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SUMMARY

Overview – legalization of sports wagering

- Legalizes, regulates, and taxes sports wagering in Ohio under the administrative authority of the Ohio Casino Control Commission.
- Allows casino operators and video lottery sales agents (horse racetrack operators that also operate video lottery terminals, commonly known as racinos) to apply to operate sports wagering at their current facilities and online.
- Defines “sports wagering” as the business of accepting wagers on sporting events, the individual performance statistics of athletes in a sporting event, or a combination, by any system or method approved by the Commission.
- Allows sports wagering in relation to professional, collegiate, Olympic, or international sports and athletic events, motor races, and any other special event authorized by the Commission.

Sports wagering operators

- Allows casino operators and video lottery sales agents to apply to be sports wagering operators and offer sports wagering in accordance with the bill at legal gaming facilities, which the bill defines as (1) casino facilities and (2) horse racetracks that have video lottery terminals.
- Specifies procedures for the Commission to issue certificates to sports wagering operators and to charge them application fees and ongoing administrative fees.
- Allows a sports wagering operator to contract with a management services provider licensed by the Commission to conduct its sports wagering, including its online sports pools, in accordance with the bill and with the Commission’s rules.

- Requires the Commission to approve sports wagering devices to be used at legal gaming facilities and all types of sports wagering to be offered at those facilities, and to license the suppliers of sports wagering devices.
- Asserts that shipments of gaming supplies, devices, and equipment into Ohio are exempt from a federal law that generally prohibits that practice but allows states to exempt themselves.
- Requires the Commission to implement an occupational licensing scheme for the sports wagering related occupations the Commission determines should be licensed, and requires applicants for those licenses to undergo criminal records checks.

Conducting sports wagering

- Requires a sports wagering operator to designate an area within the legal gaming facility for conducting sports wagering and requires a person to be physically present in that area in order to place wagers at the facility.
- Requires an individual to be 21 years old to place sports wagers or, with certain exceptions, to be present in the sports wagering area of the facility.
- Requires the operator to determine the minimum and maximum wagers and specifies the forms of payment the operator may accept.
- Allows the operator to engage in certain risk management practices, such as pooling wagers, laying off wagers with another operator, or using a liquidity pool.
- Specifies the procedures that apply to unclaimed winnings.
- Permits an operator to establish an online sports pool website and accept sports wagers online from individuals located in Ohio who are at least 21 years old.
- Prescribes requirements for online sports pool websites, including requirements for patrons' sports wagering accounts and the location of the server hosting the website.
- Allows an operator also to accept wagers from an individual located outside Ohio pursuant to a sports wagering agreement between the Commission and the jurisdiction in which the individual is located, so long as the agreement does not violate federal law.

Administration by Ohio Casino Control Commission

- Requires the Commission to adopt all rules related to sports wagering in accordance with the Administrative Procedure Act, and specifies several sports wagering related topics on which the Commission may adopt rules.
- Allows the Commission to enter into sports wagering agreements with other governments to allow persons outside Ohio to participate in sports wagering conducted by one or more operators authorized to conduct sports wagering by the member governments.

- Prohibits sports wagers from being initiated, received, or otherwise made outside Ohio unless the Commission enters into a sports wagering agreement with another government after determining that the agreement would be in accordance with applicable federal and state laws.
- Specifies required terms for a sports wagering agreement and allows the Commission to adopt rules concerning sports wagering agreements.
- Requires the Commission, upon written request, to provide certain information concerning persons who are licensed under the bill, and specifies several categories of information concerning those persons that are exempt from release as public records.
- Creates the State Sports Wagering Revenue Fund as a custodial fund in the state treasury.
- Requires all sports wagering related fees collected by the Commission, other than civil penalties, to be deposited in the fund, and requires the Treasurer of State to disburse money from the fund on the order of the Executive Director of the Commission or the Executive Director's designee.

Taxation of sports wagering

- Imposes a 6.25% tax on an operator's net revenue from sports wagering.
- Requires that the sports wagering tax be administered in much the same way as the state's existing tax on casino revenue.
- Credits all of the revenue from the tax to the General Revenue Fund.
- Requires that operators 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 wagering, not on gross receipts.

Prohibitions and enforcement

- Requires an operator to employ commercially reasonable methods to prohibit certain persons from placing sports wagers, including the operator's staff and their household members, athletes, and persons with access to confidential information.
- Prohibits a person who is participating in the voluntary exclusion program established by the Commission under the Casino Law from wagering on any sporting event.
- Allows the Commission or an operator to ban any individual from entering a sports wagering area of a legal gaming facility, conducting sports wagering on the grounds of a facility, or wagering or operating sports wagering.
- Requires an operator to employ commercially reasonable methods to prevent the sharing of confidential information that could affect sports wagering offered by the operator or by third parties until the information is made publicly available.

