

CSI - Ohio

The Common Sense Initiative

Business Regulation Impact Analysis

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

Regulation/Package Title: Skill-based amusement machine prohibited activities and affirmative duties.

Rule Number(s): 3772-50-16, 3772-50-17, 3772-50-18, 3772-50-19, 3772-50-20

Date: October 18, 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Rescinded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 include prohibited activities and affirmative duties of licensees. The rules are part of the development of the Commission’s oversight of skill-based amusement machine gaming.

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

- **3772-50-16**, titled “Prohibited activities.” This rule prohibits certain conduct by skill-based amusement machine vendors, operators, locations, and other persons. The prohibited conduct includes obtaining a skill-based amusement machine from a person not licensed by the Commission, with a limited exception; extending credit to players; failing to submit

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any required report of form; submitting a skill-based amusement machine to more than one certified independent skill-based amusement machine testing laboratory; and conducting or participating in conducting skill-based amusement machine gaming in violation of the Revised Code or the administrative rules. The purpose of the rule is to outline the specific activities that are prohibited in skill-based amusement machine gaming in Ohio.

- **3772-50-17**, titled “Duties of skill-based amusement machine vendors.” This rule describes the responsibilities of skill-based amusement machine vendors to manufacture or distribute skill-based amusement machines that comply with technical standards established by the Commission, submit skill-based amusement machines to a certified independent skill-based amusement machine testing laboratory, and ensure that skill-based amusement machines have a locked cabinet or console. The rule further provides that a skill-based amusement machine vendor shall comply with notices and directives from the Commission or the Executive Director to implement policies, procedures, or practices. The purpose of the rule is to outline the affirmative duties of a licensed skill-based amusement machine vendor.
- **3772-50-18**, titled “Duties of type-B skill-based amusement machine operators.” This rule describes the responsibilities of type-B skill-based amusement machine operators to maintain certain records, including a machine entry authorization log, maintain the security of locked cabinets or consoles, ensure that prizes are capable of being dispensed from a type-B skill-based amusement machine, and place a sign or sticker on each type-B skill-based amusement machine providing a complaint phone number available to consumers. The rule further provides that a type-B skill-based amusement machine operator shall comply with notices and directives from the Commission or the Executive Director to implement policies, procedures, or practices. The purpose of the rule is to outline the affirmative duties of a licensed type-B skill-based amusement machine operator.
- **3772-50-19**, titled “Duties of type-C skill-based amusement machine operators.” This rule describes the responsibilities of type-C skill-based amusement machine operators to maintain certain records, including a machine entry authorization log, maintain the security of locked cabinets or consoles, display available prizes in a single area, and place a sign at a location or sticker on each skill-based amusement machine providing a complaint phone number available to consumers. The rule further provides that a type-C skill-based amusement machine operator shall comply with notices and directives from the Commission or the Executive Director to implement policies, procedures, or practices. The purpose of the rule is to outline the affirmative duties of a licensed type-C skill-based amusement machine operator.
- **3772-50-20**, titled “Duties of type-C skill-based amusement machine locations.” This rule describes the responsibilities of type-C skill-based amusement machine locations to revenue-share only with licensed operators and maintain accounting for each agreement, allow a licensed operator to place any required signs or materials at the location, display available prizes in a single area, and ensure at least one licensed skill-based amusement

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machine key employee is employed at or present at the location. The rule further provides that a type-C skill-based amusement machine location shall comply with notices and directives from the Commission or the Executive Director to implement policies, procedures, or practices. The purpose of the rule is to outline the affirmative duties of a licensed type-C skill-based amusement machine location.

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.

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 vendors, operators, locations and other persons to fulfill its obligation to regulate skill-based amusement machine gaming in Ohio and eliminate illegal casinos. The Commission will also analyze the regulated community's comments about requests for waivers or variances from these rules once they are implemented.

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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 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 September 20, 2016, with a requested comment period ending on September 30, 2016. A list of the stakeholders contacted by the Commission is 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 September 21, 2016 e-mail, stakeholders provided comments that are incorporated as Attachment B. As a result of the stakeholder comments, the Commission made several changes to the draft rules, including:

- Clarifying that a person cannot modify a skill-based amusement machine in a manner that would make the machine non-compliant with the requirements under the chapter in proposed rule 3772-50-16(H);
- Specifying that a person may not further redeem a merchandize prize for any prize prohibited in R.C. 2915.01 in proposed rule 3772-50-16(I);

