

CSI - Ohio

The Common Sense Initiative

Business Regulation Impact Analysis

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

Regulation/Package Title: Skill-based amusement machine tournaments, hearings, and sanctions.

Rule Number(s): 3772-50-26, 3772-50-27, 3772-50-28

Date: November 21, 2016

Rule Type:

New

5-Year Review

Amended

Rescinded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 this package relate to the regulation of skill-based amusement machines and encompass skill-based amusement machine tournaments, hearings, and sanctions.

In particular, the proposed rule package contains the following rules:

- **3772-50-26**, titled “Skill-based amusement machine tournaments.” This rule requires licensed skill-based amusement machine operators to provide notice to the Commission that they intend to conduct a skill-based amusement machine tournament. The rule further outlines specific requirements for skill-based amusement machine tournaments,

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including requirements on prizes, advertisements, duration, and frequency. The rule provides an exclusion for tournaments that are conducted on a national or international level. The purpose of the rule is to establish requirements for skill-based amusement machine tournaments to ensure the integrity of the tournaments and limit the potential for abuse by illegal casino operators.

- **3772-50-27**, titled “Hearings.” This rule establishes that the Commission shall utilize the hearing procedures promulgated in chapter 3772-21 of the Administrative Code. The purpose of the rule is to provide consistent hearing procedures, in accordance with R.C. Chapter 119, between casino-related and skill-based amusement machine-related applicants and licensees.
- **3772-50-28**, titled “Sanctions.” This rule establishes the scope of the sanctions that may be imposed upon on a person that is found to have violated the provisions of R.C. Chapters 3772 and 2915 and any of the related administrative rules. The purpose of the rule is to establish the authority of the Commission to sanction persons involved in skill-based amusement machine gaming in a manner consistent with the Commission’s authority to sanction persons involved in casino gaming.

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 skill-based amusement machines. Rather, skill-based amusement machines are governed under R.C. Chapters 2915. and 3772.

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)?

The rules became necessary with the passage of H.B. 64 (131st General Assembly) wherein the General Assembly required the Commission to regulate skill-based amusement machines in a manner consistent with its ability to do the same with respect to casino gaming. The proposed rules will allow the Commission to fulfill its statutory obligation to regulate skill-based amusement machines and ensure the integrity of skill-based amusement machine gaming in Ohio.

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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 skill-based amusement machine gaming. The Commission will consider the proposed regulation successful if the Commission is able to validate those persons who conduct skill-based amusement machine gaming in compliance with Ohio law (i.e. R.C. Chapters 2915. and 3772.) and eliminates illegal casinos (such as slot machine parlors that masquerade as skill-based amusement machine parlors). The Commission will utilize the rules to establish compliance requirements for licensed skill-based amusement machine operators who conduct tournaments and fulfill its obligation to regulate skill-based amusement machine gaming in Ohio and eliminate illegal casinos through the use of administrative hearings and sanctions. The Commission will also evaluate the quantity and quality of the administrative hearings and sanctions authorized under the rules. Further, the Commission will analyze 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.

With the passage of H.B. 64 (131st General Assembly), the Commission has taken several steps to engage the stakeholder community regarding the development of proposed regulation of skill-based amusement machines. Prior to drafting regulations, Commission staff engaged in numerous outreach activities with members of the regulated community including telephone conversations, e-mail communication, and in-person meetings. Since January 2016, Commission staff have held more than 18 individual meetings with members of the regulated community. Staff have also visited with stakeholders at their business locations in order to understand the business environment and how the skill-based amusement machine industry operates, as a whole.

Commission staff also met with representatives of several trade-based associations whose membership would be interested in or impacted by skill-based amusement machine gaming regulation, including, the Ohio Coin Machine Association, Bowling Centers Association of Ohio, and the Ohio Licensed Beverage Association. Additionally, the Director of Skill Games presented at the 1st Annual Gaming Law Symposium on March 4, 2016, highlighting the Commission's regulatory authority and outlining the Commission's efforts to promulgate administrative rules addressing skill-based amusement machines.

After several months of engagement by Commission staff, the Commission prepared draft rules for stakeholder review and comment. The draft rules were circulated to members of the stakeholder community by e-mail on October 17, 2016, with a requested comment period ending on October 28, 2016. A list of the stakeholders contacted by the Commission is

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included as Attachment A. All of the stakeholders contacted by the Commission have either met with Commission staff or otherwise engaged staff through telephone or e-mail.

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

The initial draft of the regulations was a direct result of the significant effort spent by Commission staff to engage with the stakeholder community. The initial draft included many thoughts, comments, and ideas provided by stakeholders. In response to the Commission's October 17, 2016 e-mail, two stakeholders provided comments that are incorporated as Attachment B. As a result of the stakeholder comments, the Commission made two substantive changes to the draft rules:

- Clarifying that operators conducting or participating in conducting national or international tournaments are not subject to tournament notification requirements under proposed rule 3772-50-26; and
- Removed the requirement, under proposed rule 3772-50-26, for operators to file a tournament report to the Commission within thirty calendar days from the end of the tournament.

