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# OHIO LEGISLATIVE SERVICE COMMISSION

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

## Occupational Regulation Report

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

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

**Impacted Profession:** Sports gaming professionals

Joe McDaniels, Attorney/Division Chief

REVISED VERSION \*\*

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

## SUMMARY OF PROPOSED REGULATIONS

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

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

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

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

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

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

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

## Sports gaming licenses

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

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

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

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

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

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

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

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

## **Bond requirement**

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

## **Process regulations**

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

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# **LEAST RESTRICTIVE REGULATION COMPARISON**

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

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

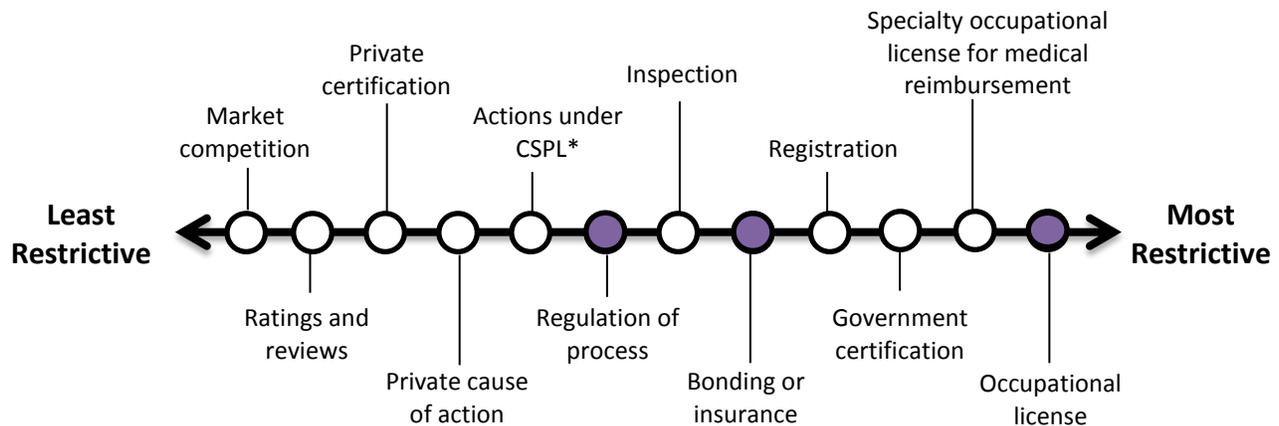
The degree of “restrictiveness” of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state’s policy by least to most restrictive:

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

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

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



\*CSPL – The Consumer Sales Practices Law

## Necessity of regulations

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

### Problem gambling

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

### Economic impact

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

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

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

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

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

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

### **Integrity of athletics**

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

### **Crime**

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

### **Restrictiveness of regulations**

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

### **Licensure requirement**

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

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

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

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

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

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

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

### **Bond requirement**

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

### **Regulations of process**

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

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

### **Other regulatory policies**

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

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

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

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

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

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

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## **STATE BY STATE COMPARISON**

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

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

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## **IMPACT STATEMENT**

### **Opportunities for employment**

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

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

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

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

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

### **Market competition**

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

### **Consumer choice**

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

### **Cost to government**

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

## APPENDIX

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

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

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

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

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

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

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

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