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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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S.B. 194\*  
133<sup>rd</sup> General Assembly

## Bill Analysis

[Click here for S.B. 194's Fiscal Note](#)

**Version:** As Reported by House State and Local Government

**Primary Sponsor:** Sen. Rulli

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## SUMMARY

### Board of Voting Systems Examiners

- Renames the Board of Voting Machine Examiners as the Board of Voting Systems Examiners.
- Adds a cybersecurity expert appointed by the Secretary of State as a nonvoting member of the Board.

### Voter registration systems

- Requires the Secretary, in consultation with the Board, to adopt rules establishing guidelines for the approval, certification, and continued certification of voter registration systems.
- Requires the Secretary also to adopt standards for the security and integrity of voter registration systems to be used in that process.
- Requires a voter registration system to meet any standards adopted by the federal Election Assistance Commission in order to be certified.
- Requires the Board and the Secretary to apply the same process to voter registration systems that the Board and the Secretary currently use to examine, test, approve, and certify voting equipment.
- Prohibits the Secretary or a board of elections from acquiring a voter registration system that has not been certified under the bill.

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\* This analysis was prepared before the report of the House State and Local Government Committee appeared in the House Journal. Note that the legislative history may be incomplete

- Allows a board of elections that is using a voter registration system before the bill takes effect to continue using that system until the county acquires a new system.
- Requires the Board or the Secretary periodically to examine, test, and inspect certified voter registration systems to determine their continued compliance.
- Requires a vendor to notify the Secretary and provide an updated operations manual if any significant enhancement or adjustment is made to a certified voter registration system.
- Specifies a process to withdraw certification for a voter registration system.

### **Protests against candidate filings**

- Requires a board of elections or the Secretary, as applicable, to decide a protest against a person's candidacy not later than ten days after the deadline to file the protest.

### **Electronic instant bingo**

- Establishes electronic instant bingo as a separate type of bingo, along with traditional bingo, raffles, and instant bingo, but largely regulates the operation of electronic instant bingo in the same manner as instant bingo.

### **Definitions**

- Defines "electronic instant bingo" as a form of bingo that consists of an electronic or digital representation of instant bingo and that meets a series of requirements.
- Defines an "electronic instant bingo system" as a mechanical, electronic, digital, or video device that is used to play electronic instant bingo and any associated equipment or software used to conduct, manage, monitor, or document any aspect of electronic instant bingo.

### **Veteran's and fraternal organizations conducting electronic instant bingo**

- Allows veteran's and fraternal organizations to offer electronic instant bingo under a Type II or Type III license, in the same way as instant bingo.
- Requires electronic instant bingo proceeds to be distributed in the same manner as instant bingo proceeds are distributed under continuing law.
- Applies the same recordkeeping and operating requirements to electronic instant bingo as currently apply to instant bingo.
- Applies the restrictions on bingo game operators in the context of electronic instant bingo to any person involved in selling or redeeming electronic instant bingo tickets, credits, or vouchers or accessing an electronic instant bingo system other than as a participant, but does not include security personnel or a person who is maintaining, updating, or repairing an electronic instant bingo system.

## **Attorney General rules**

- Requires the Attorney General to adopt rules under the Administrative Procedure Act to ensure the integrity of electronic instant bingo, and lists several topics that must be covered under those rules.
- Authorizes the Attorney General to impose a civil fine on a charitable organization that has a bingo license for failure to comply with bingo laws and rules.

## **Distributor and manufacturer licensing**

- Requires a licensed distributor or manufacturer of bingo supplies to obtain an electronic instant bingo endorsement to the distributor's or manufacturer's license in order to distribute or manufacturer electronic instant bingo systems.
- Requires the distributor or manufacturer to pass a criminal records check regarding gambling-related offenses in order to receive the endorsement.
- Requires bingo equipment manufacturers and distributors seeking licensure to post a \$50,000 bond.
- Requires that manufacturers of electronic instant bingo software own their own proprietary software or have a license to use proprietary software.
- Allows the Attorney General to suspend or revoke an endorsement for violations of Ohio's gambling laws or rules.

