



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: State Lottery Commission

Rule Contact Name and Contact Information:

Christine Jasica – (216) 774-5652

Regulation/Package Title (a general description of the rules' substantive content):

Video Lottery Game Requirements: Video Lottery Game Play; Lottery Prize Payments

Rule Number(s): 3770:2-7-01, 3770:2-7-02

Date of Submission for CSI Review: 05/14/2021

Public Comment Period End Date: 05/31/2021

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/ X rules (FYR? X)

Amended/\_\_\_ rules (FYR? \_\_\_)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

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regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Reason for Submission**

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business. 3770:2-7-01**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms. 3770:2-7-02**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance. 3770:2-7-02**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

2. **Please briefly describe the draft regulation in plain language.**

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

3770:2-7-01 – Sets forth rules pertaining to video lottery game play under division 3770:2 of the Administrative Code.

3770:2-7-02 – Sets forth various administrative functions related to the determination and validity of prize payments.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Ohio Revised Code 3770:03 Commission – power and duties.

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4. **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.*

The answer is No to both questions.

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

Not applicable.

6. **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)?**

The Ohio Constitution Article 15, Section 15.06 permits the General Assembly to authorize a state agency to conduct lotteries. The General Assembly has authorized the State Lottery Commission, a state agency, to license video lottery sales agents to sell video lottery, the net proceeds of which are used for elementary, secondary, vocational and special education in the state. These rules are necessary to ensure the consistent and proper conduct of video lottery sales agents with regard to the operation of video lottery games, the advertising and promotion of video lottery games, and the game play and payment of prizes for the video lottery games.

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

Success will be measured through the consistent enforcement of these standardized requirements pertaining to video lottery sales agents. They will ensure initial and ongoing compliance with lottery rules and regulations, while maintaining the integrity of each individual entity and all video lottery operations as a whole. These regulations also enable the lottery to continue to hold video lottery sales agents to the same standards that they met upon initial licensure.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

Not applicable.

### **Development of the Regulation**

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

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

On April 19, 2021, the below listed stakeholders were notified of the proposed amendment to the rules via email. The stakeholders consist of representatives of all seven Ohio racetracks.

Chris Corrado, Boyd Gaming  
Justin Remschneider, Boyd Gaming  
Jason Newkirk, Boyd Gaming  
David Frankhouser, Delaware North Companies  
Ron Sultemeier, Miami Valley Gaming/Delaware North Companies  
Karen Cincione, Delaware North Companies  
Craig Robinson, Miami Valley Gaming/Delaware North Companies  
Austin Miller, Miami Valley Gaming/Delaware North Companies  
Rob Swedinovich, Miami Valley Gaming/Delaware North Companies  
Sang Nguyen, Miami Valley Gaming/Delaware North Companies  
Shawn Bailey, Delaware North Companies  
Carl Sottosanti, Penn National  
Jim Baldacci, Penn National  
Frank Donaghue, Penn National  
John Oberle, Penn National  
Allie Evangelista, Penn National  
Mike Whitemaine, MTR Gaming  
Anthony Carano, MTR Gaming  
Gary Carano, MTR Gaming  
Kyle Wentz, Northfield Rocksinco  
Ed Dick, Jack Entertainment  
Allyson Miller, Jack Entertainment  
Lisa Powers, Jack Entertainment  
Mary Ellen Corbett, Jack Entertainment  
Daneen Petty, Boyd Gaming  
Michelle Rasmusson, Boyd Gaming  
Daniel Kennedy, Penn National  
Ken Ostempowski, Scioto Downs  
Louis Theros, MGM Grand  
Patrick Madamba, Jr., MGM Grand  
Shelly Miller, MGM Grand  
Cindy Bliss, MGM Grand  
Sam Porter, Ice Miller

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

No input or suggested revisions were received.

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**11. 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?**

Not applicable.

**12. 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?**

These rules are necessary to ensure the consistent and proper conduct of video lottery sales agents with regard to the video lottery operations and game requirements, and to ensure their integrity under standards set forth in the rules. Being that these rules accomplish this objective, as it pertains to video lottery sales agents, in the most efficient and least restrictive manner, we believe that these are the best alternatives.

**13. 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.***

Not applicable.

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

OAC §3770:2 is the only OAC section that pertains to video lottery operations. These regulations do not duplicate or resemble any other regulation in that section.

**15. 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.**

All video lottery sales agents will be held to the same standards.

**Adverse Impact to Business**

**16. 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; and**

The seven horse racing organizations currently holding racing permits granted by the Racing Commission will be impacted, including those individuals interested in affiliating with these horse racing organizations. Others impacted include those individuals who have applied to become, or who are currently operating as, a licensed video lottery sales agent or sales agent employee.

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

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3770:2-7-01 – Video lottery games offered by video lottery sales agents on the video lottery terminals in their facilities must be approved by the director and/or the commission.

3770:2-7-02 – Video lottery sales agents, located at the facility where a valid credit voucher was issued, are responsible for the payment and/or redemption of that credit voucher. Video lottery sales agents who participate in redeeming credit vouchers also are required to comply with all applicable laws regarding withholding of taxes, debts, and obligations and reporting requirements.

**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.*

3770:2-7-01 – Failure to obtain approval from the director and/or the commission to offer video lottery games could result in a penalty and/or fine. A monetary estimate is not possible because penalties for non-compliance with the Lottery Act, if any, are discretionary. If a video lottery sales agent is in violation, the adverse impact can be measured by the dollar amounts associated with monetary penalties, or can be measured by the dollar amounts associated with the immediate and indefinite disabling of all or a portion of the video lottery operations and/or removal of video lottery equipment at a video lottery sales agent’s video lottery facility

3770:2-7-02 – A monetary estimate is not possible because penalties for non-compliance with the Lottery Act, if any, are discretionary. Similarly, it is unknown how many credit vouchers will be issued, which a video lottery sales agent is required to redeem. If a video lottery sales agent is in violation, the adverse impact can be measured by the dollar amounts associated with monetary penalties, or can be measured by the dollar amounts associated with the immediate and indefinite disabling of all or a portion of the video lottery operations and/or removal of video lottery equipment at a video lottery sales agent’s video lottery facility. The required payment of video credit vouchers should not have an adverse impact because video lottery sales agents are only required to redeem video credit vouchers that were issued by their video lottery facility. Said payments and all prize payments, are to be considered a cost of engaging in the gaming business.

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

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3770:2-7-01 – Requiring that video lottery games, which are offered in licensed lottery facilities, be approved by the director and/or the commission, ensures consistency and legality, which protecting product integrity, decency, and security standards.

3770:2-7-02 – Fines or any other punitive licensing actions are justified because they incentivize ongoing compliance with lottery standards, as well as adherence to the Lottery Act, and lottery policies, rules and regulations.

### **Regulatory Flexibility**

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

Video lottery sales agents are not considered small businesses according to the size standards dictated by 13 C.F.R. 121.201.

**19. 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?**

All monetary fines and penalties for non-compliance are discretionary. There is no automatic penalty for a paperwork violation and all individual facts and circumstances are taken into account, including experience level, when exercising discretion.

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

VLT Management of the Ohio Lottery Commission is available to assist any video lottery sales agent or employee regarding the conditions outlined in the proposed no change rules.

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