



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 sales agent employee licensing.

Rule Number(s): 3770:2-4-01

Date of Submission for CSI Review: June 15, 2021

Public Comment Period End Date: June 30, 2021

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/_X_ rules (FYR? _X_)

Rescinded/___ rules (FYR?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 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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- 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.

The rule creates categories of video lottery sales agent employee licenses and references the administrative code where the categories are defined.

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 – powers and duties.

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.**

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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 sale of lottery games, and their integrity under standards set forth in the rules.

The rule creates categories of video lottery sales agent employee licenses and references the administrative code where these categories are defined.

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 standardized requirements for the licensing of video lottery sales agent employees. This will ensure initial and ongoing employee compliance with lottery rules and regulations, while maintaining the integrity of those licenses employees and that of their video lottery sales agent employees.

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.

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 rule via email. The stakeholders consist of representatives of all seven Ohio racetracks.

Chris Corrado, Boyd Gaming
Justin Remschneider, Boyd Gaming
Jason Newkirk, Boyd Gaming
Henry Graffeo, Boyd Gaming
David Frankhouser, Delaware North Companies
Ron Sultemeier, Miami Valley Gaming/Delaware North Companies

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

Karen Cincione, Delaware North Companies
Domenic Mancini, Miami Valley Gaming/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 Rocksino
Mark BIRTHA, Hard Rock Rocksino Northfield Park
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
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 comments or suggested revisions were received.

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?

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

This rule is necessary to ensure the consistent and proper conduct of video lottery sales agents and video lottery sales agent employees with regard to the sale of lottery games, and to ensure their integrity under standards set forth in the rule. Being that this rule accomplishes this objective, as it pertains to video lottery sales agents and video lottery sales agent employees, in the most efficient and least restrictive manner, we believe that this is the best alternative.

- 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?**

Not Applicable.

- 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 applicants seeking video sales agent licenses and video sales agent employee licenses will be held to these same standards. Fees for re-licensure are consistent with fees paid at licensure. Application forms are the same for all applicants and re-applicants, as are the penalties imposed and the appeal procedures followed.

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 employee.

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

Video lottery sales agent employees must obtain an appropriately categorized employee license, as defined in 3770:2-2-01. The employee license category selected determines the fee that will be required to commence and complete the video lottery sales agent employee licensing process.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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 monetary cost of this rule is imposed by OAC 3770:2-11-01(C). That rule requires each applicant for a category one license to pay a licensing fee of two hundred fifty dollars. Each applicant for a category two license shall pay a licensing fee of one hundred dollars. Category three employees are not licensed by the lottery. Category four employees are not required to pay a licensing fee.

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

Licensing of video lottery sales agent employees is justified because that process ensures consistent enforcement of standardized requirements pertaining to the licensing of video lottery sales agent employees. This process also guarantees initial and ongoing employee compliance with lottery rules and regulations, while maintaining the security and integrity of the lottery, of those licensed employees, as well as their video lottery sales agent employers.

Regulatory Flexibility

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

All businesses, regardless of size, are held to the same standards. If a business is too small, it may fail to operate within required sales goals or at a level of quality that is consistent with the Ohio Lottery’s security and profitability obligations. Video lottery sales agent are not considered small businesses.

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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.

615 W. Superior Avenue
Cleveland, Ohio 44113-1879
(800) 686-4208
vlt@lottery.ohio.gov