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

- Requires a manufacturer of an electronic instant bingo system to submit the system to an independent testing laboratory and to the Attorney General for approval before the manufacturer may sell, offer to sell, or otherwise provide or offer to provide the system to any person for use in Ohio.
- Requires every electronic instant bingo system in use in Ohio to include an internal report management system and to allow the Attorney General to access the internal report management system, monitor the electronic instant bingo in real time, and remotely deactivate the electronic instant bingo system or any aspect of it.
- Permits the Attorney General to inspect any electronic instant bingo system in use in Ohio at any time to ensure that the system is in compliance with the bill and with the Attorney General's rules.
- Allows the Attorney General to establish by rule an annual fee to be paid by electronic instant bingo system distributors to cover the cost of monitoring and inspecting systems under the bill.

## **Prohibitions regarding electronic instant bingo**

- Prohibits several types of conduct related to the operation of electronic instant bingo.

- Prohibits any person from selling, offering to sell, or otherwise providing or offering to provide an unapproved electronic instant bingo system to any person for use in Ohio.
- Specifies that a person who knowingly violates any of the prohibitions in the bill or in the Attorney General's rules is guilty of illegal electronic instant bingo conduct, which is a first degree misdemeanor for a first offense and a fifth degree felony for any subsequent offense.

## **Bingo licenses, generally**

### **Denial or suspension**

- Allows the Attorney General to deny a bingo license to an organization, or suspend an organization's bingo license for up to five years, if the Attorney General has good cause to believe that any director or officer of the organization has breached the director's or officer's fiduciary duty to the organization.
- Provides the Attorney General with rule-making authority to place limits, restrictions, and probationary conditions on bingo operator, manufacturer, and distributor licenses.
- Authorizes the Attorney General to make rules related to granting, suspending, revoking, or modifying a bingo operator, distributor, or manufacturer license or endorsement and for approving changes to electronic instant bingo systems and games.
- Allows the Attorney General to suspend, refuse, or revoke a bingo license if the charitable organization engages in misconduct.

### **Youth athletic park organizations**

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

### **License type**

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

### **Technical changes**

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

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

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

## **Minors playing traditional bingo**

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

## **Bingo Law enforcement**

### **Charitable organizations**

- Allows the Attorney General or a law enforcement agency to examine the accounts and records of any officer, agent, trustee, member, or employee of a charitable organization with a bingo license.
- Permits the Attorney General or a law enforcement agency to investigate a bingo distributor or manufacturer or any officer, agent, trustee, member, or employee of the bingo distributor or manufacturer in relation to violations of the Bingo Law.

### **Manufacturers and distributors**

- Permits the Attorney General or a law enforcement agency to investigate a bingo distributor or manufacturer or any officer, agent, trustee, member, or employee of the bingo distributor or manufacturer in relation to violations of the Bingo Law.

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## DETAILED ANALYSIS

### Board of Voting Systems Examiners

The bill renames the Board of Voting Machine Examiners as the Board of Voting Systems Examiners, in recognition of the Board’s expanded role under the bill in examining and approving voter registration systems, as discussed below. Currently, the Board is responsible for examining and approving voting machines, marking devices, automatic tabulating equipment, voting and tabulation software, and electronic pollbooks.

The bill also adds a cybersecurity expert appointed by the Secretary of State as a nonvoting member of the Board. Under continuing law, the voting members of the Board include two members appointed by the Secretary, one member appointed by the House of Representatives leader who is of the opposite political party from the Secretary, and one member appointed by the Senate leader who is of the opposite political party from the Secretary. (For example, currently, the Board consists of two members appointed by the Secretary, one member appointed by the House Minority Leader, and one member appointed by the Senate Minority Leader.) In the case of a tie vote, the Secretary casts the deciding vote.