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, as these proposed rules pertain to skill-based amusement machine tournaments and the administrative hearing and sanction process.

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?

The Commission staff reviewed regulations in other jurisdictions, including skill-based video lottery terminals, carnival and amusement games, and boardwalk games. Some of the draft regulations are modeled on regulations in other jurisdictions; however, Ohio's definition of skill-based amusement machines is significantly different than other states' definitions. Further, other jurisdictions have not had success in eliminating illegal slot machine gambling. Moreover, the Commission's obligation is to amplify the requirements outlined in R.C. 2915.01(UU) through the draft regulations. After reviewing other jurisdictions' requirements and carefully considering the requirements in R.C. 2915.01(UU), the Commission concluded that the draft regulations were the most effective to achieve the Commission's mandate to regulate skill-based amusement machines. Furthermore, proposed rules 3772-50-27 and 3772-50-28 merely outline a similar administrative hearing and sanction procedure utilized by the Commission with respect to casino gaming.

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.*

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Proposed rules 3772-50-27 and 3772-50-28 do not contemplate performance-based regulations because the proposed rules outline the administrative hearing and sanction procedures utilized by the Commission. Therefore, the regulated community will only be impacted by the proposed rules if there is an alleged violation of chapter 3772-50 of the administrative code. Proposed rule 3772-50-26 does contain some requirements that are performance-based. Many of the requirements merely outline minimum requirements for advertising and conducting a skill-based amusement machine tournament but do not dictate a specific process or procedure an operator must use to conduct a tournament.

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

As the General Assembly has tasked the Commission with the oversight and regulation of skill-based amusement machines in Ohio, there are no other regulations that govern skill-based amusement machine tournaments or the hearing and sanction procedures utilized by the Commission pertaining to skill-based amusement machine gaming.

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.

The Commission provides notice to the stakeholder community through e-mail, phone calls, meetings, and presentations at legal and trade forums regarding proposed and final-filed rules and will engage in outreach with stakeholders when rules are filed or become effective. Finally, the Commission's Division of Skill Games, under the direction and supervision of the Executive Director, will be responsible for the consistent and predictable implementation of the proposed regulation. Any issues that arise in the compliance process will be reviewed by Commission staff to 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;

Skill-based amusement machine vendors (manufacturers and distributors), skill-based amusement machine operators, skill-based amusement machine key employees, and skill-based amusement machine locations.

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 costs for employer time and payroll. In addition, failure to comply with the proposed rules may result in administrative action by the Commission including the denial, suspension, or revocation of a license or a monetary civil penalty.

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.

Proposed Rule 3772-50-26, “Skill-based amusement machine tournaments.”

The proposed rule describes the requirements for a skill-based amusement machine operator to conduct a tournament utilizing a skill-based amusement machine. Many of the requirements of the rule are outlined in the governing statutes, such as the limitations on the types of merchandise prizes that may be awarded, and, therefore, operators should already be complying with those requirements under the rule. Some requirements under the rule, such as limitations on advertising, frequency, and duration may have a minimal business impact as an operator will need to put in place procedures to ensure that they comply with these requirements. As most operators do not offer tournaments that exceed the maximum requirements under the proposed rule, the Commission does not anticipate that these business impacts will be significant and should not impact the majority of the regulated community. Finally, the proposed rule requires a notification to the Commission that an operator intends to conduct a tournament. The potential adverse business impact includes the time and payroll necessary to submit the notice to the Commission. The Commission estimates that the notice should be approximately one page in length and take approximately twenty minutes to complete and submit to the Commission via the state of Ohio licensing website.

Proposed Rule 3772-50-27, “Hearings.”

The proposed rule outlines that the Commission shall utilize the same hearing procedures utilized by the Commission with respect to casino gaming. The proposed rule ensures that the Commission complies with the requirements of R.C. Chapter 119. As the hearing procedures afford the regulated community with consistent due process protections, the Commission does not anticipate that this rule will have a negative business impact.

Proposed Rule 3772-50-28, “Sanctions.”

This rule describes the authority of the Commission to issue administrative sanctions against persons who violate provisions of chapter 3772-50 of the administrative code. The rule specifies that the Commission may impose fines and penalties; take action to restrict licenses issued under chapter 3772-50 of the administrative code; including, denying, revoking, suspending, conditioning, restricting, or non-renewing; and causing a forfeiture of a skill-based amusement machine. The administrative sanctions would be imposed only in the event that a person had violated a provision under chapter 3772-50 and after the person had been given the due process required under R.C. Chapter 119 and proposed rule 3772-50-27.