- Establishes several criminal prohibitions concerning sports wagering, including prohibitions concerning wagering by individuals under 21 or by operator staff, corrupt practices intended to change the outcome of a sporting event, and other fraudulent activities.
- Requires the Commission and all operators to cooperate with investigations conducted by sports governing bodies or law enforcement agencies, and requires operators to report certain illegal or suspicious activities to the Commission.
- Specifies that an operator is not liable under the laws of Ohio to any party, including patrons, for disclosing information as required under the bill, and is not liable for refusing to disclose information unless required under the bill.
- Requires law enforcement agencies to furnish to the Commission, on prescribed forms, all information obtained during the course of any substantial investigation or prosecution if it appears that a violation of the law governing sports wagering has occurred.
- Gives the Attorney General the power to bring a civil action to restrain any violation of the bill's provisions concerning sports wagering.
- Allows the Commission to adopt rules prescribing civil penalties for violations of the law governing sports wagering.
- Permits the Commission, if an operator or its employee or agent violates the law governing sports wagering or engages in a fraudulent act, to suspend or restrict the operator's sports wagering or require the removal of an employee or agent.

TABLE OF CONTENTS

Overview – legalization of sports wagering.....	5
Sports wagering operators	6
Eligibility	6
Application process	7
Ongoing administrative fees	7
Management services providers	7
Sports wagering devices and suppliers	8
Occupational licenses	8
Conducting sports wagering	9
At legal gaming facilities.....	9
Online	10
Within Ohio	10
Outside Ohio.....	10
Administration by Ohio Casino Control Commission	10

Administrative rules	10
Out of state sports wagering agreements	11
Public records concerning sports wagering	13
Information to be disclosed.....	13
Exempt information.....	14
State Sports Wagering Revenue Fund.....	15
Taxation of sports wagering	15
Tax on sports wagering revenue	15
Income tax withholding on sports wagering winnings	16
Application of Commercial Activity Tax to sports wagering receipts	16
Sharing of confidential tax information	16
Prohibitions and enforcement.....	16
Persons prohibited from placing sports wagers	16
Confidential sports information	17
Criminal prohibitions.....	17
Cooperation with investigations	19
Civil action by Attorney General	20
Civil penalties imposed by Ohio Casino Control Commission.....	20

DETAILED ANALYSIS

Overview – legalization of sports wagering

The bill legalizes, regulates, and taxes sports wagering in Ohio under the administrative authority of the Ohio Casino Control Commission and allows casino operators and video lottery sales agents (operators of video lottery terminals (VLTs) at horse racetracks, commonly known as racinos) to apply to operate sports wagering at their current facilities and online (see **COMMENT 1**).

Under the bill, “sports wagering” means the business of accepting wagers on sporting events, the individual performance statistics of athletes in a sporting event, or a combination of any of those by any system or method of wagering approved by the Commission, including mobile applications and other digital platforms that utilize communications technology to accept wagers originating within Ohio. A “wager” is a sum of money or thing of value risked on an uncertain occurrence. “Sports wagering” includes exchange wagering, parlays, over-under, moneyline, pools, in-game wagering, single-game bets, teaser bets, in-play bets, proposition bets, and straight bets.¹ But, “sports wagering” does not include casino gaming, fantasy contest

¹ 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*

entry fees, or pari-mutuel horse racing wagering, which are all regulated separately under continuing law.

The bill defines a “sporting event” as any professional sport or athletic event, any collegiate sport or athletic event, any Olympic or international sports competition event, any motor race event, or any other special event authorized by the Commission. A “professional sport or athletic event” is an event at which two or more individuals 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 in which two or more individuals participate in sports or athletic events offered, sponsored by, or played in connection with a public or private post-secondary educational institution.

Currently, the Revised Code 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 excludes sports wagering, as permitted and regulated under the bill, from the definition of a bet.

The federal Professional and Amateur Sports Protection Act of 1992 (PASPA) generally prohibits the states from legalizing sports wagering. However, in 2018, the U.S. Supreme Court overturned PASPA on the ground that it violates the states’ rights under the 10th Amendment to the U.S. Constitution. Consequently, that law no longer prevents Ohio from legalizing and regulating sports wagering.²

Sports wagering operators

Eligibility

The bill allows casino operators and video lottery sales agents to offer sports wagering in accordance with the bill at legal gaming facilities, which include (1) casino facilities and (2) horse racetracks that have VLTs. A casino operator or video lottery sales agent who is issued a certificate of authority by the Ohio Casino Control Commission is considered a “sports wagering operator.”