Each member of the Board must be a competent and experienced election officer or a person who is knowledgeable about the operation of voting equipment. Members receive \$300 per day for each combination of systems or pieces of equipment examined and reported on, provided that a member must not receive more than \$600 to examine and report on any one system or piece of equipment. Members also must be reimbursed for expenses incurred in performing their official duties.<sup>1</sup>

## **Voter registration systems**

### **Approval and certification required**

The bill requires the Secretary of State, in consultation with the Board of Voting Systems Examiners, to adopt rules establishing guidelines for the approval, certification, and continued certification of voter registration systems. The Secretary also must adopt standards for the security and integrity of voter registration systems to be used in that process. “Voter registration system” means software and any related equipment used by a board of elections or the Secretary to process, store, organize, maintain, or retrieve voter registration records.

If the federal Election Assistance Commission (EAC) certifies voter registration systems as part of its Testing and Certification Program, the bill requires a voter registration system to meet the EAC’s standards in addition to those adopted by the Secretary and to have the most recent federal certification number issued by the EAC. Currently, the EAC tests and certifies voting systems but not voter registration systems.

Under the bill, the Board and the Secretary must apply the same process to voter registration systems that the Board and the Secretary currently use to examine, test, approve, and certify voting machines, marking devices, automatic tabulating equipment, voting and tabulation software, and electronic pollbooks.

The bill prohibits the Secretary or a board of elections from acquiring a voter registration system that has not been certified under the bill. However, a board of elections that is using a voter registration system before the bill takes effect may continue using that system until the county acquires a new system.<sup>2</sup>

### **Process for approval and certification**

#### **Vendor submission**

A vendor who wishes to have a voter registration system certified for use in Ohio first must submit all of the following to the Board:

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<sup>1</sup> R.C. 3506.05 and conforming changes in R.C. 3506.04, 3506.06, 3506.07, and 3506.10.

<sup>2</sup> R.C. 3506.01(I), 3506.05, and 3506.16. See also U.S. Election Assistance Commission, *Fact Sheet: The U.S. Election Assistance Commission’s Voting System Testing and Certification Program*, available at [eac.gov/news/2017/03/07/fact-sheet-the-us-election-assistance-commissions-voting-system-testing-and-certification-program-voting-systems-certification-communications-fact-sheet/](http://eac.gov/news/2017/03/07/fact-sheet-the-us-election-assistance-commissions-voting-system-testing-and-certification-program-voting-systems-certification-communications-fact-sheet/).

- The voter registration system;
- All current related procedural manuals;
- A current description of all related support arrangements;
- A detailed explanation of the construction and method of operation of the system;
- A full statement of the system’s advantages;
- A list of the patents and copyrights used in the crucial operations of the system, as determined by the Board;
- A \$2,400 fee, to be deposited in the Board’s fund to pay for the services and expenses of Board members and any other expenses incurred in fulfilling the Board’s duties;
- An additional fee, at the option of the Board and in an amount set by the Board by rule, to pay the costs of alternative testing or testing by persons other than Board members, record keeping, and other extraordinary costs incurred in the examination process. Any unused moneys from the additional fee must be returned to the vendor.

Additionally, the Secretary’s rules must require vendors or software developers to place in escrow, with an independent escrow agent approved by the Secretary, a copy of all source code and related documentation, together with periodic updates as they become known or available. The Secretary must require that the documentation include a system configuration and that the source code include all relevant program statements in low- or high-level languages. “Source code” does not include variable codes created for specific elections.<sup>3</sup>

### **Board examination and report**

When a vendor submits a voter registration system, the bill requires the Board to examine the system and file a written report with the Secretary of State within 60 days after the vendor submits it or as soon thereafter as is reasonably practicable. The report must include (1) the Board’s recommendations and, if applicable, its determination or condition of approval regarding whether the system, manual, and other related materials or arrangements meet the applicable criteria and can be safely used, or (2) a written statement of reasons the Board needs more time for testing. The Board may grant temporary approval to allow experimental use of the system.

