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 certification of independent skill-based amusement machine testing laboratories, standards, and testing. 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:

- **3772-50-21**, titled “Independent skill-based amusement machine testing laboratory certification.” This rule establishes the process for requesting and obtaining certification from the Commission as an independent skill-based amusement machine testing laboratory. The purpose of the rule is to provide guidance as to the process of obtaining
certification and to ensure that certified laboratories meet minimum competency and qualification requirements.

- **3772-50-22**, titled “Conditions of skill-based amusement machine testing laboratory certification.” This rule establishes the requirements to obtain and maintain certification as an independent skill-based amusement machine testing laboratory. The purpose of the rule is to ensure the integrity of skill-based amusement machine gaming by requiring independent testing laboratories to have appropriate internal policies, controls, and security measures to maintain certification.

- **3772-50-23**, titled “Duties of certified independent skill-based amusement machine testing laboratories.” This rule specifies the requirements for certified independent skill-based amusement machine testing laboratories including testifying on behalf of the Commission as needed, taking appropriate measures to correct non-conforming work products, maintaining training procedures, and reviewing all software and technology used to conduct scientific testing and verification. The purpose of this rule is to outline the affirmative duties of independent skill-based amusement machine testing laboratories that are certified by the Commission.

- **3772-50-24**, titled “Skill-based amusement machine standards.” This rule contains the technical requirements for each type-B or type-C skill-based amusement machine that can be verified through independent testing or evaluation. The purpose of this rule is to ensure the integrity of skill-based amusement machines by ensuring that all skill-based amusement machines are designed and function in accordance with the requirements under R.C. 2915.01(UU).

- **3772-50-25**, titled “Approval and testing.” This rule requires skill-based amusement machine vendors and operators to ensure that the Commission has approved a skill-based amusement machine prior to selling or operating the machine for use in Ohio. The rule further describes the procedures a vendor or operator may use to seek the requisite approval of a machine. The purpose of the rule is to make sure that each skill-based amusement machine operated in Ohio meets the technical standards adopted by the Commission.

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 the minimum technical requirements for all legal skill-based amusement machines to operate in the state, including the creation of a publicly-available database listing all approved games. The approval of games allows the Commission to ensure that all games in the state operate in compliance with R.C. Chapter 2915. The Commission will also 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 numerous 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 proposed rules were initially provided to stakeholders by e-mail on December 13, 2016 with a comment period closing on January 5, 2017. A list of the stakeholders contacted by the Commission as part of this outreach is included as Attachment A. The comments received by the Commission are included as Attachment B. The rules were revised and, again, provided to stakeholders for comment on from March 7, 2017 through March 15, 2017. A copy of the comments received is incorporated as Attachment C.

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. Additionally, as a result of the additional comment periods, stakeholders provided feedback on all of the proposed rules. As a result of the stakeholder comments, the Commission made several changes to the draft rules, including:

- Clarifying the scope of record retention in paragraph (N) of proposed rule 3772-50-22;
- Adding parameters to the restriction in paragraph (D) of proposed rule 3772-50-23, including a specific provision for the use of testing reports in administrative hearings;
- Adding clarity to the definition of “Advertised Prize” in the appendix to proposed rule 3772-50-24;
- Adding a definition of “game design” in the appendix to proposed rule 3772-50-24;
- Clarifying the language in paragraph 3 under “game outcome” in the appendix to proposed rule 3772-50-24 as it relates to the application of skill of a player to successfully complete the game;
- Clarifying the restrictions pertaining to random number generators in paragraph 4 under “game outcome” in the appendix to proposed rule 3772-50-24;
- Eliminating the blanket prohibition on autonomous game adjustment in the appendix to proposed rule 3772-50-24;
- Eliminating a 200 ms reaction time minimum requirement in the appendix to proposed rule 3772-50-24;
• Removing a requirement that non-electronic player interaction devices must be of uniform size, shape, weight, and function and instead require that they conform to manufacturer specifications in the appendix to proposed rule 3772-50-24;

• Removing the meter requirement in the definition of “total played” and “total won” in the appendix to proposed rule 3772-50-24 and moving the requirement for maintaining game accounting of total played and total won to the body of proposed rule 3772-50-24;

• Clarifying the language in paragraphs 1 and 2 under “game outcome” in the appendix to proposed rule 3772-50-24;

• Removing the prohibition on pre-randomized pools of outcomes in the appendix to proposed rule 3772-50-24;

• Clarifying that a player must be able to achieve the advertised prize per game in the appendix to proposed rule 3772-50-24;