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 Ohio Lottery Commission to sell video lottery games through VLTs at racetracks. VLTs are devices that allow customers to play lottery games and receive an

Sports – Guide to the Different Types of Wagers, available at <https://www.onlinegamblingsites.com/betting/wagers-bets/>.

² R.C. 2915.01 and 3775.01(B), (I), (J), (L), and (R). See also R.C. 2915.02, not in the bill, and *Murphy v. National Collegiate Athletic Association*, 138 S. Ct. 1461 (2018).

immediate result on an electronic display, and are similar in appearance to slot machines. Those racetrack facilities are commonly called racinos.³

Application process

The bill requires a casino operator or video lottery sales agent who wishes to be a sports wagering operator to submit an application to the Ohio Casino Control Commission, on a form prescribed by the Commission by rule, for each legal gaming facility at which the applicant wishes to conduct sports wagering. The applicant also must submit a nonrefundable \$100,000 fee for the first certificate issued to the applicant, which is deposited in the State Sports Wagering Revenue Fund, discussed below. If the applicant satisfies the qualification requirements established by the Commission (see “**Administrative rules**,” below), the Commission must issue the applicant a certificate authorizing the applicant to conduct sports wagering in a designated legal gaming facility.⁴

Ongoing administrative fees

Under the bill, a sports wagering operator also must pay the Commission a nonrefundable administrative fee of \$100,000 five years after the operator begins operations and every five years thereafter, provided that the operator continues to meet all of the qualification requirements specified by the Commission by rule. Those fees must be deposited in the State Sports Wagering Revenue Fund, discussed below.⁵

Management services providers

The bill allows a sports wagering operator to contract with a licensed management services provider to conduct its sports wagering, including its online sports pools, in accordance with the bill and with the Ohio Casino Control Commission’s rules (see “**Administrative rules**,” below). The management services provider must fulfill the sports wagering operator’s duties under the bill and is subject to all applicable provisions of the bill to the same extent as a sports wagering operator.

A person who meets the requirements in the Commission’s rules 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 \$10,000. The Commission may accept licensing by another jurisdiction with similar licensing requirements as evidence that the applicant meets the requirements to be a licensed management services provider. A management services provider who continues to meet the Commission’s requirements may

³ R.C. 3775.01(A), (C), (E), (O), and (Q). See also R.C. 3772.01(G), not in the bill, and Ohio Administrative Code 3770:2-2-01.

⁴ R.C. 3775.02(A), (B), and (C).

⁵ R.C. 3775.02(D).

renew the provider's license annually by paying a nonrefundable renewal fee of \$1,000. The fees must be deposited in the State Sports Wagering Revenue Fund, discussed below.⁶

Sports wagering devices and suppliers

The bill requires the Ohio Casino Control Commission to issue supplier's licenses consistent with its procedures for issuing gaming-related vendor licenses for casino gaming. A supplier's license authorizes a person to supply sports wagering devices to sports wagering operators.

A "sports wagering device" is a mechanical, electrical, or computerized contrivance, terminal, device, apparatus, piece of equipment, or related supplies approved by the Commission for conducting sports wagering at a legal gaming facility. "Sports wagering device" does not include a patron's personal computer, mobile device, or other device used solely to transmit information and input to a device used to conduct sports wagering at a legal gaming facility.

A sports wagering device must be approved by the Commission and acquired from a licensed supplier. The Commission must test sports wagering devices and forms, variations, or composites of sports wagering under the terms and conditions that the Commission considers appropriate before authorizing a sports wagering operator to offer a sports wagering device or form, variation, or composite of sports wagering.

The bill asserts that all shipments of gaming supplies, devices, and equipment, including slot machines, into Ohio are exempt from Section 2 of the federal law known as An Act to Prohibit Transportation of Gambling Devices in Interstate and Foreign Commerce. That section 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.⁷

Occupational licenses

The Ohio Casino Control Commission must determine the occupations related to sports wagering that require an occupational license, provided that no employee licensed in a similar occupation under the Casino Law may be subject to additional licensing requirements. An applicant for an occupational license under the bill must submit a complete set of fingerprints to the Bureau of Criminal Identification and Investigation for the purpose of conducting a criminal records check. (It appears that the Commission would have the authority to determine what criminal convictions, if any, disqualify an applicant for an occupational license issued under the bill.)⁸

⁶ R.C. 3775.02(E).