If the Board finds that the voter registration system meets the applicable criteria, can be used safely, and has the capacity to be warranted, maintained, and serviced, the Board must approve the system and recommend that the Secretary certify it for use.<sup>4</sup>

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<sup>3</sup> R.C. 3506.05(D) and (I)(1).

<sup>4</sup> R.C. 3506.05(E).



## **Certification by Secretary of State**

Upon receiving a favorable recommendation from the Board, the Secretary of State may, but is not required to, certify the voter registration system. If the Secretary does so, the Secretary must notify the boards of elections that they may adopt the system for use.<sup>5</sup>

## **Continuing certification**

The bill requires the Board or the Secretary of State periodically to examine, test, and inspect certified voter registration systems to determine their continued compliance with the bill and the Secretary's standards, in the same manner as the Board and the Secretary currently review other certified equipment. If a significant problem is uncovered in a certified system, or if a record of continuing problems exists for the system, then the examination, testing, and inspection of the system for continuing certification must be conducted in the same manner as for the initial approval and certification.

If any enhancement or significant adjustment is made to a certified voter registration system's hardware or software that could result in a patent or copyright change or that significantly alters the crucial operations of the system, as determined by the Board, the vendor must notify the Secretary of State and provide an updated operations manual for the system. The Secretary then must notify the Board and forward the updated manual to it, and the Board may require the vendor to submit the system to an examination and test in order for the system to remain certified.<sup>6</sup>

## **Withdrawal of certification**

The bill requires the Secretary of State to begin the process of withdrawing certification for a voter registration system if any of the following occur:

- A board of elections notifies the Secretary or the Board of Voting Systems Examiners of any significant problem with the system;
- The Secretary or the Board determines that the system fails to meet the requirements necessary for approval or continued compliance with the bill and the Secretary's standards;
- The Board determines that there are significant enhancements or adjustments to the system's hardware or software;
- The vendor has failed to notify the Secretary of any significant enhancements or adjustments, as required by the bill.

The Secretary first must send a written notice to the users and vendors of the voter registration system that the system's certification may be withdrawn. The notice must specify the reasons why the certification may be withdrawn and the date on which the certification will

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<sup>5</sup> R.C. 3506.05(E).

<sup>6</sup> R.C. 3506.05(F).

be withdrawn unless the vendor (1) takes satisfactory corrective measures, (2) explains why there are no problems with the system, or (3) explains why the enhancements or adjustments to the system are not significant.

Within 30 days after receiving the notice, the vendor must submit to the Board, in writing, (1) a description of the corrective measures taken and the date on which they were taken, (2) an explanation of why there are no problems with the system, or (3) an explanation of why the enhancements or adjustments to the system are not significant.

Then, not later than 15 days after receiving the vendor's submission, the Board must determine whether the submission is satisfactory to allow continued certification of the system. The Secretary must send the vendor a written notice of the Board's determination and its reasoning. If the Board determines that the submission is unsatisfactory, the Secretary's notice must include the effective date of withdrawal of the certification. That date is not required to be the same as the deadline included in the Secretary's initial notice to the vendor.

If the certification is scheduled to be withdrawn, the vendor may, within 30 days after receiving notice from the Secretary, submit a written request for the Board to hold a hearing to reconsider its decision. Any interested party must be given the opportunity to submit testimony or documentation in support of, or opposition to, the Board's recommendation.<sup>7</sup>

## **Protests against candidate filings**

The bill requires a board of elections or the Secretary of State, as applicable, to decide a protest against a person's candidacy filing not later than ten days after the deadline to file the protest. This provision of the bill applies to a protest filed against a candidate's declaration of candidacy and petition (filed to appear on a primary ballot), against a nominating petition (filed to run as an independent candidate, as a candidate in a nonpartisan election, or as the nominee of a newly formed political party), or against a declaration of intent to be a write-in candidate at a primary or general election.

Under continuing law, when a person files those candidacy papers, any qualified elector who is eligible to vote in the election for that office may file a protest against the person's candidacy by a specified deadline, with the same officials with whom the candidacy papers were filed. The election officials promptly must schedule a hearing and mail a notice to the candidate and the elector who filed the protest. At the hearing, the election officials must hear the protest and must determine the validity or invalidity of the candidacy papers. That determination is final.

