provisions of the Revised Code.

### **Sports gaming equipment**

The bill defines “sports gaming equipment” as any mechanical, electronic, or other device, mechanism, or equipment, and related supplies, that are used or consumed in the operation of sports gaming at a sports gaming facility.

The bill states that all shipments of gambling devices, including any sports gaming devices or related materials, to licensed sports gaming facilities in Ohio are legal shipments of gambling devices into Ohio, as long as the supplier registers, records, and labels the devices or materials in accordance with the federal Act to Prohibit Transportation of Gambling Devices in Interstate and Foreign Commerce. 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>14</sup>

## **State Lottery Commission**

### **Additional members**

The bill adds two members to the State Lottery Commission, which currently has nine members, and retains the requirement that no more than a simple majority of the Commission may be members of the same political party. Members of the Commission are appointed to three-year terms by the Governor with the advice and consent of the Senate. The bill specifies that the two new members must be appointed to terms ending August 1, 2022.

Under the bill, three members of the Commission must have gaming experience. But, no existing member of the Commission must be removed in order to be replaced by a person with gaming experience. Instead, the bill requires the two additional members of the Commission to have gaming experience, and the next person appointed after the two new members also must have gaming experience.<sup>15</sup>

### **Administrative rules**

The bill requires the State Lottery Commission to adopt rules in accordance with the Administrative Procedure Act that include all of the following:

- Procedures for accepting wagers on a sports event or series of sports events;
- The maximum wager that a sports gaming agent may accept from any one individual on any one sports event;

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<sup>14</sup> R.C. 3770.30 and 3770.40. See also 15 U.S.C. 1172.

<sup>15</sup> R.C. 3770.01 and Section 5 of the bill.

- The types of wagering tickets to be issued;
- The manner in which tickets are issued;
- The type of records to be kept by licensees;
- The system to be used to place a wager;
- Protections for a player placing a wager;
- Measures to promote responsible sports gaming;
- Penalties and fines for violating the Commission’s rules (see “**Civil penalties imposed by State Lottery Commission,**” below);
- Prohibitions against sports gaming advertising targeting individuals under 21;
- Any other procedure or thing the Commission determines necessary to ensure the integrity of sports gaming.

The bill also requires the Commission to adopt rules establishing minimum internal control standards for the administration of sports gaming operations, for sports gaming equipment, systems, or other items used to conduct sports gaming, and for the maintenance of financial records and other required records. The Commission may approve minimum internal control standards proposed by sports gaming agents.

Additionally, the Commission may adopt rules that establish standards for advertising on items that are used in the conduct of, or to promote, a sports gaming event and may develop its own advertising or enter into a contract for advertising services.

Finally, the bill allows the Commission to make anonymized sports gaming data available to professional and collegiate sports leagues as the Commission determines necessary to ensure the integrity of sports gaming.<sup>16</sup>

### **Sports Gaming Advisory Board**

The bill creates the Sports Gaming Advisory Board to advise the State Lottery Commission and to study and develop recommendations for the Commission’s rules under the bill. The Board must make recommendations to the Commission as it determines appropriate.

The Board consists of the following 11 members:

- Seven members appointed by the Governor with the advice and consent of the Senate, not more than three of whom may be members of the same political party;
- Two members of the House of Representatives appointed by the Speaker of the House, who must not be members of the same political party;

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<sup>16</sup> R.C. 3770.31.

- Two members of the Senate appointed by the President of the Senate, who must not be members of the same political party.

Members of the Board must be residents of Ohio and must serve without compensation. A member of the State Lottery Commission or the Ohio Casino Control Commission may not serve on the Board.

The Board ceases to exist three years after the bill takes effect.<sup>17</sup>

### **Monitoring of sports gaming**

The bill requires the Director of the State Lottery Commission to employ a monitoring system utilizing software to identify abnormal irregularities in volume or odds swings that could signal suspicious activities that require further investigation. The Commission must develop the requirements and specifications for the system according to industry standards and implement the system as part of the minimum internal control standards.