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- Clarifying that a person may not submit the same skill-based amusement machine to two or more certified independent skill-based amusement machine testing laboratories in proposed rule 3772-50-16(L) and (M);
- Adding provisions in proposed rule 3772-50-16(N) to allow a skill-based amusement machine vendor to enter into a revenue-sharing agreement as long as certain conditions are met;
- Removing the requirement in proposed rule 3772-50-16(Q) that an exchange of a merchandise prize be allowed only for damaged or defective merchandise;
- Adding a “knowingly” element to the provision in proposed rule 3772-50-16(S);
- In proposed rule 3772-50-17(A), adding additional language to indicate that a skill-based amusement machine vendor that manufactures skill-based amusement machines for use in Ohio must comply with the provisions in R.C. Chapters 2915. and 3772. and the administrative code;
- Removing a requirement to list the key employee in proposed rule 3772-50-18(C);
- Eliminating a requirement under proposed rule 3772-50-19 that would have prohibited owners and employees from playing skill-based amusement machines;
- Added additional language in proposed rule 3772-50-19(B) to account for an operator that is a franchisor;
- Removing a requirement to list the key employee in proposed rule 3772-50-19(C);
- Clarifying language in proposed rule 3772-50-19(E)(3) to indicate that a prize must be available at the time of redemption rather than the time of each play of a skill-based amusement machine;
- Eliminating the prohibition on brochures and signs as a means for a player to select a prize under proposed rule 3772-50-19(E)(5);
- Creating an exception in proposed rule 3772-50-19(F) to allow certain operators to place a sign on premise rather than stickers on individual machines;
- Adding clarification that the requirements in proposed rule 3772-50-20 apply to licensed skill-based amusement machine locations;
- Clarifying language in proposed rule 3772-50-20(C)(3) to indicate that a prize must be available at the time of redemption rather than the time of each play of a skill-based amusement machine; and
- Eliminating the prohibition on brochures and signs as a means for a player to select a prize under proposed rule 3772-50-20(C)(5);

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 prohibited activities and affirmative duties of skill-based amusement machine vendors, operators, and locations.

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.

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 proposed rules do contemplate performance-based requirements. Proposed rule 3772-50-16 outlines conduct that is prohibited by licensees; however, the rule does not proscribe the methods that a licensee must utilize to prevent the prohibited conduct. Similarly, proposed rules 3772-50-17 through 3772-50-20 outline affirmative obligations of certain licensees but does not mandate the process needed to ensure compliance. Thus, each licensee will be able to develop its own unique policies and practices to ensure it complies with the regulations in the manner best suited to its business model.

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 prohibited activities and affirmative duties of skill-based amusement machine vendors, operators, and locations.

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

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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 3772-50-16, “Prohibited activities.”

Proposed rule 3772-50-16 outlines prohibited conduct of licensees. Much of the proposed rule should not have an adverse business impact as the requirements merely require licensees to do business with other licensed entities. As entities that are engaged in the conduct of skill-based amusement machine gaming are already required to be licensed, these provisions should not otherwise adversely affect the regulated community. Additionally, many of the prohibited activities merely clarify existing prohibitions under R.C. 2915.01 that licensees are already familiar with following. To the extent there is an adverse impact on the regulated community, the potential adverse impact is the time and payroll necessary to develop policies and procedures to ensure compliance with the regulation and sanctions for non-compliance. The amount of time necessary to develop the policies and procedures will vary significantly based on numerous factors including the scope of the business operations and corporate structure and the extent that the licensee’s business practices already prevent non-compliance. Should a licensee violate the proposed rule, the Commission may take administrative action against the licensee, in accordance with R.C. Chapter 119., including the denial, suspension, or revocation of a license or a monetary civil penalty.

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Proposed Rule 3772-50-17, “Duties of skill-based amusement machine vendors.”

This rule describes affirmative requirements for a skill-based amusement machine vendor. The potential adverse impact is the employer time and payroll necessary to develop the policies and procedures necessary to ensure compliance with the rule and sanctions for non-compliance. The amount of time necessary to develop the policies and procedures will vary significantly based on numerous factors including the scope of the business operations and corporate structure and the extent that the licensee’s business practices already prevent non-compliance. Should a skill-based amusement machine vendor violate the rule, the Commission may take administrative action against the licensee, in accordance with R.C. Chapter 119., including the denial, suspension, or revocation of a license or a monetary civil penalty.

Proposed Rule 3772-50-18, “Duties of type-B skill-based amusement machine operators.”