The Revised Code currently does not provide a deadline for election officials to resolve a protest, although as a practical matter, a protest against any candidate other than a write-in

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<sup>7</sup> R.C. 3506.05(G) and (H).

candidate would need to be decided in time to have uniformed services and overseas absent voter's ballots printed and ready to mail on the 46<sup>th</sup> day before the election.<sup>8</sup>

## Electronic Instant Bingo

### Background on charitable bingo

The Ohio Constitution generally prohibits gambling, but includes exceptions for a state-run lottery, casino gaming at four specified facilities, and bingo conducted by charitable organizations for charitable purposes, as authorized and regulated by the General Assembly. Charitable organizations that wish to conduct bingo games must apply for a license from the Attorney General and comply with the requirements of the Revised Code and of administrative rules adopted by the Attorney General, including requirements governing the places, times, and manner of holding bingo games.<sup>9</sup>

### Types of bingo

The Revised Code defines "bingo" to include four types of activities:<sup>10</sup>

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

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<sup>8</sup> R.C. 3513.041, 3513.05, 3513.262, and 3513.263. See also R.C. 3509.01(B) and 3517.012(B)(3)(b), not in the bill.

<sup>9</sup> Ohio Constitution, Article XV, Section 6; R.C. Chapter 2915; and Ohio Administrative Code Chapter 109:1-4.

<sup>10</sup> R.C. 2915.01(O).

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

## **Charitable organizations**

For purposes of offering bingo games, continuing law defines a “charitable organization” as an organization that has been in continuous existence in Ohio for at least two years before applying for a bingo license and that either (1) is exempt from taxation under subsection 501(c)(3) of the federal Internal Revenue Code or (2) is a volunteer rescue service organization, volunteer firefighter’s organization, veteran’s organization, fraternal organization, or sporting organization that is exempt from taxation under subsection 501(c)(4), (7), (8), (10), or (19) of the Internal Revenue Code.<sup>11</sup>

## **Distribution of net profit**

### **Generally**

The proceeds of charitable bingo must be used for a charitable purpose. For all types of bingo other than instant bingo, continuing law requires the net profit of the game to be used by or given to one of the following:<sup>12</sup>

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

### **Instant bingo**

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

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<sup>11</sup> R.C. 2915.01(H).

<sup>12</sup> R.C. 2915.01(V).

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

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

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

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

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

As is discussed below, the bill regulates electronic instant bingo proceeds in the same manner as instant bingo proceeds.<sup>13</sup>

## **Electronic instant bingo**

The bill establishes electronic instant bingo as a separate type of bingo, along with traditional bingo, raffles, and instant bingo, but largely regulates the operation of electronic instant bingo in the same manner as instant bingo. The bill allows only veteran's and fraternal organizations who are 501(c)(4)s, (7)s, (8)s, (10)s, or (19)s, to conduct electronic instant bingo.<sup>14</sup>

### **Definitions**

"Electronic instant bingo" is a form of bingo that consists of an electronic or digital representation of instant bingo in which a participant wins a prize if the participant's electronic instant bingo ticket contains a combination of numbers or symbols that was designated in advance as a winning combination, and to which all of the following apply:

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<sup>13</sup> R.C. 2915.01(RR) and 2915.101.

<sup>14</sup> R.C. 2915.14. See R.C. 2915.01(J) and (L) for the definitions of "veteran's organization" and "fraternal organization."

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

Under the bill, an “electronic instant bingo system” is a mechanical, electronic, digital, or video device that is used to play electronic instant bingo and any associated equipment or software used to conduct, manage, monitor, or document any aspect of electronic instant bingo. The bill specifies that an electronic instant bingo system is not considered a slot machine or other prohibited scheme of chance.<sup>15</sup>

## **Veteran’s and fraternal organizations conducting electronic instant bingo**

### **License**

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

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

The bill allows veteran’s and fraternal organizations to offer electronic instant bingo under a Type II or Type III license, in the same way as instant bingo.<sup>16</sup>

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

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<sup>15</sup> R.C. 2915.01.

