



# Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

## Business Impact Analysis

Agency, Board, or Commission Name: Ohio Casino Control Commission  
("Commission")

Rule Contact Name and Contact Information:

Caty Abbott, 614-387-5856, caty.abbott@casinocontrol.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

Ohio Adm. Code 3772-50-08

Rule Number(s): 3772-50-08 (amendment)

Date of Submission for CSI Review: March 13, 2020

Public Comment Period End Date: March 27, 2020

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/ 1 rules (FYR? N)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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## **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a.  Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b.  Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c.  Requires specific expenditures or the report of information as a condition of compliance.
- d.  Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

## **Regulatory Intent**

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

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

**3772-50-08 (amendment)**, titled, "Type-C skill-based amusement machine location licensure." Presently, this rule establishes the licensing factors used by the Commission to evaluate the suitability for licensure of type-C skill-based amusement machine locations, as well as describes the process for obtaining a license as a type-C skill-based amusement machine location, including both an application and license fee of twenty-five dollars each. The proposed amendments to this rule would waive the application and license fee for type-C skill-based amusement machine locations that also seek or hold a type-C skill-based amusement machine operator license. The amendments mirror similar waivers available under Commission rules. Currently, the rules allow for a waiver of application and licensing fees for skill-based amusement machine vendors who seek or hold a type-C skill-based amusement machine operator license. Essentially, while the Commission mandates those individuals and entities who both sell and operate skill games to obtain both the vendor and operator licenses, the Commission only charges the application and licensing fees once. This same arrangement is not available for locations that may be required to also seek an operator license if they own one or more Type-C games, which is what this amendment seeks to accomplish.

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3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

R.C. 3772.03

4. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

Not applicable.

5. **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 amendments 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.

6. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

Regulation became necessary with the passage of H.B. 64 (131<sup>st</sup> 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, including the function of licensing. The proposed amendments create a parity of fees between skill-based amusement machine licensees and applicants and reduce the cost of obtaining multiple skill-based amusement machine licenses as required under Ohio law.

7. **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 the amendments in terms of the number of application and license fees that are waived for type-C skill-based amusement machine locations that also seek or hold a type-C skill-based amusement machine operator license. The Commission will also continue to measure success of the amendments in terms of whether they help to ensure the integrity of skill-based amusement machine gaming. The Commission will consider the proposed amendments successful if the Commission licenses 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).

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

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## **Development of the Regulation**

### **9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

Originally, with the passage of H.B. 64 (131<sup>st</sup> General Assembly), the Commission took several steps to engage the stakeholder community regarding the regulation of skill-based amusement machines. Prior to drafting the regulations in 2016, Commission staff engaged in numerous outreach activities with members of the regulated community including telephone conversations, e-mail communication, and in-person meetings. Commission staff held 18 individual meetings with members of the regulated community, as well as 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.

Stakeholders were the first to highlight the need for these amendments when they suggested a waiver for the application and license fee for type-C skill-based amusement machine locations that also seek or hold a type-C skill-based amusement machine operator license. Because these amendments seek to codify that initial waiver suggestion, and provide a positive impact to the stakeholders by reducing the cost of obtaining multiple skill-based amusement machine licenses, no further stakeholder outreach was conducted.

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

Stakeholders approached the Commission with the suggestion to waive application and license fees in situations where type-C skill-based amusement machine locations also seek or hold a type-C skill-based amusement machine operator license. Commission staff took into consideration that, currently, Commission rules allow a similar waiver for skill-based amusement machine vendors who seek or hold a type-C skill-based amusement machine operator license, but the same arrangement is not available for locations that may be required to also seek an operator license if they own one or more Type-C games. The proposed amendments seek to eliminate that disparity.

### **11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

This question does not apply to these proposed amendments because no scientific data was necessary to develop or measure their outcomes, as this rule pertains to the licensure of skill-based amusement machines.

### **12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

No alternative regulations were considered because these amendments were specifically requested by members of the regulated community and are providing a positive impact by

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waiving the application and license fee for type-C skill-based amusement machine locations that also seek or hold a type-C skill-based amusement machine operator license.

**13. 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 amendments do not include performance-based regulation because they simply waive the application and license fee for type-C skill-based amusement machine locations that also seek or hold a type-C skill-based amusement machine operator license. The amendments are crafted to create a licensing process that applies to all stakeholders in a licensing category. This process creates consistency as it is applied to all stakeholders, whereas, a performance-based rule could lead to inconsistent licensing procedures or outcomes for similarly situated stakeholders.

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

The Ohio Department of Agriculture currently licenses and regulates concession games at fairs of county or independent agricultural organizations under R.C. 1711.11. While the definitions of skill-based amusement machines and concession games are not identical, to the extent a game may fall into both categories, rule 3772-50-01 has specified that skill-based amusement machines, regulated by the Commission, do not include any concession games licensed under R.C. 1711.11. Therefore, there should be no duplication of regulation for these games. Operators who are licensed by the Department of Agriculture will continue to comply with that regulatory scheme without additional regulation imposed by the Commission.

**15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The Commission's Division of Skilled Games, under the direction and supervision of the Executive Director, will be responsible for the consistent and predictable implementation of the proposed amendments. Any issues that arise in the licensing and waiver process will be reviewed by Commission staff to coordinate a consistent response and conduct outreach to the regulated community.

**Adverse Impact to Business**

**16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community; and**

Skill-based amusement machine operators and skill-based amusement machine locations.

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

The nature of the potential adverse impact from the proposed amendments includes cost of fees and costs for employer time and payroll. In addition, failure to comply with the proposed rules, for either licensed or unlicensed entities, may result in a license not being issued or the Commission suspending or conditioning the issuance of a license.

**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.*

Presently, the rule requires an applicant applying for a type-C skill-based amusement machine location license to pay a twenty-five dollar application fee, as well as a twenty-five dollar license fee. The proposed amendments will waive the application and license fees for type-C skill-based amusement machine locations that also seek or hold a type-C skill-based amusement machine operator license. Therefore, while there will still be an application and license fee associated with a type-C skill-based amusement machine location, applicants who are seeking or already hold a type-C skill-based amusement machine operator license will not be charged again for the location application and license, thus actually providing a positive impact to businesses.

The only potential adverse impact on business includes the time and payroll necessary to complete the application. The application, which is available through the state’s eLicense website, is four and a half pages in length, excluding instructions and definitions. The Commission estimates that a type-C skill-based amusement machine location would need approximately one hour per page to complete the application along with an additional one to two hours to become familiar with the eLicense website (for first-time users). Thus, the Commission estimates that a type-C skill-based amusement machine location would need approximately four and half to seven and a half hours to complete an application.

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

The Commission concluded that the benefit to stakeholders far outweighs the potential time and payroll necessary to complete the application. The Commission also based this determination on the fact that stakeholders were the ones who requested the proposed amendments.

## **Regulatory Flexibility**

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

Yes (indirectly). The proposed amendments indirectly provide exemption or alternative means of compliance through rule 3772-50-10, which permits the Commission, upon written request, to grant waivers and variances, from the rules adopted under R.C. Chapter 3772-50, including these amendments, 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.

### **19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

To the extent R.C. 119.14 would apply to a violation of the proposed amendments, 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

### **20. 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:  
100 E. Broad St., 20<sup>th</sup> 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](mailto: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, request waivers and variances from Commission regulations.

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