This rule describes affirmative requirements for a type-B skill-based amusement machine operator. The potential adverse impact is the employer time and payroll necessary to develop the policies and procedures necessary to ensure compliance with the rule and sanctions for non-compliance. The amount of time necessary to develop the policies and procedures will vary significantly based on numerous factors including the scope of the business operations and corporate structure and the extent that the licensee’s business practices already prevent non-compliance. Should a type-B skill-based amusement machine operator violate the rule, the Commission may take administrative action against the licensee, in accordance with R.C. Chapter 119., including the denial, suspension, or revocation of a license or a monetary civil penalty.

Proposed Rule 3772-50-19, “Duties of type-C skill-based amusement machine operators”

This rule describes affirmative requirements for a type-C skill-based amusement machine operator. The potential adverse impact is the employer time and payroll necessary to develop the policies and procedures necessary to ensure compliance with the rule and sanctions for non-compliance. The amount of time necessary to develop the policies and procedures will vary significantly based on numerous factors including the scope of the business operations and corporate structure and the extent that the licensee’s business practices already prevent non-compliance. Should a type-C skill-based amusement machine operator violate the rule, the Commission may take administrative action against the licensee, in accordance with R.C. Chapter 119., including the denial, suspension, or revocation of a license or a monetary civil penalty.

Proposed Rule 3772-50-20, “Duties of skill-based amusement machine locations.”

This rule describes affirmative requirements for a type-C skill-based amusement machine location. The potential adverse impact is the employer time and payroll necessary to develop the policies and procedures necessary to ensure compliance with the rule and sanctions for non-compliance. The amount of time necessary to develop the policies and procedures will vary significantly based on numerous factors including

the scope of the business operations and corporate structure and the extent that the licensee's business practices already prevent non-compliance. Should a type-C skill-based amusement machine location violate the rule, the Commission may take administrative action against the licensee, in accordance with R.C. Chapter 119., including the denial, suspension, or revocation of a license or a monetary civil penalty.

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.

In order to regulate skill-based amusement machine gaming and eliminate illegal casinos, skill-based amusement machine vendors, operators, and locations need to know what activities are required and prohibited as part of the privilege and responsibility of maintaining a license. The proposed rules give the regulated community guidance as to these requirements. Many of the regulatory requirements are designed to clarify provisions under R.C. 2915.01 and are familiar with those operators who engage in lawful skill-based amusement machine gaming. Several of the requirements are meant to combat schemes utilized by illegal casinos to subvert Ohio law. For example, the prohibition against further redemption of a merchandise prize seeks to redress a scheme where a valid merchandise prize is later redeemed for an illegal prize, such as cash. Other requirements of the rule will allow the Commission to ensure the integrity of skill-based amusement machine gaming, such as requirements to place critical media (like a motherboard) into a locked cabinet or console and record those persons who access the console, will allow the Commission to ensure that games are not altered or changed after approval. As the proposed rules allow the Commission to fulfill its statutory mandate in an efficient and effective manner, the Commission concluded that the regulatory purpose of the proposed rules justified the potential adverse business impact.

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

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.

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ATTACHMENT A

First Name	Last Name
Tom	Frick
Chad	Hawley
Troy	Judy
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
John	Singleton
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
Seprina	Brown
Christy	Prince
Rich	Bitonte
Randy	Allen
Eric	Hackney



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September 29, 2016

Via First Class Mail and Electronic Mail

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Re: CEC Entertainment, Inc. dba Chuck E. Cheese's Comments to Skill-Based Amusement
Machines Rules numbered 3772-50-16 through 3772-50-20

Dear Ms. Morrison:

Thank you for the opportunity to provide comments to the Ohio Casino Control Commission in connection with the draft rules numbered 3772-50-16 through 3772-50-20 regarding skill-based amusement machine ("SBAM") gaming. Please accept this letter as the comments of CEC Entertainment, Inc. ("CEC"), which operates and franchises approximately 580 Chuck E. Cheese's family entertainment centers located within nearly every state in the United States; twenty-one Chuck E. Cheese's are located within Ohio. CEC is a business that offers ticket redemption games among other fun and entertaining experiences for families with children between the ages of 2 and 12.

Draft Rule 3772-50-16

Section (B) prohibits SBAM operators from purchasing SBAMs from sources that do not hold Ohio SBAM vendor licenses. Given its national presence and volume purchasing, CEC typically acquires its SBAMs from sources outside Ohio, often directly from the manufacturer. Section (B)'s prohibition on the acquisition of SBAMs from unlicensed entities will severely restrict the pool of potential SBAMs for Ohio locations. If CEC's vendors choose not to undergo SBAM vendor licensing in Ohio, CEC may be unable to continue its Ohio operations.