<sup>16</sup> R.C. 2915.08, 2915.093, 2915.094, and 2915.095.

## **Proceeds, records, and operations**

The bill requires electronic instant bingo proceeds to be distributed in the same manner as instant bingo proceeds are distributed under continuing law. (See “**Distribution of net profit**,” above.) And, the bill applies the same recordkeeping and operating requirements to electronic instant bingo as currently apply to instant bingo.<sup>17</sup>

## **Game operators**

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

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

## **Attorney General rules**

The bill requires the Attorney General to adopt rules under the Administrative Procedure Act to ensure the integrity of electronic instant bingo, including rules governing all of the following:<sup>19</sup>

- The requirements to receive a license to conduct electronic instant bingo;
- The location and number of electronic instant bingo systems in use;
- The times when electronic instant bingo may be offered;
- Signage requirements in facilities where electronic instant bingo is offered;
- Electronic instant bingo device and system specifications, including reveal features and game themes;
- Procedures and standards for reviewing, approving, inspecting, and monitoring electronic instant bingo systems, as discussed below; and
- The fees to be paid by manufacturers and distributors for that purpose.

The bill also allows the Attorney General to adopt a schedule of civil fines which may be imposed against organizations for failure to comply with the conditions of its license, and for failure to comply with any rule adopted by the Attorney General under the gambling law.

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<sup>17</sup> R.C. 2915.01(V), 2915.09, 2915.10, 2915.101, and 2915.13.

<sup>18</sup> R.C. 2915.01(Q) and 2915.09.

<sup>19</sup> R.C. 2915.14(C).

## **Distributor and manufacturer licensing**

Continuing law requires distributors and manufacturers of bingo supplies to be licensed by the Attorney General, and electronic instant bingo systems are considered bingo supplies under the bill. In addition to being licensed as a distributor or manufacturer, as applicable, the bill requires a distributor or manufacturer of electronic instant bingo systems to obtain an electronic instant bingo endorsement to the distributor's or manufacturer's license. An endorsement issued under the bill is good for the term of the underlying license. To obtain the endorsement, a distributor or manufacturer must apply to the Attorney General, on a form prescribed by the Attorney General, submit a set of fingerprints for a criminal records check, and pay any applicable fee charged by the Bureau of Criminal Identification and Investigation. (No criminal records check is required to receive a distributor or manufacturer license, generally.) In addition, any manufacturer or distributor seeking licensure must post a \$50,000 bond.

Manufacturers of electronic instant bingo software may only sell or provide electronic instant bingo systems that contain proprietary software owned by or licensed to the manufacturer. The manufacturer must provide a copy of the license along with the application for an endorsement.

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

The bill allows the Attorney General to suspend or revoke an endorsement issued under the bill in the same manner as the Attorney General currently may suspend or revoke a manufacturer or distributor license for violations of Ohio's gambling laws or rules.<sup>20</sup>

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

### **Approval**

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

If the laboratory certifies that the system meets the applicable requirements, the manufacturer then may submit the system to the Attorney General for review and approval,

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<sup>20</sup> R.C. 109.572, 2915.01(Z), (KK), and (LL), 2915.081, and 2915.082.



along with a copy of the laboratory's certification and a fee established by the Attorney General by rule. If the Attorney General agrees that the system meets the bill's requirements and the Attorney General's rules, the Attorney General must approve the system for use in Ohio.<sup>21</sup>

### **Monitoring**

The bill requires every electronic instant bingo system in use in Ohio to include an internal report management system and to allow the Attorney General or the Attorney General's designee to access the internal report management system, monitor the electronic instant bingo in real time, and remotely deactivate the electronic instant bingo system or any aspect of it.