• Clarifying that calibration also includes repair or replacement in the appendix to proposed rule 3772-50-24;

• Adding a provision in proposed rule 3772-50-24 to ensure operators are able to display game rules in a manner other than through the game mechanics or electronics as long as the rules are prominently displayed and accurate;

• Adding language clarifying that the Commission will make a determination in a reasonable time frame to paragraph (C) of proposed rule 3772-50-25;

• Adding language in paragraph (J) of proposed rule 3772-50-25 that indicates that once a game is approved it may be utilized by any licensed operator or vendor; and

• Clarifying the time frame in paragraph (K) of proposed rule 3772-50-25 to indicate that an operator or vendor should seek approval of games in use in Ohio within 90 days of the issuance of its initial vendor or operator license.

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?

Proposed rule 3772-50-24, and particularly the appendix to that rule, was developed in consultation with Gaming Laboratories International, Inc. (“GLI”), the world’s largest gaming-related scientific testing laboratory. GLI assisted Commission staff with ensuring that the technical standards adopted as Appendix A to rule 3772-50-24 are technically feasible and comport with current skill-based amusement machine industry standards. Ultimately, the consultation provided by GLI was utilized to develop technical standards that validate legal skill-based amusement machines and exclude illegal slot machines.

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.

Some of the proposed rules do contemplate performance-based requirements. Proposed rules 3772-50-21 through 3772-50-23 outline the requirements for obtaining and maintaining certification as an independent skill-based amusement machine testing laboratory but does not mandate the method that the certified independent skill-based amusement machine testing laboratory shall utilize to comply with the requirements. Proposed rule 3772-50-24 outlines the minimum technical standards of skill-based amusement machines but does not outline the methods that must be used to meet the standards.

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 the testing and technical standards for skill-based amusement machines in Ohio.

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, and independent skill-based amusement machine testing laboratories.

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, a certification fee for independent skill-based amusement machine testing laboratories, and, in some circumstances, the cost of obtaining independent scientific testing of skill-based amusement machines by vendors or operators. 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.


This rule outlines the process for obtaining certification as an independent skill-based amusement machine testing laboratory. Primarily, the rule requires a skill-based amusement machine testing laboratory to demonstrate that it meets the certification requirements outlined in the rules and can comply with the requirements of Chapter 3772-50 of the Revised Code, especially to scientifically test and evaluate skill-based amusement machines, including the technical standards adopted in proposed rule 3772-50-24. The certification process includes a review of the skill-based amusement machine testing laboratories policies, procedures, competencies, and qualifications as well as the payment of a certification fee. The potential business impact is the payment of a two thousand dollar certification fee, the costs of employer time and resources to maintain the documents and materials to demonstrate compliance with Chapter 3772-50 of the Administrative Code, and, in the event that the investigation of a skill-based amusement machine testing laboratory exceeds the certification fee, the Commission may, in its discretion, require the skill-based amusement machine testing laboratory to pay for the costs of investigation that exceed the fee.


This proposed rule describes the requirements for maintaining certification by the Commission as an independent skill-based amusement machine testing laboratory. Primarily, this rule requires, as a condition for compliance, many policies and procedures that are utilized by scientific and technical testing laboratories to ensure
industry best practices. The potential business impact of the proposed rule will vary depending on the practices already in place by a testing laboratory. The potential costs include the cost to obtain professional liability insurance, the costs to receive ISO accreditation, maintaining a full-time staff member to ensure compliance with Commission requirements, maintaining records and inventory and providing access or copies to those documents upon request, maintaining physical security (such as security cameras) at all lab locations where skill-based amusement machine testing will take place, and providing staff for testimony or otherwise assisting the commission in investigations and hearings. Should a certified skill-based amusement machine testing laboratory fail to meet all of the conditions of certification, the Commission may take administrative action against the laboratory including the denial, suspension, or revocation of the certification or a monetary civil penalty.

**Proposed Rule 3772-50-23, “Duties of certified independent skill-based amusement machine testing laboratories.”**

This rule outlines the affirmative duties of certified independent skill-based amusement machine testing laboratories. The potential business impact includes the employer costs and payroll to meet the affirmative duties such as performing annual background and credit checks on each employee, providing notification to the Commission in the event nonconforming work is discovered, creating and maintaining employee training programs, creating and maintaining internal standards and policies, and proving testimony at hearings and court proceedings when requested by the Commission. Should a certified independent skill-based amusement machine testing laboratory fail to meet these requirements, the Commission may take administrative action against the laboratory including the denial, suspension, or revocation of the certification or a monetary civil penalty.