Section (H) creates a serious operational barrier to SBAM operators. It is necessary to have the ability to adjust settings, including electronic and mechanical features that affect game play, after a SBAM is in place and available for operation at a CEC location. SBAM operators must retain the ability to control the difficulty settings for their SBAMs in order to make each SBAM optimally entertaining. The proposed prohibition on modification of features that affect game play will prevent SBAM operators from adjusting SBAM features and difficulty settings to allow players, particularly children, to win the games. If players are not able to win the SBAM on a regular basis, players will not want to play the SBAM, potentially leading to a failure of the SBAM operator's business.

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Draft Rule 3772-50-17

Section (A) suggests that SBAM vendors must engage in manufacturing SBAMs. CEC suggests adding language to clarify that SBAM vendors have a duty to manufacture SBAMs solely to the extent that the SBAM vendor is a manufacturer in addition to or instead of being a distributor.

Section (C) requires SBAM vendors to submit SBAMs for testing by a certified independent skill-based testing laboratory. As stated above, it is unclear whether CEC's SBAM vendors will be willing to undergo licensing as a vendor in Ohio. It is also unclear whether those SBAM vendors will be willing to submit the SBAMs for testing given the anticipated burden and expense. More information is necessary regarding the time, expense, and burden of submitting a SBAM to a certified independent skill-based testing laboratory before CEC can fully comment on this section.

Regarding Section (D), CEC requests that the Commission add clarifying language to indicate for what period of time a SBAM vendor must retain copies of the testing reports and other documentation from the certified independent skill-based testing laboratory.

Draft Rule 3772-50-19

Section (B)(2) requires SBAM operators to maintain records of the quantity and wholesale value of each merchandise prize "offered or awarded." Because CEC does not maintain a winner's list or other records of what merchandise prizes are actually awarded to each player, CEC suggests that the language "or awarded" be removed from the draft rule. CEC has no objection to maintaining records of the quantity and wholesale value of the merchandise prizes available for award.

Section (C) requires that the keys to all SBAM cabinets not be provided to a Type C SBAM location's employees. Given that CEC's franchise location will be considered a location, this section could be read to indicate that the franchise's owner and employees cannot have access to the keys for the cabinets of their SBAMs. This is burdensome and unrealistic given the franchise relationship.

Section (D) proposes that all SBAM operators maintain a machine entry authorization log (MEAL) for each SBAM. This is profoundly burdensome for entities like CEC, and the manner in which this rule will help ensure the integrity of SBAM gaming is unclear. SBAMs are regularly accessed for reasons such as a token jam. Maintaining MEAL records for each SBAM for each and every mechanical or operational issue is not helpful and would create a substantial burden for SBAM operators and their employees.

Section (G) requires that all SBAMs have a sticker listing the name and phone number of the SBAM in order for players to make complaints. This is an unnecessary and duplicative requirement for SBAM operators given that the SBAM operator will be onsite.



Conclusion

CEC looks forward to continuing to work with the Ohio Casino Control Commission to reach a resolution that ensures the integrity of SBAM gaming and protects Ohio residents without inhibiting the operation and growth of the family recreation industry. Please contact me if we can be of assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Christy A. Prince".

Christy A. Prince

cc: David Deck
Steve Tugend
Lloyd Pierre-Louis
Michael E. Zatezalo

DAVE & BUSTER'S

Comments to Draft Licensing Rules for the Skill-Based Amusement Industry Proposed by the Ohio Casino Control Commission

Draft OAC 3772-50-16 through OAC 3772-50-20

Dave & Buster's is pleased to have the opportunity to offer comments to the Ohio Casino Control Commission's third set of proposed skill game rules.

Dave & Buster's shares the Commission staff's articulated goal of creating rules that give the Commission the tools it needs to shut down illegal operators while creating clear and reasonable rules for legitimate operators that ensure skill game patrons have a fair experience.

However well-intentioned, the proposed rules would have the effect of creating the most comprehensive, complex and detailed regulatory scheme in the country without appreciably improving protections to patrons.

It continues to be difficult to evaluate the full impact of any one rule or set of rules without knowing what the Commission will include in future rules. Dave & Buster's appreciates the Commission's assurance that we will have a continuing ability to comment upon rules, even after they are approved by the Commission.

Dave & Buster's comments are based upon its experience operating in 33 different states. It is important for Dave & Buster's to be able to operate in Ohio in accordance with its national brand standards. It is not a casino and its games are not slot machines.

Dave & Buster's is concerned that some of the provisions in this set of draft rules would impose extensive and expensive administrative and operational requirements that, while appropriate for casino slot machines, are unnecessary for the skill game industry and/or inconsistent with the nature of skill games. Our recommendations are intended to offer alternatives that lessen the negative impact on legitimate business practices without reducing the Commission's ability to take enforcement action.

OAC 3772-50-16 Prohibited activities.

While many of the requirements and prohibitions of this rule are appropriate in the casino industry, they are unduly burdensome and unnecessarily restrictive for lawful entertainment venues. Specifically:

- **Revenue sharing** – Sections (D), (E) and particularly (N) seem to prohibit a vendor from ever entering into revenue-sharing arrangements. While Dave & Buster's does not have any such agreements in place at this time, these types of arrangements are common in the industry. Prior draft rules require disclosure of any such agreements to the Commission and the Commission would have the authority to investigate any suspect agreement.

Therefore, we recommend that licensed vendors be permitted to enter into revenue-sharing agreements.

- **Game controls** – Section (H) prohibits any action “to modify, alter, change, or turn on or off any electronic or mechanical feature that affects game play” after a game has been approved by the Commission without the prior written approval from the Commission’s executive Director or designee.

Dave & Buster’s recommends this Section (H) be DELETED in its entirety.

The ability of an operator to control and change game features is fundamental to the nature of skill games (as opposed to slot machines or other games of chance.)

The very nature of a skill game demands that an operator be able to adjust features that impact game play. Changes might need to be made as a result of software changes. Adjustments might be made in response to play patterns or the game market. Adjusting speed or level of difficulty, without imposing payout percentages or making it impossible to win, might be appropriate for customer satisfaction or other business reasons. Obviously, an operator cannot change the nature of the game so it is no longer a skill game but it needs to be able to have the ability to make adjustments to games.

Prior proposed rules require an operator to obtain Commission approval for all games, and an operator has the responsibility to operate the approved games lawfully. If the Commission suspects that an operator is not operating lawfully, or has changed the nature of an approved game so that it is no longer a skill game, the Commission will have authority to investigate and take action if warranted against such an operator.

- **Prize redemption/exchange** – Sections (I) and (Q) appear to prohibit an operator from exchanging prizes except in the case of a damaged or defective product. Dave & Buster’s recommends that these provisions be DELETED.

In the alternative, we suggest that the rule permit operators to exchange prizes for other merchandise (of the same value) or return tickets/credits (in the same amount as those redeemed for the prize) to a customer’s game card (again in a value corresponding to the tickets redeemed for the prize.)

Operators need the ability to accept returns and make exchanges and refunds for many reasons. Customers may change their minds about a prize. It is also common for minors to redeem tickets for prizes which receive parent disapproval when the parents see them, such as candy or items that the parents deem inappropriate based upon the minor’s age or other reason.

- **Testing requirements** – As further explained in comments to proposed OAC 3772-50-17 (and as we have previously communicated to the Commission), Dave & Buster’s is extremely concerned about and opposed to extensive machine testing requirements.

With respect to the provisions in this rule, we do not understand the necessity for Sections (L) and (M). That being said, it seems that Section (L) should be limited to a “knowing” standard. Further, we read (M) to suggest that testing labs are going to submit results to the Commission. In that case, we suggest that the Commission compile and publish a list of approved machines and permit each type of approved machine to be sold/used with no further requirements for testing.

- **Prizes** – We recommend that Section (S) is amended to prohibit an operator from knowingly awarding a prize that is not operational or does not function as advertised or displayed. Dave & Buster’s awards the prizes that it advertises but Dave & Buster’s is not responsible for a product’s performance.

OAC 3772-50-17 Duties of skill-based amusement machine vendors.

While the proposed testing requirements contained in this rule may make sense in the casino industry, they are unduly burdensome and unnecessarily restrictive for lawful entertainment venues. Specifically, Section (C) appears to require a vendor to have each and every game machine tested by a certified independent testing laboratory.

Dave & Buster’s strongly opposes this requirement. It will be very time-consuming, burdensome, and extremely expensive. We estimate it will cost thousands of dollars per game machine by the time each machine is prepared and shipped for testing, tested and then placed at a store.

A further serious and related concern is that Section (E), especially when read in conjunction with proposed OAC 3772-50-16(H), seems to prohibit any change to a game after testing and approval by the Commission. As explained in comments to proposed OAC 3772-50-16(H), Dave & Buster’s opposes these proposed requirements and requests they be DELETED but offers some alternatives.

We further explain the problems caused by a locked console in our comments to proposed OAC 3772-50-19(C) and (D). In addition to all of those comments, we are concerned about the application of this rule in the event that a game receives a software repair, change or update.