⁷ R.C. 3775.01(F), (N), and (P), 3775.02(F), 3775.05(E), and 3775.09. See also R.C. 3772.12 and 3772.121, not in the bill, and 15 U.S.C. 1172.

⁸ R.C. 109.572, 3775.05(F), and 3775.07(A).

Conducting sports wagering

At legal gaming facilities

Under the bill, a sports wagering operator must designate an area within the legal gaming facility for conducting sports wagering. The operator must accept a sports wager from an individual who is at least 21 years old and who is physically present in the area of a legal gaming facility where authorized sports wagering occurs or who wagers by means of a sports wagering device located in the facility as authorized by the Ohio Casino Control Commission. An individual may not place or attempt to place a wager on behalf of an individual who is not present in the designated area of the legal gaming facility.

The operator must determine the minimum and maximum wagers and may accept only wagers made with cash, chips, tokens, or other representatives of value approved by the Commission, against credits made to a sports wagering account (see “**Online**,” below), or on credit extended in accordance with the operator’s internal controls and the Commission’s rules.

The bill allows the operator to manage risk associated with sports wagers by rejecting or pooling one or more wagers. An operator may lay off one or more sports wagers with another sports wagering operator. (That is, an operator may transfer a wager to another operator in order to reduce or balance out the operator’s potential liability.) An operator also may employ systems that offset loss or manage risk in the operation of sports wagering through the use of liquidity pools in another jurisdiction in which the operator or an affiliate or other third party is licensed to operate, provided that at all times, adequate protections are maintained to ensure sufficient funds are available to pay patrons.

If a patron does not claim a winning sports wager within one year from the date of the event, the operator is no longer obligated to pay the winnings to the patron, and the operator must retain half the winnings and remit half to the State Sports Wagering Revenue Fund, discussed below.

An individual under 21 may not be present in the area designated for conducting sports wagering, except that an employee of a sports wagering operator who is between 18 and 21 may be present in that area, so long as the employee’s duties are related solely to nongaming activities. An individual under 21 may enter the designated area to pass to another area where sports wagering is not being conducted, but only if the individual is personally escorted by the operator’s personnel, as approved by the Commission, who must remain in close proximity to the individual at all times.

See “**Prohibitions and enforcement**,” below, for information about who may not place sports wagers and about wagering practices that are prohibited under the bill.⁹

⁹ R.C. 3775.03(A) and (F) and 3775.05.

Online

Within Ohio

The bill also permits a sports wagering operator to use the same brand as its legal gaming facility to provide an online sports pool website, and each website may have an accompanying mobile application bearing the same brand. The website must accept sports wagers through computers or mobile devices at a legal gaming facility through an online gaming system that is operated by the sports wagering operator.

An individual who is at least 21 years old and who is physically located in Ohio may use a mobile or other digital platform to make sports wagers on the online sports pool website through a sports wagering account established with the operator for the purpose of sports wagering, including deposits, withdrawals, wagered amounts, and payouts on winning wagers. The account must be in the name of an individual, and not in the name of any beneficiary, custodian, joint trust, corporation, partnership, or other organization or entity. The individual may establish and fund the account either in person through the operator's employees or sales agents or over the Internet through the operator's website or mobile application in a manner that complies with the operator's internal controls. The individual's wagers must be made against credits to the individual's sports wagering account or on credit extended in accordance with the operator's internal controls and Ohio Casino Control Commission rules.

The server hosting the online sports pool website must be located within a restricted area of the legal gaming facility or in another secure U.S. facility owned or operated by the sports wagering operator or its management services provider.¹⁰

Outside Ohio

Under the bill, a sports wagering operator may accept wagers from an individual physically located in another state or jurisdiction with which the Ohio Casino Control Commission has entered into a sports wagering agreement (see "**Out of state sports wagering agreements**," below) using a mobile or other digital platform through the individual's sports wagering account, so long as the platform is approved by the Commission and all other requirements of the agreement are satisfied, and so long as accepting wagers from a person not physically located in Ohio does not violate federal law (see **COMMENT 2**).¹¹

Administration by Ohio Casino Control Commission

Administrative rules

The bill requires the Ohio Casino Control Commission to adopt all rules related to sports wagering in accordance with the Administrative Procedure Act. The Commission must adopt

¹⁰ R.C. 3775.01(G) and (M), 3775.03(A) and (B), and 3775.05(A).

¹¹ R.C. 3775.03(C).

rules as necessary to fulfill its duties under the bill, which may include rules concerning any of the following, to the extent those issues are not addressed in existing casino and lottery rules:¹²

- Standards and procedures to govern the conduct of sports wagering, including the manner in which wagers are received, payouts are paid, and point spreads, lines, and odds are disclosed;
- Prescribing qualifications for a certificate to operate sports wagering;
- Prescribing qualifications for a management services provider license;
- Prescribing the manner in which a sports wagering operator's books and financial records relating to sports wagering must be maintained and audited, including standards for the daily counting of an operator's gross receipts from sports wagering and standards to ensure that internal controls are followed. "Gross receipts" means the total amount of cash and cash equivalents paid by sports wagering patrons to an operator to participate in sports wagering;
- Prescribing the manner in which the sports wagering operator must maintain records of all wagers placed for at least three years after the sporting event occurs, including, to the extent practicable, personally identifiable information of the individual placing the wager; the amount and type of wager; the time the wager was placed; the location of the wager, including Internet Protocol (IP) address if applicable; the outcome of the wager; and records of abnormal wager activity;
- Prescribing conditions to ensure the security and integrity of wagers accepted under an approved mobile or digital platform or online sports pool;
- Providing written information to persons participating in sports wagering about sports wagering, payouts, winning wagers, and other information the Commission considers relevant;
- Prescribing conditions to ensure that advertisements for sports wagering meet all of the following requirements:
 - They do not target persons under 21 or other persons who are ineligible to place wagers, problem gamblers, or other vulnerable individuals;
 - They disclose the identity of the sports wagering operator;
 - They provide information about or links to resources relating to problem gambling;
 - They are not otherwise false, misleading, or deceptive to a reasonable consumer.

Out of state sports wagering agreements

Under the bill, the Ohio Casino Control Commission may enter into sports wagering agreements with other governments, whereby persons who are physically located in a member

¹² R.C. 3775.01(D) and 3775.06.

jurisdiction outside Ohio may participate in sports wagering conducted by one or more operators authorized to conduct sports wagering by the member governments. The Commission also may take all necessary actions to ensure that any sports wagering agreement becomes effective.

The bill prohibits sports wagers from being initiated, received, or otherwise made outside Ohio unless the Commission enters into a sports wagering agreement with another government after determining that the agreement would be in accordance with applicable federal and state laws. The bill states that, consistent with the intent of Congress as articulated in the Unlawful Internet Gambling Enforcement Act of 2006,¹³ the intermediate routing of electronic data relating to lawful intrastate sports wagering authorized under the bill does not determine the location or locations in which that wagering is initiated, received, or otherwise made (see **COMMENT 2**).

A sports wagering agreement must include provisions that do all of the following:

- Account for revenue sharing by Ohio and another government;
- Permit Ohio's effective regulation of sports wagering, including provisions relating to licensing of persons, technical standards, resolution of disputes by patrons, and requirements for bankrolls, enforcement, accounting, and maintenance of records;
- Require each member government to prohibit operators of sports wagering, management or other service providers, or suppliers, manufacturers, or distributors of sports wagering systems from engaging in any activity permitted by the agreement unless they are authorized to engage in the activity in Ohio or in a member jurisdiction with similar requirements approved by the Commission;
- Prohibit variation from the requirements of the agreement for any member government without a lack of opposition by Ohio and all member governments;
- Prohibit any subordinate or side agreements among any subset of member governments unless they relate exclusively to the sharing of revenues;
- Require each member government to establish and maintain regulatory requirements governing sports wagering that are consistent in all material respects with Ohio's requirements, if the agreement allows individuals physically located in Ohio to participate in sports wagering conducted by another government or an operator licensed by another government.

Additionally, the bill allows the Commission to adopt rules prescribing all of the following:¹⁴

¹³ 31 U.S.C. 5361 *et seq.*

¹⁴ R.C. 3775.04.

- The form, length, and terms of a sports wagering agreement, including provisions relating to how Ohio and other governments will tax activities under the agreement, how to share and distribute revenues, and how to resolve disputes with patrons;
- The information that a government that proposes to enter into a sports wagering agreement must furnish to the Commission;
- The information that must be furnished to the Commission to enable the Commission and its Executive Director to carry out the purposes of the bill's provisions regarding sports wagering agreements;
- The procedure for hearings conducted by the Commission to resolve disputes arising under a sports wagering agreement, including any special rules or notices;
- The information required to be furnished to the Commission to support any recommendations made to the Commission.

Public records concerning sports wagering

Information to be disclosed

The bill requires the Ohio Casino Control Commission, upon written request, to provide any of the following information, subject to the exemptions described below under “**Exempt information**.”¹⁵

- The information provided under the bill concerning a sports wagering operator or an applicant for a sports wagering operator certificate;
- The amount of the wagering tax and admission tax paid daily to the state by a sports wagering operator (see “**Taxation of sports wagering**,” below);
- A copy of a letter providing the reasons for the denial of an application for a sports wagering operator certificate and a copy of a letter providing the reasons for the Commission's refusal to allow an applicant to withdraw the application, but with exempt information redacted if that information is the reason for the denial or refusal to withdraw;
- A person's name, place of employment, job title, and gaming experience that is provided for a person who holds, held, or has applied for a certificate or license under the bill;
- The reason for denial or revocation of a certificate or license or for disciplinary action against the person.

¹⁵ R.C. 3775.10(B) and (C).

Exempt information

The bill exempts all of the following information that may be included as part of an application to the Ohio Casino Control Commission for a certificate or license under the bill from disclosure under the Public Records Law:

- An applicant's birth certificate;
- Any information concerning an applicant's minor child;
- Any of the following concerning an applicant or the applicant's spouse:
 - Social Security number;
 - Passport number;
 - Federal tax identification number;
 - Driver's license number;
 - Date of birth;
 - Place of birth.
- The home address and telephone number of an applicant or the applicant's spouse or dependent;
- The electronic mail address of the applicant's spouse or family member;
- The name or address of an applicant's previous spouse;
- The personal financial information and records of an applicant or of an employee or the spouse or dependent of an applicant, including tax returns and information and records of criminal proceedings;
- Any information concerning a victim of domestic violence, sexual assault, or stalking;
- Any trade secret, medical records, and patents or exclusive licenses;
- Security information, including risk prevention plans, detection and countermeasures, location of count rooms or other money storage areas, emergency management plans, security and surveillance plans, equipment and usage protocols, and theft and fraud prevention plans and countermeasures;
- Information received by the Commission from another jurisdiction relating to an applicant who holds, held, or has applied for a certificate or license under the bill.

The bill allows a person who holds, held, or has applied for a certificate or license under the bill to waive the confidentiality of the information described above. Further, the bill allows the Commission to disclose the information described above to the Inspector General, a prosecutor, a law enforcement agency, or any other appropriate governmental entity or

licensing agency, so long as the recipient treats the information in the same manner as the Commission.¹⁶

State Sports Wagering Revenue Fund

The bill creates the State Sports Wagering Revenue Fund, which is in the custody of the Treasurer of State but is not part of the state treasury. All fees collected by the Ohio Casino Control Commission in connection with the operation of sports wagering, other than civil penalties, must be deposited in the fund. (See “**Civil penalties imposed by Ohio Casino Control Commission**,” below.) The Treasurer must disburse money from the fund on the order of the Executive Director of the Commission or the Executive Director’s designee. The Treasurer must invest any portion of the fund not needed for immediate use in the same manner as state funds and subject to all provisions of law with respect to the investment of state funds.¹⁷

Taxation of sports wagering

Tax on sports wagering revenue

The bill levies a 6.25% tax on a sports wagering operator’s net revenue from sports wagering. The tax is imposed on the operator’s “sports wagering receipts,” which include the total amount received as wagers, less (a) cash paid as winnings, (b) the cost of other items, services, or noncash awards distributed to patrons as a result of sports wagering, (c) voided wagers, and (d) patrons’ uncollectible debts.¹⁸

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 wagering tax. As with the casino gaming tax, an operator must file daily tax returns showing the operator’s sports wagering receipts and pay the tax due. Returns are filed electronically on each day that banks are open.

The bill specifies that, if an operator 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.

All of the revenue from the tax is credited to the General Revenue Fund.¹⁹

¹⁶ R.C. 3775.10(A), (D), and (E).

¹⁷ R.C. 3775.02(G).

¹⁸ R.C. 5753.01. An uncollectible debt includes an amount that has become worthless or uncollectible during the current tax period, has been uncollected for at least six months, and qualifies as a bad debt under federal income tax law.

¹⁹ R.C. 5753.021, 5753.03, 5753.04, 5753.05, 5753.06, 5753.061, 5753.07, 5753.08, and 5753.10.

