



Common Sense Initiative

Mike DeWine, Governor
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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 licenses; application; denial of licenses; suspension or revocation; and renewal

Rule Number(s): 3770:2-3-01, 3770:2-3-04, 3770:2-3-05, 3770:2-3-07

Date of Submission for CSI Review: 05/12/2021

Public Comment Period End Date: 05/28/2021

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Rescinded/___ rules (FYR?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 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. 3770:2-3-07
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms. 3770:2-3-01, 3770:2-3-04
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance. 3770:2-3-01, 3770:2-3-04, 3770:2-3-05, 3770:2-3-07
- 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.

3770:2-3-01 - The rule establishes those items which must be provided to the lottery by a video lottery license applicant, and conditions to which a video lottery license applicant must agree, in order for the applicant to be considered for a license as a video lottery sales agent.

3770:2-3-04 – The rule sets forth the procedures pertaining to the denial of an application for a video lottery sales agent license under section 3770.2 of the Revised Code.

3770:2-3-05 – The rule sets forth the conditions relating to the suspension or revocation of a video lottery license.

3770:2-3-07 – The rule sets forth the process for the renewal of a video lottery license.

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.

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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 for the rules in this package.

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

Specifically, 3770:2-3-01 establishes those items which must be provided to the lottery by a video lottery license applicant, and conditions to which a video lottery license applicant must agree, in order for the applicant to be considered for a license as a video lottery sales agent.

3770:2-3-04 – sets forth the procedures pertaining to the denial of applications for video lottery sales agent licenses under section 3770.02 of the Revised Code.

3770:2-3-05 – sets forth the conditions relating to the suspension or revocation of a video lottery license.

3770:2-3-07 – sets forth the process for the renewal of a video lottery license.

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

3770:2-3-01 - The lottery would measure the success of this regulation by 1) the elimination of unnecessary delay in application processing times; 2) the speed with which revenue can begin flowing for both the state (for education purposes) and for the video lottery sales agents; and 3) the increase in the rate at which economic development can proceed in terms of new employment opportunities at video lottery sales agent facilities.

3770:2-3-04 – Success will be measured through the consistent enforcement of standardized requirements for video lottery sales agents, which will ensure initial and ongoing compliance

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with lottery rules and regulations, while maintaining the integrity of that entity. Additionally, in some instances where a video lottery sales agent license is denied, an adjudication hearing is required, which ensures fair, impartial review by a hearing officer, as well as published outcomes.

3770:2-3-05 – Success will be measured through the consistent enforcement of standardized requirements for video lottery sales agents, which will ensure initial and ongoing compliance with lottery rules and regulations, while maintaining the integrity of that entity.

3770:2-3-07 – Allows the lottery to monitor and review information supplementation as required by 3770:2-3-01, review annual certifications of no material changes to application information, and fully review renewal applications every three years as required by 3770:2-3-07. From this information, the lottery will be able to determine ongoing video sales agent compliance with lottery rules and regulations and routinely assess the stability of the same.

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.

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

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John Oberle, Penn National
Allie Evangelista, Penn National
Mike Whitemaine, MTR Gaming
Anthony Carano, MTR Gaming
Gary Carano, MTR Gaming
Kyle Wentz, Northfield Rocksino
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 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?

The rules are necessary to the complete and proper submission of information by video lottery applicants and to ensure the consistent and proper conduct of video lottery sales agents and video lottery sales agent employees with regard to the sales of video lottery games, and to ensure their integrity under standards set forth in the rules. Being that these rules accomplish this objective, as they pertain to video lottery sales agents, and does so in the most efficient and least restrictive manner, we believe that this remains the best alternative.

13. Did the Agency specifically consider a performance-based regulation? Please explain.

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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 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 reapplicants, 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 and video lottery sales agent employee.

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

3770:2-3-01 - If after reviewing a video lottery sales agent license application, governed by 3770:2-3-02, the lottery determines that a video lottery applicant has not met the requirements for issuance of a video lottery sales agent license, the director may deny the application. Before the application can be considered, video lottery applicants must submit multiple pieces of supporting documentation and information to the lottery as part of a complete application packet.

