

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Lottery Commission

Regulation/Package Title: Video Lottery

Rule Number(s): 3770:2-2-01 and 3770:2-3-08

Date: March 28, 2013

Rule Type:

New

☒ Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

3770:2-2-01 – The state lottery commission adopted the use of certain terms and provided definitions for those terms in rule 3770:2-2-01 which is entitled “Definition of certain terms used in division 3770:2 of the Administrative Code.” Subsequently, in Amended Substitute

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House Bill 386 the General Assembly amended section 3770.21 of the Revised Code and adopted the use of certain terms and provided definitions for those terms. The amendments to 3770:2-2-01 conform the administrative rule to the terms and definitions adopted in Amended Substitute House Bill 386.

3770:2-3-08 – Amended Substitute House Bill 386 also amended section 3769.087(C) of the Revised Code by providing that “beginning July 1, 2013, the state lottery commission shall adopt a rule to require the lottery sales agent conducting video lottery terminal gaming on behalf of the state to disperse to the state lottery commission one-half of one per cent of such a lottery sales agent’s commission for the purpose of providing funding support to appropriate state agencies for programs that provide for gambling addiction and other related addiction services.” The proposed amendment to 3770:2-3-08 creates a new subsection (E) requiring the funding support for gambling addiction services. The proposed amendment also amends subsection (C) by using the new terminology adopted in Amended Substitute House Bill 386 of the Revised Code and referenced in rule 3770:2-2-01.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Section 3770.03 of the Revised Code and section 3769.087 of the Revised Code.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

3770:2-2-01 – The administrative regulation must conform to the definitions established in the state lottery commission’s enabling legislation.

3770:2-3-08 – The adoption of a regulation was made mandatory by Amended Substitute House Bill 386.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

3770:2-2-01 – As these proposed amendments relate to definitions of terms use, no measurement of outputs or outcomes will be measured.

3770:2-3-08 – In fiscal 2012 the lottery and Ohio for Responsible Gambling conducted a prevalence study to create a baseline profile of Ohioans' attitudes towards gaming and tendency towards problem or pathological gambling behavior.

This program is intended to support awareness, education, and training. A follow up study will be conducted likely in fiscal 2015 which will identify changes in consumer behavior and help determine the success of our programs and the ongoing levels of support needed.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On March 4, 2013, the below listed stakeholders were notified of the proposed amendments via email. The stakeholders consist of representative of all seven (7) Ohio racetracks.

David Frankhouser, Delaware North Companies Gaming & Entertainment
John Carlo, Lebanon Trotting Club,
William Bissett, Delaware North Companies Gaming & Entertainment
C. Keith Nixon, Jr., Miami Valley Trotting Club
Ron Sultemeier, Delaware North Companies Gaming & Entertainment
Karen Cincione, Vorys, Sater, Seymour & Pease LLP (for DNC)
Fred Mills, Vorys, Sater, Seymour & Pease LLP (For DNC)
Melanie Thoburn, Delaware North Companies Gaming & Entertainment
Shawn Bailey, Churchill Downs, Incorporated
Jim Simms, Wheeling Island Casino (operation of DNC)
Brock Milstein, Northfield Park
Luther Heckman, Northfield Park
Carl Sottosanti, Penn National Gaming, Inc.
Jim Baldacci, Penn National Gaming, Inc.
Frank Donaghue, Penn National Gaming, Inc.
John Oberle, Ice Miller, LLP (for Penn National Gaming, Inc.)
Rod Thomas, Penn National Gaming, Inc.
Kevin Kaufman, River Downs (for Pinnacle Entertainment, Inc.)
Robert Allen, River Downs (for Pinnacle Entertainment, Inc.)
Sue Ascanio, River Downs and Belterra Casino Resort (for Pinnacle Entertainment, Inc.)
Vicky Litz, River Downs (for Pinnacle Entertainment, Inc.)
John W. Bittner, Jr., MTR Gaming
Joseph L. Billhimer, MTR Gaming
Nick A. Rodriguez-Cayro, MTR Gaming

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Troy Buswell, MTR Gaming
Tonya MacDonald, MTR Gaming
Marcus Glover, Rock Ohio Caesar's
Greg Margaris, Caesar's Entertainment
Dan Reinhard, Rock Gaming, Inc.
Lee Dillard, Caesar's Entertainment
Rick Skinner, Caesar's Entertainment
David Paragas, Barnes & Thornburg, LLP

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Only one comment was received regarding possible implications of the definition of "video lottery terminal." The state lottery commission, however, is using the definition given by the Ohio General Assembly in 3770.21 of the Revised Code.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

As to 3770:2-2-01 this question is not applicable. As to 3770:2-3-08 it is not known what criteria the General Assembly may have used to determine the amount to be disbursed. The lottery is adopting the rule as mandated using the amounts set forth in 3769.087(C).

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

3770:2-2-01 – The nature of the proposed amendment is to conform the state lottery commission's regulation to the definitions used in its enabling legislation. As such, alternatives were inapplicable.

3770:2-3-08 – ORC 3769.087(C) is a straight forward mandatory requirement for the adoption of a rule by the state lottery commission requiring the disbursement of one-half of one per cent of the video lottery sales agent's commission to the state lottery commission for funding support for gambling addiction services. The proposed amendment does not expand upon the legislative directive, but merely adopts it as required. Alternative regulations are therefore inapplicable.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Based upon the explanation provided in the answer to question 10, performance based regulations are not applicable.

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12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

3770:2-2-01 – This is the only regulation relating to video lottery that contains definitions of terms used in division 3770:2.

3770:2-3-08 – This proposed amendment is based upon a new legislative requirement and no other state lottery commission regulations address this new topic.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The state lottery commission's gaming vendor, Intralot, Inc., will calculate the amount to be disbursed to the lottery each week for problem gambling services. The gaming vendor calculates the VLT sales agent commission (66.5%) and the amount retained by the lottery (33.5%). The gaming vendor will then apply the one-half of one per cent calculation to the VLT sales agent's commission and include this as a separate calculation on the invoice sent to the VLT sales agent.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The seven racing permit holders who either now have or have applied for a video lottery sales agent license.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

Payment of one-half of one per cent of the video lottery sales agent's commission to the state lottery commission to support problem gambling services.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

The obligation to pay the one half of one per cent for problem gambling does not begin until July 1, 2013. As an example, however, the calculated commission (66.5%) for VLT sales agent Scioto Downs for the month of February 2013 was \$7,304,625. Had the one-half of one per cent been charged against VLT sales agent commission for that month, the total charged to Scioto Downs for support of gambling service for that month would have been \$36,523.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

These two proposed rule amendments simply adopt changes to the applicable law governing video lottery. As such, the balancing of these interests was presumably performed by the General Assembly. This is particularly true as to rule 3770:2-3-08(C) which simply implements a charge upon the regulated business community as imposed by the General Assembly.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Video lottery sales agents have estimated annual receipts in excess of \$7.0 million and are therefore not classified as a “small business” pursuant to 13 C.F.R. 121.201.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

See answer to #16 above.

18. What resources are available to assist small businesses with compliance of the regulation?

See answer to #16 above.