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# OHIO LEGISLATIVE SERVICE COMMISSION

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133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Reps. A. Holmes and LaRe

Emily E. Wendel, Attorney

### SUMMARY

- Allows the charitable organizations that currently may offer instant bingo to offer the game using an electronic instant bingo device.
- Requires the Attorney General to adopt rules to ensure the integrity of electronic instant bingo.
- Requires electronic instant bingo devices to be reviewed by the Attorney General and tested and analyzed by an independent testing laboratory.
- Requires electronic instant bingo devices to interface with a statewide centralized report management system that can track, monitor, and remotely deactivate the devices.

### DETAILED ANALYSIS

#### Electronic instant bingo

##### Generally

The bill allows the charitable organizations that currently may offer instant bingo to offer the game using an “electronic instant bingo device,” which the bill defines as an electronic device that allows a person to play an electronic or digital representation of a form of physical instant bingo.

Under existing law, physical instant bingo games are conducted using paper tickets sold to participants either in person or using a ticket dispenser. A portion of the ticket contains numbers, letters, or symbols that are concealed by a perforated pull tab, which the participant removes to reveal them. If the ticket shows a winning combination of numbers, letters, or symbols, the participant wins a prize. The prize amount and structure are predetermined. In some instant bingo games, the winning numbers, letters, or symbols are determined by using a

seal card to reveal predesignated winners or by using a bingo blower to randomly select the winners.

Physical instant bingo tickets operate similarly to a scratch-off lottery ticket, allowing a participant to purchase a ticket and then remove part of the ticket to reveal whether the ticket is a winner. An electronic instant bingo device, on the other hand, allows a participant to insert payment and then have the device virtually assign a ticket to the participant and reveal whether the ticket is a winner.

The bill eliminates a provision of current law that specifies that “instant bingo” does not include any device that is activated by the insertion of a coin, currency, token, or an equivalent, and that contains as one of its components a video display monitor that is capable of displaying numbers, letters, symbols, or characters in winning or losing combinations. And, the bill specifies that an electronic instant bingo device is not considered a slot machine, which is permitted only in casinos, or another type of electronic device used to conduct a prohibited scheme of chance.<sup>1</sup> (See **COMMENT**, below.)

### **Regulation of electronic instant bingo**

The bill requires the Attorney General to adopt rules under the Administrative Procedure Act to ensure the integrity of electronic instant bingo. Before a charitable organization may use an electronic instant bingo device, the Attorney General must review the device and supporting system, and an independent testing laboratory must issue a report stating that the device and supporting system have been tested, analyzed, and determined to meet the requirements of the Revised Code and any relevant rules of the Attorney General.

Further, all electronic instant bingo devices must interface with a centralized report management system. The system must track all information required by Ohio law and by the Attorney General’s rules and must be able to monitor all electronic instant bingo devices used in Ohio in real time and to remotely deactivate any device.<sup>2</sup>

### **Background on charitable bingo**

The Ohio Constitution generally prohibits gambling, but includes exceptions for a state-run lottery, casino gaming at four specified facilities, and bingo conducted by charitable organizations for charitable purposes, as authorized and regulated by the General Assembly. Charitable organizations that wish to conduct bingo games must apply for a license from the Attorney General and comply with the requirements of the Revised Code and of administrative rules adopted by the Attorney General, including requirements governing the places, times, and manner of holding bingo games.<sup>3</sup>

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<sup>1</sup> R.C. 2915.01.

<sup>2</sup> R.C. 2915.083.

<sup>3</sup> Ohio Const., art. XV, sec. 6; R.C. Chapter 2915; and Ohio Administrative Code Chapter 109:1-4.

## Types of bingo

The Revised Code defines “bingo” to include four types of activities:<sup>4</sup>

- Traditional bingo, in which participants purchase a card with spaces arranged in a grid marked with letters, numbers, or other symbols, and cover the spaces as randomly selected numbers, letters, or symbols are called, with the goal being to win a prize by creating a line or other pattern;
- Punch boards, in which the organization prepares a board with many holes with a randomly numbered slip of paper in each hole, and participants pay for the opportunity to draw slips of paper from the board, with the goal being to win a prize by drawing the slip with the winning number;
- Raffles, in which participants purchase tickets and the ticket stubs are placed in a container and randomly selected, with the goal being to win a prize by having the participant’s ticket stub selected (see **COMMENT**, below);
- Instant bingo, described above. The bill expands instant bingo to include electronic instant bingo.