Income tax withholding on sports wagering winnings

Under continuing law, individuals are subject to federal, state, and municipal income tax on their sports wagering winnings. The bill provides that, whenever federal income tax withholding is required, a sports wagering operator 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.²⁰

Application of Commercial Activity Tax to sports wagering receipts

Sports wagering operators 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 wagering receipts. Under the bill, an operator is only required to pay the CAT on its sports wagering receipts (as defined above), not on the gross amount it receives from sports wagering.²¹

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 wagering tax information with the Ohio Casino Control Commission.²²

Prohibitions and enforcement

Persons prohibited from placing sports wagers

The bill requires a sports wagering operator to employ commercially reasonable methods to prohibit all of the following persons from placing sports wagers with the operator:

- The operator, its directors, officers, and employees, and any relative living in the same household of such a person;
- Any athlete, coach, referee, team owner, employee of a sports governing body or one of its member teams, or player or referee union personnel, based on publicly available information and any lists of employees and affiliates provided to the operator or the Ohio Casino Control Commission by a sports governing body. (A "sports governing body"

²⁰ R.C. 718.031, 5747.02, 5747.063, 5747.064, 5747.08, and 5747.20.

²¹ R.C. 5751.01.

²² R.C. 5703.21.

is the organization that prescribes final rules and enforces codes of conduct with respect to a sporting event and the participants in the sporting event.)

- Any individual with access to nonpublic confidential information held by the operator.

The bill separately prohibits a sports wagering operator employee from placing a wager on any sporting event at any of the sports wagering operator's facilities or through the operator's mobile application or digital platform.

A person who is participating in the voluntary exclusion program established by the Commission under the Casino Law is prohibited from wagering on any sporting event. And, the Commission or a sports wagering operator may ban any individual from entering a sports wagering area of a legal gaming facility, conducting sports wagering on the grounds of a facility, or wagering or operating sports wagering.

The bill also imposes criminal penalties concerning sports wagering by persons under 21 and sports wagering operators, agents, or employees participating in sports wagering at their own facilities (see "**Criminal prohibitions**," below).²³

Confidential sports information

The bill requires a sports wagering operator to employ commercially reasonable methods to prevent the sharing of confidential information that could affect sports wagering offered by the operator or by third parties until the information is made publicly available. The operator must maintain the confidentiality of information provided by a sports governing body to the operator unless disclosure is required by the bill, by the Ohio Casino Control Commission, by another law, or by a court order.²⁴

Criminal prohibitions

The bill prohibits any person from knowingly doing any of the following, and makes those violations a first degree misdemeanor for a first offense and a fifth degree felony for a subsequent offense (see the table below for the continuing-law maximum prison or jail terms and fines for the various levels of criminal offenses):

- Making a false statement on an application submitted to the Ohio Casino Control Commission;
- Permitting an individual who is under 21 to make a sports wager;
- Entering or attempting to enter the area of a legal gaming facility where sports wagering is being conducted while under 21, unless the person is escorted as provided under the bill;

²³ R.C. 3775.01(K), 3775.03(D) and (E), and 3775.07(B).

²⁴ R.C. 3775.07(B)(4) and (E).

- Being a sports wagering operator, agent, or employee who participates in sports wagering at a legal gaming facility at which the operator, agent, or employee has an interest or is employed.

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 certified or licensed under the bill, the Commission must revoke the certificate or license upon 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 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;
- Changing or altering the normal outcome of any game played on a mobile or other digital platform or online sports pool, including any interactive gaming system used to monitor the platform or pool, or the way in which the outcome is reported to any participant in the game;
- Manufacturing, selling, or distributing any device that the person intends to be used to violate any of the bill's provisions governing sports wagering;
- Placing a bet or aiding any other individual in placing a bet on a sporting event after unlawfully acquiring knowledge of the outcome on which winnings from that bet are contingent;
- Claiming, collecting, or taking anything of value from a legal 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 for wagering at a legal gaming facility;
- Having in the person's possession on grounds owned by the legal gaming facility, or on grounds contiguous to the facility, any device intended to be used to violate a provision of the bill governing sports wagering or any rule of the Commission;
- Operating sports wagering in a manner other than the manner required by the bill.

The bill prohibits any person from knowingly doing any of the following, makes those violations a third degree felony, specifies that if the violator is certified or licensed under the bill, the Commission must revoke the certificate or license upon the first offense, and specifies that if the violator is a public servant or party official, the person is forever disqualified from holding any public office, employment, or position of trust in Ohio:

- Offering, promising, or giving anything of value or benefit to a person who is connected with a sports wagering operator or to an agent or employee of a sports wagering

operator, under an agreement to influence, or with the intent to influence, the actions of the person to whom the offer, promise, or gift is made in order to affect or attempt to affect the outcome of sports wagering conducted under the bill or an official action of a Commission member, agent, or employee;

- Soliciting, accepting, or receiving a promise of anything of value or benefit while the person is connected with a sports wagering operator or agent or employee of a sports wagering operator, under an agreement to influence, or with the intent to influence, the actions of the person to affect or attempt to affect the outcome of sports wagering conducted under the bill or an official action of a Commission member, agent, or employee.