### **Inspection**

The Attorney General may inspect any electronic instant bingo system in use in Ohio at any time to ensure that the system complies with the bill and with the Attorney General's rules. If the Attorney General determines that any person or any system is in violation of the bill or of those rules, the Attorney General may order that the violation immediately cease and may deactivate the system or any aspect of it.<sup>22</sup>

### **Fees**

The Attorney General may establish by rule adopted under the Administrative Procedure Act an annual fee to be paid by electronic instant bingo system distributors to cover the cost of monitoring and inspecting systems under the bill. Those fees must be deposited in the Charitable Law Fund and used for those purposes.<sup>23</sup>

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

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

Under the bill, no veteran's or fraternal organization that conducts electronic instant bingo may do any of the following:

- Possess an electronic instant bingo system that was not obtained in accordance with the bill or with Attorney General rules;
- Conduct electronic instant bingo on any day, at any time, or on any premises not specified on the organization's Type II or Type III license;
- Fail to display the organization's bingo license;

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<sup>21</sup> R.C. 2915.15(A) and conforming changes in R.C. 2915.01, 2915.08, 2915.091, 2915.10, and 2915.12.

<sup>22</sup> R.C. 2915.15(C).

<sup>23</sup> R.C. 109.32 and 2915.15(D).

- Permit any person the organization knows, or should have known, to be under 18 to play electronic instant bingo;
- Permit any person to play electronic instant bingo without paying the full price predetermined for each ticket in an electronic instant bingo deal;
- Fail, once an electronic instant bingo deal has begun, to continue to sell tickets in that deal until all prizes have been awarded;
- Permit any person whom the organization knows, or should have known, has been convicted of a felony or gambling offense in any jurisdiction to be a bingo game operator in the conduct of electronic instant bingo;
- Permit a bingo game operator to play electronic instant bingo;
- Pay compensation to a bingo game operator for conducting electronic instant bingo, except that an employee of a veteran's or fraternal organization may redeem electronic instant bingo tickets or vouchers for the organization's members or invited guests, so long as no portion of the employee's compensation is paid from any bingo receipts.
- Pay consulting fees to any person in relation to electronic instant bingo.

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

A person who knowingly violates any of those prohibitions is guilty of illegal electronic instant bingo conduct, which is a first degree misdemeanor for a first offense and a fifth degree felony for any subsequent offense. And, a person who knowingly violates a rule of the Attorney General concerning electronic instant bingo is subject to the same penalties.<sup>24</sup>

## **Bingo licenses, generally**

### **Denial or suspension**

Under the bill, the Attorney General may deny a bingo license to an organization, suspend an organization's bingo license for up to five years, or place limits, restrictions, or probationary conditions on a license, if the Attorney General has good cause to believe that any director or officer of the organization has breached the director's or officer's fiduciary duty to the organization. Continuing law allows the Attorney General also to deny or suspend a bingo license for certain other reasons involving dishonesty or violations of the Gambling Law.<sup>25</sup>

In addition, the Attorney General may place limits, restrictions, and probationary conditions on bingo operator, manufacturer, and distributor licenses as a condition of granting a license or a temporary license. The Attorney General also may make rules for modifying,

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<sup>24</sup> R.C. 2915.14.

<sup>25</sup> R.C. 2915.08(F)(3).

suspending, or revoking licenses or endorsements. The Attorney General may suspend, revoke, or refuse to grant a bingo license to a charitable organization if the Attorney General has good cause to believe that any director or officer of the organization has breached the director's or officer's fiduciary duty to, or committed theft or any other type of misconduct related to, the organization or any other charitable organization that has been issued a bingo license under the Gambling Law.