## Charitable organizations

For purposes of offering bingo games, continuing law defines a “charitable organization” as an organization that has been in continuous existence in Ohio for at least two years before applying for a bingo license and that either (1) is exempt from taxation under subsection 501(c)(3) of the federal Internal Revenue Code or (2) is a volunteer rescue service organization, volunteer firefighter’s organization, veteran’s organization, fraternal organization, or sporting organization that is exempt from taxation under subsection 501(c)(4), (7), (8), (10), or (19) of the Internal Revenue Code.<sup>5</sup>

## Distribution of net profit

### Generally

The proceeds of charitable bingo must be used for a charitable purpose. For all types of bingo other than instant bingo, continuing law requires the net profit of the game to be used by or given to one of the following:<sup>6</sup>

- A public charity, as determined under the Internal Revenue Code;
- A veteran’s organization that meets certain qualifications, provided that the net profit must be used for specified charitable purposes, used to award certain scholarships, donated to a governmental agency, used for nonprofit youth activities, used to donate

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<sup>4</sup> R.C. 2915.01(O).

<sup>5</sup> R.C. 2915.01(H).

<sup>6</sup> R.C. 2915.01(V).

U.S. or Ohio flags to nonprofit organizations, used for the promotion of patriotism, or used for disaster relief;

- A fraternal organization that has been in continuous existence in Ohio for 15 years and that uses the net profit exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, if such contributions would be considered deductible charitable contributions under the Internal Revenue Code;
- A volunteer firefighter's organization that uses the net profit to provide financial support for a volunteer fire department or a volunteer fire company.

### **Instant bingo**

Under continuing law, a charitable organization other than a veteran's, fraternal, or sporting organization must distribute 100% of the net profit from the proceeds of the sale of instant bingo to an organization listed above that may receive the net profit of other types of bingo, or to a department or agency of the federal government, the state, or any political subdivision.

Continuing law requires a veteran's, fraternal, or sporting organization that conducts instant bingo to dispose of the first \$250,000 or less in net profit from the proceeds of the sale of instant bingo in a calendar year as follows:

- The organization must distribute at least 25% to an organization listed above that may receive the net profit of other types of bingo, or to a department or agency of the federal government, the state, or any political subdivision;
- The organization may retain not more than 75% to cover the organization's expenses in conducting instant bingo.

The organization must dispose of any net profit from the proceeds of the sale of instant bingo that exceeds \$250,000 in a calendar year as follows:

- The organization must distribute at least 50% to an organization listed above that may receive the net profit of other types of bingo, or to a department or agency of the federal government, the state, or any political subdivision;
- The organization may distribute 5% for the organization's own charitable purposes or to a community action agency;
- The organization may retain 45% to cover the organization's expenses in conducting instant bingo.

The Attorney General may, by rule, increase the \$250,000 threshold for changes in prices as measured by the Consumer Price Index and other factors affecting the organization's expenses in conducting bingo.<sup>7</sup>

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## COMMENT

Since 2013, several charitable organizations have been involved in ongoing litigation against the Attorney General concerning the issue of whether those organizations legally may hold raffles using devices known as electronic raffle machines. The machines operate by randomly predesignating an outcome or prize associated with each entry, then selling an entry to a participant through the machine's electronic interface and revealing whether the entry is a winner.

The 10th District Court of Appeals ruled in 2018 that Ohio law prohibits the use of electronic raffle machines to hold a raffle because their method of operation does not meet the legal definition of a raffle. That decision was appealed to the Ohio Supreme Court, but the Court has agreed to delay making a ruling until after June 30, 2020, in anticipation that the parties may resolve the matter out of court. It appears that the system used to operate electronic raffle machines might meet the legal definition of instant bingo as it is expanded under the bill to include electronic game play.<sup>8</sup>

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## HISTORY

Action	Date
Introduced	06-11-19

H0282-I-133/ts

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<sup>7</sup> R.C. 2915.01(RR). See also R.C. 2915.101, not in the bill.

<sup>8</sup> *Ohio Veterans and Fraternal Charitable Coalition v. DeWine*, 2018-Ohio-4679 (10<sup>th</sup> Dist. Ct. App. 2018) and *Ohio Veterans and Fraternal Charitable Coalition v. Yost*, 2019-Ohio-3749 (2019).