The Director must promptly report to the State Lottery Commission and the Ohio Casino Control Commission any facts or circumstances related to the operation of a sports gaming licensee that constitute a violation of state or federal law, and must immediately report any suspicious wagering to the appropriate state or federal authorities (see “**Enforcement by Ohio Casino Control Commission**,” below).<sup>18</sup>

### **Taxation of sports gaming**

#### **Tax on sports gaming revenue**

The bill levies a 10% tax on a sports gaming agent’s net revenue from sports gaming. The tax is imposed on the sports gaming agent’s “sports gaming receipts,” which include the total amount received as wagers, less winnings paid to the wagers.

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 agent must file daily tax returns showing the sports gaming agent’s sports gaming receipts and pay the tax due. Returns are filed electronically on each day that banks are open.

The bill specifies that, if a sports gaming agent has negative receipts for a particular day (if the winnings paid out exceed the amount wagered), the Tax Commissioner may allow the operator to carry forward the deficit to future tax returns until the operator’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 agent surrenders its

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<sup>17</sup> Section 4 of the bill.

<sup>18</sup> R.C. 3770.02.

license and the sports gaming agent's last return reported a deficit. In that case, the Tax Commissioner must pay 10% of the deficit to the sports gaming agent.<sup>19</sup>

### **Income tax withholding on sports gaming winnings**

Under continuing law, individuals are subject to federal, state, and municipal income tax on their sports gaming winnings. The bill provides that, whenever federal income tax withholding is required, a sports gaming agent also must withhold state and 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>20</sup>

### **Application of commercial activity tax to sports gaming receipts**

Sports gaming agents 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 agent is only required to pay the CAT on its sports gaming receipts (as defined above), not on the gross amount it receives from sports gaming.<sup>21</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 State Lottery Commission.<sup>22</sup>

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

### **Sports Gaming Revenue Fund**

The bill creates the Sports Gaming Revenue Fund in the state treasury and requires all state revenues generated from sports gaming to be deposited in the fund. Those revenues include all of the following:<sup>23</sup>

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<sup>19</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>20</sup> R.C. 718.031, 5747.02, 5747.063, 5747.064, 5747.08, and 5747.20.

<sup>21</sup> R.C. 5751.01.

<sup>22</sup> R.C. 5703.21.

<sup>23</sup> R.C. 3770.31(D) and (F), 3770.99(I), and 5753.031.

- Revenue from the 10% tax imposed on sports gaming agents' sports gaming receipts;
- Sports gaming license application and renewal fees paid to the State Lottery Commission;
- Application and renewal fees paid to the Commission by veteran's and fraternal organizations that contract with a sports gaming agent to offer sports gaming at their facilities;
- Revenue derived from the sale of advertising on sports gaming items;
- Fines paid to the Commission as penalties for noncriminal violations of the law governing sports gaming;
- Any other fees or fines charged by the Commission under its rules governing sports gaming;
- Interest on the moneys in the Sports Gaming Revenue Fund.

### **Costs and reimbursements**

Under the bill, the Director of Budget and Management must transfer moneys from the Sports Gaming Revenue Fund to several other funds in order to make reimbursements and pay the expenses involved in regulating sports gaming in Ohio. The Director must make the following transfers:

- To the continuing-law Tax Refund Fund, amounts equal to the refunds certified by the Tax Commissioner that are attributable to the tax on sports gaming agents' sports gaming receipts;
- To the Lottery Commission Sports Gaming Fund, which the bill creates in the state treasury, the following amounts not later than the 15<sup>th</sup> day of each month:
  - The amount necessary to reimburse the State Lottery Commission's actual operating costs and expenses incurred in administering the law governing sports gaming, provided that the amount transferred must not exceed 10% of the revenue credited to the Sports Gaming Revenue Fund in the preceding month;
  - The amount necessary to pay any bonuses, compensation, or reimbursements due to veteran's and fraternal organizations that contract with a sports gaming agent to offer sports gaming at their facilities.
- To the Casino Control Commission Sports Gaming Fund, which the bill creates in the state treasury, the amount necessary to reimburse the Ohio Casino Control Commission's actual expenses incurred to assist in implementing and enforcing the law governing sports gaming (see "**Enforcement by Ohio Casino Control Commission,**" below);
- To the Sports Gaming Tax Administration Fund, which the bill creates in the state treasury, the amount necessary to reimburse the Department of Taxation's actual

expenses incurred in administering the tax on sports gaming agents' sports gaming receipts.