Based upon Dave & Buster’s experience in other states, we offer two alternatives regarding testing which we think better balance the burden imposed upon a business with a regulatory agency’s enforcement responsibilities:

- Remove machine testing requirements and require each vendor to self-certify compliance with the Commission’s rules; and/or,
- Permit the Commission to test an identified machine(s) on a case by case basis, such as in response to a complaint, or upon suspicion of violation of Commission rules, or even on a random basis to verify compliance with rules.

Dave & Buster’s would be happy to talk with Commission staff about these and other possible approaches.

OAC 3772-50-19 Duties of type-C skill-based amusement machine operators.

While many of the requirements and prohibitions of this rule may make sense in the casino industry, they are unduly burdensome and unnecessarily restrictive for lawful entertainment venues. Specifically:

- **Employee/owner play prohibition** - Prohibiting employees and owners from playing games at Dave & Buster's locations is punitive and we do not understand why this would ever be a problem at a lawfully operating family entertainment center. We recommend that Section (A) be DELETED.
- **Security and control of machines** - While we understand the need to secure and control access to skill game machines, and we already do so in the regular course of our business, the provisions of (C) and (D) are too restrictive and unnecessary for lawful skill game operations.

In particular, (D) is unworkable from a practical standpoint. Employees need to be able to open machines to ensure the machines work correctly. In fact, employees open machines many times every day for many legitimate reasons, such as, in order to load or replenish tickets, clear ticket jams, fix or reset operational glitches with hardware or software, add balls, clear ball jams, replace game pieces, repair machines, clean machines, etc. Logging every entry would be a tremendous administrative burden since there might be hundreds of entries per shift. Requiring a log entry for each machine entry means that employee time would be shifted to logging rather than fixing problems with the games – this does not seem to serve either the operator's business interests or the Commission's interest since it is in both parties' best interests to have properly working games.

The Commission will have clear authority to take action against an operator who operates unlawfully. Prior proposed rules require an operator to obtain Commission approval for all games, and an operator has the responsibility to operate the approved games lawfully. Therefore, it is not necessary or appropriate in our view for the Commission to impose requirements that will significantly burden a business' ability to effectively manage its daily operations.

Therefore, we recommend that (C) be amended to require only that an operator secure and control access to skill game machines, and we request that (D) be DELETED.

- **Prizes** - Dave & Buster's also requests that Section (F) be amended to clarify that:
 - In addition to having a prize area where all prizes are displayed, an operator may also display prizes in other areas of its location.

- An operator may offer food and beverages from its location as a merchandise prize and that may be offered/represented by a sign, picture or display in the prize area and elsewhere.
- It is not always possible or desirable to have all prizes available at all times at all location so we recommend that Sections (F)(4), (5) and (6) be DELETED and Section (F)(3) be amended to require:

(3) The prize must be available to redeem at the time of play or within a reasonable amount of time after play. When an operator knows a prize is not available at a location at the time of play, the operator will post a notice in the prize area explaining the absence. If the prize is not available at the location at the time of play, as soon as the operator receives the prize, the operator will make reasonable arrangements for delivery of the prize which, based upon the customer's preference, may include shipping or returning to the location to pick up;

We suggest these changes because, as a practical matter, at any time, a prize may become temporarily out of stock at any particular location or even companywide, depending upon the popularity of a prize and the time it takes to order, receive and distribute it. Currently, if a customer chooses such a prize, after explaining the situation to the customer, Dave & Buster's makes arrangements to provide the prize to the customer after it receives the prize. Usually, the customer comes back to the store to get it.

Even if Dave & Buster's, as a company, has a stock of a particular prize, not every location may have every prize at every moment. Inventory at each store varies due to customer volume, demand, redemptions, and logistics of distribution and delivery of prizes among stores throughout the country.

Further, for safety and security reasons, individual stores do not typically have high value prizes on hand. Having them in stock increases risk of theft and other crime. From a safety and inventory control perspective, Dave & Buster's has found the best way to handle high value prizes is to accurately depict a prize, through a box or other way, and make arrangements to deliver the prize to a customer within a reasonable time after the customer redeems the prize. This process works well from a business and customer perspective.

OAC 3772-50-20 Duties of type-C skill-based amusement machine locations.

Dave & Buster's will be licensed as an "operator" and, based upon prior draft rules and conversations with Commission staff, it is our understanding that individual Dave & Buster's store locations in Ohio will not need to be licensed as "locations" since Dave & Buster's owns and operates all of the stores. We suspect that the Commission intends for this rule to apply only to locations/entities licensed as a type-C skill-based amusement machine location. Therefore, we

recommend expressly limiting this rule to licensed locations by amending the first sentence of the rule to read:

In addition to all other requirements under this chapter, each licensed type-C skill-based amusement machine location has an ongoing duty to:...