This proposed rule proscribes the minimum technical standards that a skill-based amusement machine must meet to be sold or operated in Ohio. The potential business impact includes the cost to modify software or mechanical elements of games that do not meet the technical requirements or, in some cases, the cost to remove a game from operation or sales if it does not meet the technical requirements. Should a skill-based amusement machine operator or 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 3772-50-25, “Approval and testing”**

The proposed rule describes the two methods a skill-based amusement machine vendor or operator can use to get a game approved for use in Ohio. The first method is to submit the game to a certified independent skill-based amusement machine testing laboratory for analysis. The potential costs for this process vary with the complexity of the game and can range from approximately five thousand to tens of thousands of dollars. The costs for the analysis are not dictated by the Commission, but rather the certified independent skill-based amusement machine testing laboratory used by the
skill-based amusement machine vendor or operator for the testing. The second method to obtain approval is to submit an approval request to the Commission. There is no fee assessed for this process, but there are costs associated with the time needed to submit the approval request, along with supplemental documentation (like owner’s manuals) that the Commission can use to approve the game. Seeking game approval is voluntary; however, should a skill-based amusement machine vendor or operator submit false or misleading information under the proposed rule, the Commission may take administrative action against the licensee, 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.

A critical component of the successful regulation of skill-based amusement machines is the process by which the Commission can ensure that all games available to the public comply with the requirements of R.C. 2915.01. In order to achieve this goal, the proposed rules first establish the minimum technical requirements that all skill-based amusement machines must meet in order to be authorized for use in Ohio. The standards have been developed to create measurable means of ensuring that the outcome of each game is determined by the skill of the player. The standards also preclude the use of game functions developed by and utilized by those in the illegal casino industry to evade the requirements of R.C. 2915.01(UU). These individuals have used the guise of legitimate skill-based amusement machines to legitimize their illegal operations, hurting the reputation of other upstanding members in the skill-based amusement machine industry while preying on unsuspecting Ohioans.

Under the proposed rules, the Commission may approve a game, without testing, if it is able to determine, based on a request, that the game meets the adopted standards. Once the game is approved, it will be approved state-wide. If the Commission is not able to determine that the game meets standards, the Commission will not approve the game, but the stakeholder can seek testing from a certified independent skill-based amusement machine testing laboratory to demonstrate that the game meets the technical standards under the proposed rules. Certifying
that skill-based amusement machine testing laboratories are capable of completely and accurately evaluating skill-based amusement machines ensures that only legitimate skill-based amusement machines are approved for use in Ohio. As the Commission intends to publish all approved games on its website, members of the public, stakeholders, and law enforcement personnel will be able to determine whether a particular game has been deemed a legal skill-based amusement machine. 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. 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 public, members of the industry, and law enforcement personnel.

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

**77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117**

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)
- 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.
Skill Games Stakeholders

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<th>NAME</th>
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### ATTACHMENT A

**Skill Games Stakeholders**

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ATTACHMENT B

Hammon, Dylan

From: David A George <dageorge@bellmusicco.com>
Sent: Tuesday, December 20, 2016 1:05 PM
To: Morrison, Andromeda
Subject: Comments per Game Regulations and Standards
Attachments: Comments to OCC per Game Regs.doc

Andromeda,

I always envisioned that rules regarding machine regs. would be where this process became most difficult.

As usual your agency has been transparent in the process and I appreciate it. I am willing to help in any way I can.

I noticed that some verbiage that was fixed in previous drafts has appeared again and I made note of it in my comments.

I have attached my thoughts.

Please call me if you have any questions and I look forward to the second draft of these rules.

Happy Holidays

David A. George
President,
Bell Music Company

I am using the Free version of SPAMfighter.
SPAMfighter has removed 6915 of my spam emails to date.

Do you have a slow PC? Try a free scan!
It is important in the regulations and standards for class C skill games that loopholes aren’t created to allow slot machines in Ohio. It is also important that the standards for the games allow the class C industry to operate tested devices to the maximum allowed under Ohio law. I firmly believe that there will be no class C industry in Ohio if the below cannot be clarified and corrected.

**Game Outcome**

1. “Each game or play shall not award a merchandise prize or redeemable voucher for a merchandise prize, with a whole sale value in excess of $10. This includes aggregating prizes such as bonus pool style awards.”

2. “At no point can a player be awarded an amount over $10 as a result of a game play.”

Currently in Ohio, legal skill games operate with a “hand count” which is consistent with the courts ruling in “Pickway Skill Games vs. