

CSI - Ohio

The Common Sense Initiative

Business Regulation Impact Analysis

Agency Name: Ohio Casino Control Commission (“Commission”)

Regulation/Package Title: Duty to Update and Institutional Investors

Rule Number(s): 3772-1-04 (Amended); 3772-3-01 (Amended); 3772-3-02 (Amended);
3772-3-03 (Amended); and 3772-4-09 (Amended)

Date: _____

Rule Type:

New
 Amended

5-Year Review
 Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

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

The proposed rules contained within “Duty to Update and Institutional Investors” relate directly to the minimum internal controls standards that casino operators must employ while

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conducting casino gaming. These rules require adherence to and implementation of minimum internal controls to protect the integrity of casino gaming and casino patrons.

3772-1-04 would require an applicant whose license has been denied or revoked by the commission to wait a period of three years before re-applying with the commission.

3772-3-01; 3772-3-02; and 3772-3-03 would change the definition of an “institutional investor” to have the same meaning as R.C. 3772.01 and establishes the continuing duty of institutional investors to provide information to the commission.

3772-4-09 places certain obligations on operators, management companies, and holding companies to protect the integrity of casino gaming. This rule would require operators, management companies, and holding companies to notify the commission when a key employee or casino gaming employee licensee is terminated or suspended.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 3772.03

3. 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.

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

This question does not apply to these proposed rules because the federal government does not regulate casino gaming in this state. Rather, casino gaming is permitted pursuant to Article XV, Section 6(C) of the Ohio Constitution and controlled by Ohio’s Casino Control Act (i.e., Chapter 3772. of the Revised Code).

5. 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)?

Article XV, Section 6(C) of the Ohio Constitution and Chapter 3772. of the Revised Code require the commission to ensure the integrity of casino gaming and to prescribe rules for how casino gaming should be conducted (i.e., minimum internal control standards). In ensuring the integrity of casino gaming, it is imperative to protect casino patrons. These proposed rules are designed to effectuate this constitutional and statutory mandate by establishing minimum internal control standards for transactions occurring at the casino facilities and for the protection of patrons and members of the public.

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

Overall, the commission will measure the success of these proposed rules in terms of whether they help to ensure the integrity of casino gaming and protect the casino patrons. This can be done in two ways. First, through evaluating whether the administrative cost of implementing and enforcing the proposed rules outweighed their public benefit. Second, through analyzing the regulated community's comments about requests for waivers or variances from these rules once they are implemented.

Development of the Regulation

7. 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.

3772-1-04, 3772-3-01, 3772-3-02, 3772-3-03, and 3772-4-09:

Casino Operators:

- Penn National Gaming
- Rock Ohio Caesars – joint venture between Rock Gaming and Caesars Entertainment

Gaming-Related Vendors:

- AC Coin & Slot
- American Gaming Systems
- Aristocrat Technologies, Inc.
- Aruze Gaming America, Inc.
- Bally Gaming, Inc.
- Galaxy Gaming, Inc.
- Gaming Partners International USA
- Gemaco
- Global Cash Access
- Happ Control, Inc.
- Hopbet

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- IGT
- Interblock USA, Inc.
- JCM
- KGM Gaming
- Konami Gaming, Inc.
- Midwest Gaming Supply
- Multimedia Games, Inc.
- NRT
- Paltronics
- Shuffle Master, Inc.
- Spielo International USA, LLC
- TCS Huxley
- Tech Art
- US Playing Cards
- WMS Gaming, Inc.

The above listed stakeholders (gaming-related vendors and operators) were contacted via email, with PDF document attachments of the proposed rules, on August 23, 2012, at 4:28 P.M.

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

After sending all of the above listed stakeholders an email on August 23, 2012 with a PDF document attachment of the proposed rules, the commission did not receive any input from any stakeholders concerning the above mentioned proposed rules.

9. 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?

This question does not apply to these proposed rules because no scientific data was necessary to develop or measure their outcomes. Instead, the commission staff reviewed how other jurisdictions (e.g., Indiana and New Jersey) approached establishing minimum internal control standards. In so doing, the commission staff was able to use, as much as possible, rules the regulated community is accustomed to, with minor adaptations to remain in compliance with Ohio law.

10. 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?

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The commission staff reviewed the rules adopted in other jurisdictions –Indiana and New Jersey. These rules are a conglomeration of the rules used by the other jurisdictions with adaptations made for the Ohio jurisdiction, and are in some cases, the result of discussions between commission staff and the regulated community.

11. 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.*

The rules include a performance-based component wherein they set the floor for compliance, but do not completely dictate how the casino operators and gaming-related vendors are supposed to achieve compliance. Additionally, Ohio Adm. Code 3772-1-04 allows the casino operators and gaming-related vendors to seek waivers and variances from these rules, which the commission will evaluate on a case-by-case basis and may grant as long as it determines that doing so is in the public's best interest. The rules, however, are not entirely performance-based in that they establish a protocol whereby the casino operators must submit their internal control standards to the commission for approval before implementation.

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

This question does not apply to these proposed rules because no regulations in this area currently exist with respect to casino gaming in this state.

13. 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.

At each casino facility, there are gaming agents and financial auditors observing, evaluating, and investigating the operations. In addition, the commission's regulatory compliance personnel consistently visit the facilities to perform table game and electronic gaming equipment audits. Any issues that arise at any point in the gaming process (i.e., from manufacturing through the actual conducting of gaming) will be funneled to the commission's central office in Columbus, Ohio, where the Executive Director and his division directors can coordinate a consistent response and conduct outreach to the regulated community.

Adverse Impact to Business

14. 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;

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The casino operators, gaming-related vendors, and institutional investors of casino operators and gaming-related vendors are the impacted business community with respect to these proposed rules.

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

The nature of the potential adverse impact from the proposed rules includes fines for noncompliance, costs for employer time and payroll, and the potential for other monetary costs to the operators.

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.

3772-1-04: Waivers and variances.

On its face, this rule does not have an adverse impact on business. The rule simply prohibits an applicant who has been denied a license from reapplying until three years after the commission denies or revokes the applicant’s license. This rule also provides a waiver in which an applicant may demonstrate to the commission that the reason for his or her denial or revocation no longer exists, waiving the three year prohibition period.

While casino gaming employees are not business entities for purposes of R.C. 107.52, the commission can speculate the impact on gaming-related vendors. The following is in consideration of proposed rule 3772-01-04 (C), which would establish a three year prohibition of application for gaming related vendors following a license revocation or denial of application by the commission. The commission notes that in the majority of cases, the negative impact on business is minimal as it is anticipated to be made up by substitute purchases from other licensed vendors. Further, it is noted that the impact to vendors is limited to the individual vendor experiencing the revocation or denial, and that when this occurs, the commission would be acting on the basis that the participation of the vendor in the Ohio casino gaming market was inappropriate.

In the remaining cases, where a gaming related product is so specialized that it is only available from one vendor, (for example, certain patented products or themed games) it is possible for the prohibition on application to have a negative economic impact on

business in Ohio. The commission has come to the conclusion that the most likely occurrence of such a case is in themed slot machine games. Slot machine vendors own exclusive rights to certain themes, and the prohibition of one vendor could, by extension, exclude a theme or type of game from the state. This could be detrimental to business in Ohio as consumer demand for a certain theme or game type could drive gaming business to other states. This case is difficult to quantify as the impact in this area would be dependent on the vendor receiving the revocation or denial.

It is more reasonable to estimate the potential negative impact on the individual vendor. However, it again should be noted that much if not all of the lost business would likely be transferred to another licensed vendor. Still, in order to consider this impact, the commission contacted Roger Bryant, Director of Slot Operations for Hollywood Casino Columbus, for information related to his anticipated demand for purchase of new games or conversion kits. (Conversion kits are used to convert an existing game cabinet to a new theme.) These two purchases combined provide for a good estimate of future business potential for all slot vendors. The Columbus casino has the largest slot operation in the state of Ohio, and as such, the commission chose to err on the side of conservatism and to use this information to evaluate negative costs over the entire state.

Mr. Bryant provided information related to the estimated number of purchases and conversions in a typical year as well as the estimated average cost of conducting such changes. The following represents calculations based on these estimates:

For new machine purchases, Mr. Bryant stated that he anticipated replacing about 300 machines per year with new machines. (3,000 machines on the floor x 10% replacement rate). Further, he estimated the cost of annual replacement of machines to be \$5,550,000 (300 machines replaced x \$18,500 cost of a new machine). For conversions, Mr. Bryant estimated that about 450 machines would be converted per year (3,000 machines on the floor x 15% conversion rate). The total annual cost of these conversions are estimated to be \$1,575,000 (450 machines converted x 3,500 estimated cost of a converted machine). This brings the total cost for Columbus replacements and conversions to \$7,125,000. This total is then extrapolated over the state for a total annual cost in Ohio of \$28,500,000 (\$7,125,000 x 4 casinos). As a result, the total lost revenue to a potential vendor that is deemed to be inappropriate to operate in Ohio is on average \$3,562,500 per year of prohibition (28,500,000 / 8 currently licensed slot vendors). However, the commission still notes that much if not all of this total would be replaced by purchases made from a substitute vendor.

3772-3-01 and 3772-3-02: Institutional Investors.

3772-3-01 was drafted because, pursuant to the enactment of H.B. 386 of the 129th General Assembly and associated changes to R.C. 3772.01, the commission is required to amend the definition of an “institutional investor” in Administrative Code Chapter 3772. This is strictly a definitional change and has no adverse impact on business.