Dear Ms Morrison,

Eclipse Compliance Testing hereby submits its comments on the latest release of the SBAM Rules being promulgated by the Ohio Casino Control Commission. In the latest rules released for comment, we would like to offer our suggestions for improving the language on two (2) sections. The two (2) sections at issue to us currently read as follows:

(L) No person shall submit a skill-based amusement machine for testing under this chapter to more than one certified independent skill-based amusement machine testing laboratory, unless approved, in writing, by the executive director of the commission or his or her designee.

(M) No certified independent skill-based amusement machine testing laboratory shall test or accept for testing under this chapter a skill-based amusement machine it knows or has reason to suspect has been submitted for testing at another certified independent skill-based amusement machine testing laboratory unless approved, in writing, by the executive director of the commission or his or her designee.

Eclipse Compliance Testing is confused as to the intent and purpose of the above requirements. We assume the Commission is try to prevent SBAM manufacturers from submitting the same software to more than one ITL in the hopes that one ITL will approve the software faster than another, or not catch a non-compliance issue. Assuming our understanding is correct, we recommend that the above sections be revised to read as follows:

(L) No person shall submit ~~the same software to be utilized in a~~ skill-based amusement machine for testing under this chapter to more than one certified independent skill-based amusement machine testing laboratory so as to circumvent one lab from finding fault or non-compliance with the skill-based amusement machine software, unless approved, in writing, by the executive director of the commission or his or her designee. This rule shall not prevent a skill-based amusement machine supplier from changing to a different skill-based amusement machine testing laboratory fro future revisions to its skill-based amusement machines.

(M) No certified independent skill-based amusement machine testing laboratory shall knowingly test or accept for testing under this chapter a skill-based amusement machine ~~it knows or has reason to suspect that~~ has been submitted for testing at another certified independent skill-based amusement machine testing laboratory unless approved, in writing, by the executive director of the commission or his or her designee.

We appreciate you allowing us to provide our comments on these rules. We hope that you will incorporate our suggestions in the final rules.

If you should have any questions or require additional information, please feel free to contact our office at (440) 914-TEST (8378).



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September 28, 2016

Via First Class Mail and Electronic Mail

Andromeda Morrison
Ohio Casino Control Commission
10 West Broad Street, 6th Floor
Columbus, Ohio 43215
andromeda.morrison@casinocontrol.ohio.gov

Re: Shaffer Distributing, Inc.'s Comments to Skill-Based Amusement Machines Rules numbered 3772-50-16 through 3772-50-20

Dear Ms. Morrison:

Thank you for the opportunity to provide comments to the Ohio Casino Control Commission in connection with the draft rules numbered 3772-50-16 through 3772-50-20 regarding skill-based amusement machine ("SBAM") gaming. Please accept this letter as the comments of Shaffer Distributing, Inc. ("Shaffer").

Rule 3772-50-16

Shaffer urges the Commission to reconsider Section (H) ("No person shall modify, alter, change, or turn on or off any electronic or mechanical feature that affects game play of a skill-based amusement machine once a skill-based amusement machine has been approved for use in Ohio, without the prior written consent of the executive director of the commission or his or her designee").

Some ability to adjust the operation of the SBAMs is necessary for a number of reasons and in a number of contexts. In a Type-B SBAM like a claw machine, operators and vendors must have the ability to adjust the claw tension mechanism regularly for three reasons. First, the claw tension mechanism may become too loose over many plays and require tightening. Second, the claw tension mechanism must be adjusted for different size prizes available to win within the Type-B SBAM, such as a small plush toy versus a football.

Third, the operator must be able to adjust the claw tension mechanism to control the difficulty setting of play for the Type-B SBAM. This is not inherently unfair because adjustment of the claw tension mechanism is simply the only way to control the operational success of the SBAM. There is no malicious intent or cheating involved; all players would be playing on the same level playing field because the same difficulty setting would apply to all players. Rather, in the absence of an auto-percentaging feature within the Type-B SBAM, the operator must be able to adjust the claw tension mechanism to be tighter if no player can win.

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No one will play a claw machine if no one can win a prize out of it. Similarly, the operator must be able to adjust the claw tension mechanism to be looser if every play results in a win, regardless of skill. The operator cannot afford to have every play result in a win for every player. If the claw tension mechanism cannot be adjusted without prior written consent of the commission, Type-B SBAMs will likely no longer be offered in any location in Ohio.