All interest generated by the funds created by the bill is credited back to those funds.<sup>24</sup>

### **Remaining moneys**

After the Director of Budget and Management makes the transfers described above for the purpose of making reimbursements and covering the state's expenses, the Director must dispose of the moneys remaining 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 remaining moneys, 98% must go to the Lottery Profits Education Fund, and 2% must go to the Problem Sports Gaming and Addiction Fund, which the bill creates in the state treasury, to alleviate problem sports gaming. All interest generated by the Problem Sports Gaming and Addiction Fund is credited back to it.

Under continuing law, the Lottery Profits Education Fund must be used solely for the support of elementary, secondary, vocational, and special education programs. (The Ohio Constitution requires that the entire net proceeds of any state-run lottery be used for that purpose.)<sup>25</sup>

## **Prohibitions and enforcement**

### **Prohibited practices**

The bill prohibits any person from offering sports gaming in Ohio without first obtaining a sports gaming agent license and prohibits a sports gaming agent from permitting a person other than the sports gaming agent to offer sports gaming on behalf of the sports gaming agent. (Those prohibitions do not apply to an agreement with a management services provider or with a veteran's or fraternal organization to offer sports gaming on behalf of a sports gaming agent, as permitted under the bill.)

A sports gaming agent may not accept a wager from an individual who is under 21 or is not physically present in an authorized sports gaming facility. Further, no employee of a sports gaming agent may engage in any sports gaming at the employer's facility. And, no employee of the State Lottery Commission may knowingly wager or be paid any prize from any wager placed at a sports gaming facility in Ohio or at any facility outside Ohio that is directly or indirectly owned or operated by a sports gaming agent.

The bill allows the Commission or a sports gaming agent to ban any individual from entering a sports gaming facility or its grounds or from participating in the play or operation of sports gaming. The Commission and each sports gaming agent must keep a log of all excluded individuals. No individual who is on the Commission's exclusion list or on a sports gaming agent's exclusion list may engage in any sports gaming in Ohio.

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<sup>24</sup> R.C. 5753.031.

<sup>25</sup> R.C. 5753.031. See also R.C. 3770.06, not in the bill, and Ohio Const., art. XV, sec. 6.

The bill also separately imposes criminal penalties for some of the activities described above.<sup>26</sup>

### **Criminal prohibitions**

The bill prohibits any person who has not been issued a sports gaming license from knowingly engaging in accepting, facilitating, or operating a sports gaming operation. Whoever violates that prohibition is guilty of a first degree misdemeanor. (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 its prohibitions concerning sports gaming.)

Under the bill, a sports gaming agent must post notice of the prohibition described above in a manner prescribed by the Commission. The notice also must include the provision of continuing law that specifies that any person who knowingly makes a false oath or affirmation that the person is not in default under a child support or spousal support order is guilty of a third degree misdemeanor. (Continuing law requires the Commission to withhold lottery prize awards over a certain amount in order to satisfy child and spousal support debts.)

Further, the bill prohibits a sports gaming licensee from 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:

- Operating sports gaming without authority of the Commission to do so;
- Operating sports gaming in any location or in any manner that is not approved by the Commission;
- Conducting, carrying on, operating, or allowing any sports gaming to occur on premises, or through any other device if equipment or material has been tampered with or exposed to conditions in which it will be operated in a manner designed to deceive the public;
- Employing an individual who does not hold a valid occupational license in a position or otherwise allowing an individual to perform duties for which a license is required by the bill or continuing to employ an individual after the employee's license is no longer valid;
- Acting or employing another person to act as if the person is not an agent or employee of the licensee in order to encourage participation in sports gaming at the sports gaming facility;
- Permitting an individual under 21 to engage in sports gaming or to enter or remain in a sports gaming facility;
- Entering or attempting to enter a sports gaming facility while under 21;
- Exchanging tokens, chips, electronic media, or other forms of credit used for wagering for anything of value except money or credits at a sports gaming facility.

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<sup>26</sup> R.C. 3770.33(A) and (D) and 3770.39.

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 race, sporting event, contest, or game upon which a wager may be made, 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 a race, sporting event, contest, or game 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 or other sports gaming game authorized under the bill 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 facility with intent to defraud, or attempting that action, 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.

Finally, the bill prohibits any person from knowingly having in the person's possession on the grounds of a sports gaming facility, or on grounds contiguous to the facility, any device intended to be used to violate the law governing sports gaming or any Commission rule governing sports gaming. That prohibition does not apply to a sports gaming agent or to a sports gaming agent's employee or agent who is acting in furtherance of the sports gaming agent's interest. Whoever violates the prohibition is guilty of a fifth degree felony on a first offense and a fourth degree felony on a subsequent offense.

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>27</sup>

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<sup>27</sup> R.C. 3770.99. See also R.C. 2929.14, 2929.18, 2929.24, and 2929.28, not in the bill.



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

### **Civil penalties imposed by State Lottery Commission**

The bill requires the State Lottery Commission to levy civil penalties for noncriminal violations of the law governing sports gaming.<sup>28</sup>

### **Enforcement by Ohio Casino Control Commission**

Under the bill, the Ohio Casino Control Commission must enter into an agreement with the Director of the State Lottery Commission to enforce the law governing sports gaming. The Ohio Casino Control Commission must enforce any sports gaming rules adopted by the Commission, and the Ohio Casino Control Commission has jurisdiction over all persons conducting or participating in the conduct of sports gaming, including the authority to investigate and penalize those persons. Under continuing law, the Ohio Casino Control Commission has the power to act as a law enforcement agency for the purpose of enforcing the laws governing casino gaming and skill-based amusement machines.<sup>29</sup>

## **COMMENT**

Although the bill amends the Revised Code to allow sports gaming, a reviewing court still might find that the Ohio Constitution prohibits sports gaming. The Constitution generally prohibits lotteries in Ohio, but does not define the term “lottery.” The Ohio Supreme Court previously has interpreted the term “lottery” to mean a game in which consideration is given, a prize is awarded, and the winner of the prize is determined by chance. Historically, this decision has been understood to mean that the Ohio Constitution broadly bans gambling of any kind in Ohio and that the General Assembly may not authorize gambling beyond that permitted by the Constitution.

The Constitution does allow the General Assembly to authorize state-conducted lotteries in which prizes are awarded by chance and the entire net proceeds of the lottery are paid into a fund for the support of certain education programs. (The Constitution also includes

<sup>28</sup> R.C. 3770.99(I).

<sup>29</sup> R.C. 3772.03.

exceptions for charitable bingo and gaming at four casino facilities.) The bill classifies sports gaming as part of the Ohio Lottery. However, a reviewing court might find that sports gaming is not the type of activity contemplated by the constitutional provision that authorizes the Ohio Lottery – for example, because the winner of a sporting event is not determined entirely by chance. In that case, the court might rule that the General Assembly cannot legalize sports gaming.<sup>30</sup>

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## HISTORY

Action	Date
Introduced	04-09-19

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H0194-I-133/ks

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<sup>30</sup> Ohio Const., art. XV, sec. 6; *Westerhaus Co. v. Cincinnati*, 165 Ohio St. 327, 338-339 (1956); and *City of Columbus v. Barr*, 160 Ohio St. 209 (1953).