



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name: State Lottery Commission

Rule Contact Name and Contact Information: Ian Litherland, (216) 774 - 0692

Regulation/Package Title (a general description of the rules' substantive content):
Video Lottery Licenses; compensation, credits, and reimbursement of expense.

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

Date of Submission for CSI Review: May 17, 2024

Public Comment Period End Date: May 31, 2024

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Rescinded/___ rules (FYR?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.

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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 sets forth the procedures for handling and availability of compensation, unclaimed credit vouchers, Video Lottery Terminal promotional gaming credit, reimbursement of expenses to Video Lottery Sales Agents, as well as Ohio gambling addiction services funding by Video Lottery Sales Agents. Small changes to grammar were made for compliance with regulatory requirements.

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 and section 3769.087

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.

Not applicable to this rule.

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

Not applicable to this rule.

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 regulation ensures consistent compensation for Video Lottery Sales Agents, treatment of unclaimed credit vouchers, video lottery terminal promotional gaming and credit and reimbursement of expenses and provides funding for the Ohio gambling addiction services.

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

Success of this regulation is measured by calculating the Video Lottery Sales Agent profits transferred to the Lottery Profits for Education Fund, and utilizing the amount transferred annually to support Ohio gambling addiction services. Both calculations are contained in the Lottery's year end annual report.

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.

No.

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.

The following stakeholders were identified and sent email correspondence on March 1, 2024.

Chris Corrado, Belterra Park

Justin Remschneider, Belterra Park

Scott Vuko, Belterra Park

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

Joel Loots, Miami Valley Gaming/Delaware North Companies

Roger Bryant, Miami Valley Gaming/Delaware North Companies

Edward McNett, Miami Valley Gaming/Delaware North Companies

Rob Swedinovich, Hollywood Gaming Mahoning Valley

Kathy Lenhardt, Hollywood Gaming Mahoning Valley

Tim Kelley, Hollywood Dayton

Matt Becker, Hollywood Dayton

Matt Spitnale, PENN Entertainment Inc.

Samuel Porter, Ice Miller

John Oberle, Ice Miller

Frank Donaghue, PENN Entertainment Inc.

Jim Baldacci, PENN Entertainment Inc.

Mike Whitemaine, MTR Gaming

Anthony Carano, Caesars Entertainment Inc.

Amy Ankerson, Scioto Downs

Holly Chandler, Ohio Racing Commission

Sherry White, Ohio Racing Commission

Kyle Wentz, MGM Northfield Park

Nick Monti, MGM Northfield Park

Chris Volle, Jack Entertainment

Ed Dick, Jack Entertainment

Lisa Powers, Jack Entertainment

Scott Borgemenke, Ohio Racing Commission

Chris Dragone, Ohio Racing Commission

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

The Lottery did not receive comments from stakeholders on this rule.

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 to this rule.

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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

ORC 3769.087 (C) is a straightforward, mandatory requirement for the adoption of a rule by the state lottery commission requiring the disbursement of one-half of one percent of the Video Lottery Sales Agents commissions to the state lottery for funding support for Ohio gambling addiction services. The proposed amendments do not expand upon the legislative directive, but merely change certain verbiage as required. Alternative regulations are therefore inapplicable.

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

This is the only regulation relating to Video Lottery that contains this topic.

14. 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 Lottery will continue to monitor and ensure that the calculation of one half of one percent is distributed to the Lottery from the Video Lottery Sales Agents profits to help fund Ohio gambling addiction services.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

Impacted businesses would be the seven racing permit holders who hold the Video Lottery Sales Agent License.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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.

Payment of one-half per cent of the Video Lottery Sales Agents commission is required to be paid to the Lottery Commission to support gambling addiction services. Based on the Lottery FY 2023 annual report, this regulation resulted in approximately \$4.5 million out of \$ 896 million of racino profits being used to fund Ohio gambling addiction services.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

The proposed changes do not reduce a regulatory burden.

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

This rule simply administers 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 implements a charge upon the regulated business community as imposed by the General Assembly.

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?**

There is no automatic penalty for a paperwork violation.

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

Video Lottery Terminal management by the Ohio Lottery is available to assist any Video Lottery Sales Agents regarding the conditions outlined in these rules.

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