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

For many years, the state, along with local governments and law enforcement officials have worked to eliminate illegal gaming in this state, largely through criminal enforcement of R.C. Chapter 2915. Since 2006, significant efforts have been made to prohibit illegal gambling without jeopardizing legitimate businesses, such as limiting winnings to merchandise prizes with a wholesale value of ten dollars or less and specifically prohibiting cash and gift card prizes. Despite these efforts, illegal gambling has proliferated across the state, under the guise of legal skill-based gaming. Unregulated gaming poses a threat to the public welfare and raises the potential for operators and others to perpetrate fraud and abuse on Ohio consumers, particularly some of Ohio's most vulnerable citizens.

To mitigate these threats, H.B. 64 (131st General Assembly) mandated the Commission to regulate skill-based amusement machines in a manner consistent with respect to the Commission's authority to regulate casino gaming. The Commission developed these proposed rules in order to meet the obligation under R.C. 3772.03 to regulate skill-based amusement machine gaming.

Proposed rules 3772-50-27 and 3772-50-28 largely follow the established rules and practices utilized by the Commission to regulate casino gaming in Ohio. As hearings and sanctions implicate the same regulatory needs for skill-based amusement machine gaming as it does for casino gaming, the Commission determined that these two rules should follow the already-established Commission rules concerning hearings and administrative sanctions with respect to casino gaming.

Proposed rule 3772-50-26 outlines requirements for skill-based amusement machine tournaments. Under section 2915.01 of the Revised Code a skill-based amusement machine may be used to conduct a tournament provided that the tournament awards a merchandise prize. However, tournaments need not adhere to the ten dollar prize limitation otherwise required under the section. The proposed rule places frequency and duration requirements on tournaments to alleviate the risk that an illegal casino operator would utilize tournaments to utilize prizes that exceed the statutory maximum value of ten dollars. The rule also requires an operator to notify the Commission when they intend to conduct a tournament. This will provide the Commission with the information necessary to ensure that tournaments are conducted in accordance with the proposed rule. The Commission determined that preventing illegal or subversive activities through the use of tournaments justified the potential business impact under the proposed rule.

Finally, the Commission consulted members of the regulated community to consider potential adverse impacts on the regulated community. Several stakeholders have commented that the rules will have the positive impact of providing greater certainty in the industry of enforcement and regulation. The proposed rules are the result of the Commission's effort to balance its obligation under R.C. 3772.03 and the potential adverse business impact while still providing the certainty that will benefit the industry.

Regulatory Flexibility

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

Yes (indirectly). The proposed rules indirectly provide exemption or alternative means of compliance through proposed rule 3772-50-10 (pending), which permits the Commission, upon written request, to grant waivers and variances, from the rules adopted under R.C. Chapter 3772-50, including these rules, if doing so is in the best interest of the public and will maintain the integrity of skill-based amusement machine gaming in the State of Ohio.

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?

To the extent R.C. 119.14 would apply to a violation of the 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 skill-based amusement machine gaming in this state. As a result, the following resources are available:

- Commission's mailing address:
10 W. Broad Street, 6th Floor
Columbus, Ohio 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

Also, all members of the regulated community 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 3772-50-10 (pending), request waivers and variances from Commission regulations.

ATTACHMENT A

First Name	Last Name
Kevin	Bachus
Josh	Bolton
Karen	Cincione
David	Corey
Phil	Craig
Bob	Davis
Kevin	Futryk
Kurt	Gearhiser
David	George
Bill	Kraft
Luther	Liggett
Kevin	McHenry
Lawrence	Miltner, Esq
Kevin	Morse
Thomas	Niehaus
Lloyd	Pierre-Louis
Scott	Shaffer
Amanda	Sines
Johnathan	Smith
Jay	Tobin
Steve	Tugend
Madge	Vail
Anne	Vitale
Jon	Oberle
Lora	Miller
Dan	Reinhard
Elise	Spriggs
Leah	Pappas Porner
Pete	Thomas
Paul	Kulwinski
Charles	Febus
Rich	Labrocca
Kevin	Mullally
Tom	Pappas
Emily	Mattisone
Chad	Belter
Nick	Farley
Al	Kress
Bil	
Seprina	Brown
Christy	Prince
Rich	Bitonte
Randy	Allen
Eric	Hackney
Tom	Frick

Chad
Troy
Courtney
Kevin
Apollo

Hawley
Judy
Burton
Braig
Amusement

Attachment B

From: Cincione, Karen A.
To: [Morrison, Andromeda](#)
Cc: [Jay Tobin](#); [Kevin Bachus](#); [Pete Stearns](#); [Niehaus, Thomas E.](#)
Subject: Dave & Buster's comments to proposed OAC 3772-50-28
Date: Friday, October 28, 2016 2:58:13 PM

Andromeda – On behalf of Dave and Buster's, we are submitting comments to proposed OAC 3772-50-28 Sanctions.