The Attorney General also may adopt rules for approving changes to technologies, systems, or games licensed under the Gambling Law, and has the authority to make rules to enforce the provisions of that law.<sup>26</sup>

### **Youth athletic park organizations**

The bill eliminates a requirement that a youth athletic park organization's playing fields have been used for nonprofit youth athletic activities for at least 100 days during a given year in order for the organization to obtain a bingo license. Under continuing law, such an organization must be a nonprofit organization that owns, operates, and maintains playing fields that are used for nonprofit youth athletic activities and that are never used to make a profit.<sup>27</sup>

### **License type**

The bill requires a bingo license to indicate whether it is a Type I, Type II, or Type III license, along with the other relevant information that must be included under continuing law.<sup>28</sup>

### **Technical changes**

Finally, the bill makes numerous stylistic and technical changes to the section of law governing bingo licenses in order to incorporate "Type I," "Type II," and "Type III" license terminology, in line with the terms the Attorney General uses; to clarify that an organization does not need a license to conduct a raffle; and generally to make the section easier to read. However, the bill does not change the requirements for the licenses, except as specified above.<sup>29</sup>

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

The bill clarifies that punch boards and seal cards are types of instant bingo games and may be played under an instant bingo license. Currently, the Attorney General regulates punch boards and seal cards in that manner, but the Revised Code refers to them separately from instant bingo in some places.<sup>30</sup>

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<sup>26</sup> R.C. 2915.08, 2915.081, 2915.082.

<sup>27</sup> R.C. 2915.01(Y) and 2915.08(C)(10).

<sup>28</sup> R.C. 2915.08(I).

<sup>29</sup> R.C. 2915.08. See also R.C. 2915.092, not in the bill.

<sup>30</sup> R.C. 2915.01(O)(2), (S), (AA), and (DD).

## **Minors playing traditional bingo**

The bill makes a technical correction to clarify the penalty that applies to a charitable organization if it permits a person the organization knows, or should have known, is under 18 to play traditional bingo. Under continuing law, such a violation is a first degree misdemeanor on the first offense and a fourth degree felony on any subsequent offense.<sup>31</sup>

## **Bingo Law enforcement**

### **Charitable organizations**

The bill allows the Attorney General or a law enforcement agency to examine the accounts and records of any officer, agent, trustee, member, or employee of a charitable organization with a bingo license, in addition to examining the charitable organization's accounts and records as permitted under continuing law.<sup>32</sup>

### **Distributors and manufacturers**

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

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

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

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

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<sup>31</sup> R.C. 2915.09(G).

<sup>32</sup> R.C. 2915.10(H)(2).

Continuing law gives the Attorney General and law enforcement agencies those powers with respect to charitable organizations that conduct bingo, but not with respect to bingo distributors or manufacturers.<sup>33</sup>

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## COMMENT

Since 2013, several charitable organizations have been involved in ongoing litigation against the Attorney General concerning the issue of whether those organizations legally may hold raffles using devices known as electronic raffle machines. The machines operate by randomly predesignating an outcome or prize associated with each entry, then selling an entry to a participant through the machine's electronic interface and revealing whether the entry is a winner.

The 10<sup>th</sup> District Court of Appeals ruled in 2018 that Ohio law prohibits the use of electronic raffle machines to hold a raffle because their method of operation does not meet the legal definition of a raffle. That decision was appealed to the Ohio Supreme Court, but the Court has agreed to delay making a ruling until after June 30, 2020, in anticipation that the parties may resolve the matter out of court. The cause was again held in abeyance on June 24, 2020, until December 30, 2020. It appears that the system used to operate electronic raffle machines might meet the legal definition of electronic instant bingo as permitted under the bill.<sup>34</sup>

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## HISTORY

Action	Date
Introduced	09-09-19
Reported, S. General Gov't & Agency Review	10-30-19
Passed Senate (33-0)	11-06-19
Reported, H. State and Local Gov't	---

S0194-RH-133/ar

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<sup>33</sup> R.C. 2915.10(H), (I), and (J).

<sup>34</sup> *Ohio Veterans and Fraternal Charitable Coalition v. DeWine*, 2018-Ohio-4679 (10<sup>th</sup> Dist. Ct. App. 2018); *Ohio Veterans and Fraternal Charitable Coalition v. Yost*, 2019-Ohio-3749 (2019); and *Ohio Veterans & Fraternal Charitable Coal. v. Yost*, 2020-Ohio-3424, 147 N.E.3d 669.