3770:2-3-04 - If after reviewing a video lottery sales agent license application, governed by 3770:2-3-02, the lottery determines that a video lottery applicant has not met the requirements for issuance of a video lottery sales agent license, the director may deny the application.

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3770:2-3-05 – Video lottery licenses may be suspended or revoked for the reasons stated in the rule, including non-compliance with Lottery Act, rules, regulations, policies, or directives.

3770:2-3-07 – Although this rule involves video lottery sales agent licensing, and is subject to CSI Office review, the lottery does not view this rule as having an adverse impact. The rule simply requires video lottery sales agent to renew their license every three years, and requires them to pay a renewal licensing fee equal to that which they paid upon initial licensure.

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.

3770:2-3-01 - A partial payment in the amount of ten million dollars is due at the time of submission of a completed application. This partial payment is refunded, however, if an application is denied, less any actual costs expended by the lottery for investigation and processing of the licensing application. These costs cannot exceed \$250,000.00. The only other adverse impact to a potential video lottery license applicant, as a result of this rule, would only be felt after an application denial. A denial could trigger additional expenses for the video lottery applicant, which are impossible to quantify, but which would be necessary should an applicant wish to attempt reapplication.

3770:2-3-04 – The adverse impact to a potential video lottery sales agent license applicant, as a result of this rule, would only be felt after an application denial. A denial could trigger additional expenses for the video lottery applicant, which are impossible to quantify, but which would be necessary should an applicant appeal the license denial or reapply for a license.

3770:2-3-05 – The adverse impact can be quantified in terms of the value in dollars of the temporary or permanent loss of revenue relating to the absence of video lottery sales by an existing video lottery sales agent due to suspension or revocation of a video lottery sales agent license. A monetary estimate is not possible, because in many cases the reverse is hypothetically changing, and/or may be contingent on many other contributing factors outside of the lottery’s control.

3770:2-3-07 – The rule requires that a video lottery applicant, at the time of submission of an application to renew a video lottery license, submit licensing fees as required under division 3770:2-11-01(B) of the OAC.

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

3770:2-3-01 - It is reasonable that if an application is denied, an applicant would have costs associated with reapplication and supplementation of their prior submission. Please note, to date, seven video lottery sales agent applications have been filed and all seven were granted licenses without issue. So any possible adverse impact is not universal, rather it is purely hypothetical and conditional.

3770:2-3-04 – The lottery does not view this rule as having an adverse impact to the regulated business community. Rather, it merely enforces licensing standards, requires ongoing adherence to rules and regulations similarly imposed on other current and potential video lottery sales agent license holders, and their employees, affords a right to a hearing to assert applicant and licensee rights when required.

3770:2-3-05 – Temporary or permanent loss of revenue is justified because any adverse action would have been triggered by a video lottery sales agent failing to follow a lottery rule, policy or regulation, including engaging in illegal, unsafe, or criminal behavior on its premises, which or pertains to its business operations. To date no video Lottery sales agent has ever had their license suspended or revoked, Any adverse licensing action that may- be imposed is justified because it incentivizes ongoing compliance with lottery standards, as well as adherence of the Lottery Act, and lottery policies, rules and regulations. Fairness is built into the process because any adverse licensing action triggers the right of the video lottery sales agent to request an adjudication hearing in front of an impartial third party hearing examiner.

3770:2-3-07 – Licensing fees offset the lottery's costs pertaining to processing applications, new facility planning, and the of employees and other resources in furtherance of establishing a viable and operating video lottery business. It is reasonable that if an application is denied, an applicant would have costs associated with reapplication and supplementation of their prior submission. Additionally, licensing fees are paid by enormous utilization gaming companies in anticipation of lottery profits, which far exceed their initial investment.

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?

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All monetary fine and penalties for non-compliance are discretionary. There is automatic penalty for a paperwork violation and all individual fact 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?

Again, video lottery sales agents are not considered small businesses. However, VLT Management of the Ohio Lottery Commission is available to assist any video lottery sales agent regarding the conditions outlined in the proposed amended rule.

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