Dave & Buster's continues to be concerned about the Commission's proposals regarding seizure of machines in proposed OAC 3772-50-14 (B)(3) and (E) as well as this rule's proposed forfeiture of skill-based amusement machines. As a matter of clarification, we assume that only machines that are determined by the Commission not to be skill-based amusement machines will be subject to forfeiture [rather than the current "skill-based" language in section (B)(5).] As we've previously mentioned, if the Commission determines that a machine does not meet the Commission's requirements, Dave & Buster's requests that the rules grant them the opportunity to remove the offending machine from Ohio before having it seized and losing it to forfeiture.

Dave & Buster's suggests adding a statement to the rule that the sanctions for rule violations are intended to be progressive in nature. This would provide some reassurance that a single rule violation or issue with a machine won't result in licensure action. Further, Dave & Buster's does not believe it is appropriate to mete out fines based upon the Commission's assessment of a person's finances as section (E) permits. Instead, Dave & Buster's recommends that licensees should be fined equally for like violations.

Thank you for considering these comments. Please contact us if you have any questions or would like to discuss. Respectfully,

Karen



Karen A. Cincione, Principal

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November 1, 2016

Ms. Andromeda Morrison
Director of Skill Games
Ohio Casino Control Commission
10 West Broad St.
Columbus, OH 43215

Ms. Andromeda Morrison:

Thank you for the opportunity to provide feedback from the Ohio Coin Machine Association (OCMA) on the Commission's draft rules provided to us on October 17, 2016 (3772-50-26.)

As you know, OCMA has been the voice for Ohio's coin operated amusement industry since 1974. Our members are very appreciative of the ability to review these draft rules. Below are the concerns from Ohio Coin Machine Association members that we hope you will address in subsequent drafts.

1. Page 48, letter A: Most tournaments on "Golden Tee Golf Games", "Big Buck Hunter Games", "Silver Strike Bowling Games", etc. are **conducted on a national basis and organized by national manufacturers**. Our members are only the conduit for these tournaments. We believe these types of tournaments, on the above equipment (as well as Tournaments conducted on Pool Tables, Electronic Dart Boards, Foosball Tables, Shuffleboard, and Air Hockey Tables) would be exempt under the ORC 2915.01, specifically this provision: (4) For purposes of division (UU)(1) of this section, the mere presence of a device, such as a pin-setting, ball-releasing, or scoring mechanism, that does not contribute to or affect the outcome of the play of the game does not make the device a skill-based amusement machine.

2. Page 1, letter B: What would constitute the Commission denying a Tournament? This is very broad-based and has no restrictions or parameters.

3. Page 1, letter C: Most tournaments on “Golden Tee Golf Games”, “Big Buck Hunter Games”, “Silver Strike Bowling Games”, etc, since they are **national in nature offer prizes that are redeemable on a national basis**. If the rules are enacted as written, it will decimate an entire type of amusement machine in Ohio and place many employees and businesses out on the street.

4. Page 1, letter D: Since the tournaments are conducted nationally, our members don't know when they will start or end. Type B machines, operated across the country include this feature. Implementation of this rule would wipe out an entire class of amusement machine, would cripple the industry and would place Ohio businesses at a competitive disadvantage. Recommendation: Enter into a dialogue with Type B industry representatives to determine how to address this issue.

5. Page 1, letter E: Most tournaments last longer than seven days and average 30-60 days.

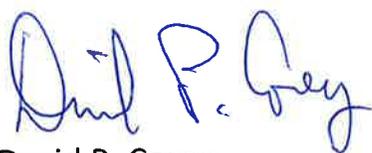
6. Page 1, letter F: See #5.

7. Page 2, letter G: Tournaments are advertised on each machine immediately when they are created.

8. Page 2, letter H, I, J: Same as the above. Our members don't control the parameters of the Tournaments. Manufacturers will be forced to leave the Ohio market because they won't have one system for Ohio, and another system for the rest of the world. These are **national & international tournaments** so they will just make the decision to leave the state like they have in the four states that do not allow prize play on amusement devices. These tournaments are an integral part of Ohio's coin machine industry and effectively banning them would obviously provide undue harm to an already beleaguered industry.

Please let us know if you have questions. We look forward to continuing our good working relationship to craft regulations that will benefit Ohioans while ensuring that the regulations do not constitute an overwhelming burden to Ohio's small business coin operated amusement industry and their customers.

Sincerely,

A handwritten signature in blue ink that reads "David P. Corey". The signature is written in a cursive style with a large, stylized 'D' and 'C'.

David P. Corey
Executive VP