Shaffer's concerns over Section (H) also arise in the context of Type-C SBAMs. It is necessary to have the ability to adjust the mechanical and electric components of a Type-C SBAM for the same reason that it is necessary to have the ability to adjust a claw tension mechanism. By adjusting a setting, the operator can control the difficulty setting of the Type-C SBAM. For example, there is a wide variety of ticket redemption SBAMs involving multiple light bulbs or pixels that light up sequentially in a very fast pattern. The player must hit a button to stop the light on a certain bulb or pixel in order to win tickets.

Operators are able to control the difficulty level of these Type-C SBAMs only by making adjustments to the electric components of the SBAM. If the operator is unable to adjust the difficulty setting, then the operator runs a serious risk that the game will be too hard and no one will want to play, or a converse risk that the game will be too easy and each play will result in a prize the operator will lose money on the game.

In connection with Section (N) (No skill-based amusement machine vendor shall participate in any revenue-sharing agreement or contract where the skill-based amusement machine vendor receives anything of value based on the amount of coin-in, revenue, receipts, or other performance of a type-B or type-C skill-based amusement machine), Shaffer is concerned that this will chill the introduction of new operators into the industry. Many potential operators are interested in the possibility of placing SBAM games in their businesses, but they are hesitant to commit to a certain lease payment or purchase price for the SBAMs. A revenue sharing agreement between a vendor and operator alleviates this concern because the vendor may agree to receive only a percentage of the revenue from the SBAM rather than a fixed monthly fee or price. In addition, a prohibition on revenue sharing agreements seems unlikely to further protect the integrity of SBAM gaming in light of the disclosures that vendors and operators must provide. Shaffer suggests requiring disclosure of revenue sharing agreements but not a prohibition on all revenue sharing agreements.

Rule 3772-50-17

Shaffer requests that the Commission provide clarifying language in Section (A) ([each vendor has an ongoing duty to] Manufacture skill-based amusement machines and related equipment in accordance with the specifications of Chapters 2915. and 3772. of the Revised Code and the rules adopted thereunder.) As drafted, the language suggests that all SBAM vendors have a duty to actually manufacture the SBAMs rather than acquiring the SBAMs from a manufacturer with the intent of acting as distributor. Shaffer suggests clarifying this language to include but not mandate the manufacture of SBAMs by SBAM vendors.

Shaffer reserves its right to offer comment on Section (B) ([each vendor has an ongoing duty to] Ensure that each skill-based amusement machine sold or otherwise provided in this state meets the minimum technical standards established by the commission.) because the minimum technical standards have not yet been established by the Commission.

Conclusion

Shaffer looks forward to continuing to work with the Ohio Casino Control Commission to reach a resolution that ensures the integrity of SBAM gaming and protects Ohio residents without inhibiting the operation and growth of the family recreation industry. Please contact me if we can be of assistance.

Very truly yours,



Christy A. Prince

cc: Scott Shaffer
Steve Tugend
Michael E. Zatezalo

Seifert, Berena

From: Morrison, Andromeda
Sent: Thursday, September 29, 2016 3:34 PM
To: Seifert, Berena
Subject: FW: Comments

From: David A George [<mailto:dageorge@bellmusicco.com>]
Sent: Wednesday, September 21, 2016 2:45 PM
To: Morrison, Andromeda <Andromeda.Morrison@casinocontrol.ohio.gov>
Subject: Comments

Andromeda,

First, thank you for the changes you have made to the first two documents that you have passed in OCC meetings. I appreciate the opportunity to provide feedback and really value that fact that you have been willing to make changes.

As usual, the document you sent yesterday was very thorough. I expect some folks to have a severe reaction to a few of the items in there (no catalogs, etc etc) but stay the course. You are drafting some very good rules.

Personally, I think it is very fair set of rules and there is nothing in that document that can't be accomplished or is over burdensome.

I had one comment per 3772-50-18 C

It says we have to have a log book with the name and license number of all "key" employees that enter the machine

However, it is not our "key" employees that enter the devices.

Our collectors and technicians are the ones that are in the machines on a weekly basis. Our "key" employees which in our case will be me and our two managers never enter machines on location.

If we have to register every tech, and collector as a "key" employee that may become burdensome

Not sure I made sense in this email

Please call with any questions

Thank You

David A. George

I am using the Free version of [SPAMfighter](#).
SPAMfighter has removed 6676 of my spam emails to date.

Do you have a [slow PC?](#) Try a free scan!