3772-3-02 does not have an adverse impact on business. In fact, this rule streamlines the process by which an entity shall be deemed suitable. The proposed rule merely requires the completion of a two page certification form and submission of documentation sufficient to establish an institutional investor’s suitability.

Previously, an entity that owned greater than one percent ownership interest of publicly traded securities in a casino facility, casino operator, management company, or holding company was required to complete a detailed seven page “Institutional Investor Waiver Request Form” that became heavily burdensome. The proposed two page replacement will make the institutional investor application process more efficient.

It should also be noted that any costs incurred as a result of this proposed rule are likely calculated as part of the operators’ operational budgets – i.e. the cost of doing business and clerical jobs. Casino operators, casino facilities, management companies and holding companies are sophisticated gaming companies that have affiliated casino operations in other jurisdictions and are accustomed to these types of regulations, which are standard in the industry.

3772-3-03 and 3772-4-09: Duty to update information.

There is staff time required in preparing the minimum internal control standards and designing or selecting compliant systems. The amount of staff time required to develop and implement these standards, procedures, and systems depend on a number of factors, including whether the operators already have well-developed internal controls and a remote access system that can be modified for compliance with Ohio’s framework. For this, we must defer to the two operators for estimates on the staff time involved in creating and implementing their minimum internal controls and remote access systems.

3772-4-09 would require a casino operator, management company and holding company licensee to notify the commission of any employee whose employment has been terminated for any reason. The adverse impact on the operators and management or holding companies is the duty to notify the commission of this

information. However, it should be noted that the costs incurred as a result of this proposed rule are likely calculated as part of the operators' operational budgets – i.e. the cost of doing business and clerical jobs. Casino operators, management companies and holding companies are sophisticated gaming companies that have affiliated casino operations in other jurisdictions and are used to these types of regulations, which are standard in the industry.

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

Three of the proposed rules, 3772-3-01, 3772-3-02 and 3772-3-03 are proposed as a result of the statutorily amended definition of an “institutional investor.” Pursuant to H.B. 386 of the 129th General Assembly and changes to R.C. 3772.01, the commission is required to amend the definition of “institutional investor” in Administrative Code Chapter 3772.

Additionally, the regulatory intent justifies the adverse impact because Article XV, Section 6(C) of the Ohio Constitution and Chapter 3772. of the Revised Code require the commission to ensure the integrity of casino gaming. To do so, the commission is charged with the responsibility of requiring the casino operators to establish and implement internal control standards.

The regulatory intent justifies the adverse impact because casino gaming is a highly regulated industry. Unregulated gaming can pose a threat to the public welfare and raises the potential for fraud and abuse. To mitigate these potential threats, the commission, like other gaming regulatory bodies, is using its regulatory authority to establish a best practices framework that licensed casino operators, gaming-related vendors, and casino gaming employees must follow.

Regulatory Flexibility

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

Yes (indirectly), though it is unlikely this will be necessary since these proposed regulations only impact the casino operators and certain gaming-related vendors, none of which likely constitute a small business. These proposed rules indirectly provide exemption or alternative means of compliance through 3772-1-04, which permits the commission, upon written request, to grant waivers and variances from the rules adopted under Chapter 3772. of the Revised Code, including these rules, if doing so is in the best interest of the public.

17. 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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Though it is unlikely section 119.14 of the Revised Code will apply to these proposed rules because the rules only impact the casino operators and certain gaming-related vendors, none of which likely constitute a small business, the commission will adhere to the statutory requirements thereunder, if applicable.

To the extent section 119.14 of the Revised Code would apply to a violation of these proposed rules, the commission will provide verbal and written notification to the small business in an attempt to correct the paperwork violation. Thereafter, the commission would allow the small business a reasonable time to correct the violation. The commission and its staff would also offer any additional assistance necessary to aid in remediation of the violation. No further action would be taken unless the small business fails to remedy the violation within the reasonable time allotted by the commission.

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

The commission and its staff are dedicated to working with members of the regulated community and the public to effectively and efficiently regulate casino gaming in this state. As a result, the following resources are available:

- Commission's mailing address:
10 West Broad Street, 6th Floor
Columbus, OH 43215
- Commission's toll free telephone number : (855) 800-0058
- Commission's fax number: (614) 485-1007
- Commission's website: <http://www.casinocontrol.ohio.gov/>
- Commission's email: Info@casinocontrol.ohio.gov
- Sign up for Commission email updates: <http://www.casinocontrol.ohio.gov/JoinUs.aspx>

Also, all members of the regulated community and the public may, in accordance with rule 3772-2-04, request to address the commission during a public meeting. Finally, all members of the regulated community may, pursuant to rule 3772-1-04, request waivers and variances from commission regulations.