Finally, the bill allows the Commission permanently to ban any person who is convicted of a felony offense described above from entering a legal gaming facility.

The table below lists the continuing law maximum sentences for the various levels of criminal offenses the bill assigns to the offenses it creates.²⁵

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

Cooperation with investigations

Under the bill, the Ohio Casino Control Commission and all sports wagering operators must cooperate with investigations conducted by sports governing bodies or law enforcement agencies, including by providing or facilitating the provision of betting information and audio or video files relating to persons placing wagers.

The bill requires an operator immediately to report to the Commission any information relating to any of the following:

- Criminal or disciplinary proceedings commenced against the operator in connection with its operations;
- Wagers that violate state or federal law;

²⁵ R.C. 3775.99. See also R.C. 2929.14, 2929.18, 2929.24, and 2929.28, not in the bill.

- Abnormal sports wagering activity or patterns that may indicate a concern regarding the integrity of a sporting event or events;
- Any other conduct that corrupts a wagering outcome of a sporting event or events for purposes of financial gain;
- Suspicious wagering activities.

A sports wagering operator is not liable under the laws of Ohio to any party, including patrons, for disclosing information as required under the bill, and is not liable for refusing to disclose information unless required under the bill.

The bill also requires a sheriff, chief of police, or prosecuting attorney to furnish to the Commission, on prescribed forms, all information obtained during the course of any substantial investigation or prosecution if it appears that a violation of the law governing sports wagering has occurred. Any such information is exempt from disclosure under the Public Records Law until that information otherwise would become a public record.²⁶

Civil action by Attorney General

The bill gives the Attorney General the power to bring a civil action to restrain any violation of the bill's provisions concerning sports wagering. Upon the request of the Ohio Casino Control Commission or its Executive Director, the Attorney General must commence and prosecute such an action to completion. The bill requires the courts to give priority to such an action over all other civil actions.

The bill states that the Attorney General may enter into agreements with any state or local law enforcement agency to carry out its duties. A civil action by the Attorney General does not preclude an administrative or criminal proceeding on the same facts.²⁷

Civil penalties imposed by Ohio Casino Control Commission

The bill allows the Ohio Casino Control Commission to adopt rules prescribing civil penalties for violations of the law governing sports wagering. The penalties must not exceed \$50,000 for each violation. The Commission must deposit the moneys it collects as civil penalties in the General Revenue Fund.

Additionally, if a sports wagering operator or its employee or agent violates the law governing sports wagering or engages in a fraudulent act, the Commission may suspend or restrict the operator's sports wagering or require the removal of an employee or agent of the operator.²⁸

²⁶ R.C. 3775.07(C) and (D), 3775.08, and 3775.11.

²⁷ R.C. 3775.11.

²⁸ R.C. 3775.12.

COMMENT

1. Although the bill amends the Revised Code to remove the prohibition against sports wagering, a reviewing court still might find that the Ohio Constitution prohibits sports wagering. 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. However, the Constitution also provides three exceptions to this rule: (1) authorized state-conducted lotteries, (2) authorized and regulated bingo conducted by charitable organizations for charitable purposes, and (3) authorized casino gaming at four casino facilities. The Court has held that this provision of the Constitution limits the power of the General Assembly to authorize gambling beyond that permitted by the Constitution. Therefore, if sports wagering is not a lottery conducted by a state agency, charitable bingo, or casino gaming, a reviewing court might hold that the General Assembly may not authorize it in statute.²⁹

2. The provisions of the bill that allow the Ohio Casino Control Commission to enter into interstate agreements to operate sports wagering across state lines might cause anyone operating those systems or placing wagers on them to violate federal law, depending on how those systems are operated. The federal Interstate Wire Act of 1961 prohibits a person from knowingly using a wire communication facility for (1) the transmission in interstate or foreign commerce of bets or wagers on sports events or contests, (2) the transmission of wire communications that entitle the recipient to money or credit as a result of a bet, or (3) information assisting in placing bets or wagers. Whoever violates that law is subject to a fine and up to two years in prison. Transmitting information assisting in placing sports wagers or bets between states in which sports wagering is legal is permitted under the Interstate Wire Act, but transmitting bets or wagers across state lines themselves is prohibited under any circumstance.³⁰

HISTORY

Action	Date
Introduced	03-14-19

S0111-I-133/ts

²⁹ 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).

³⁰ 18 U.S.C. 1084.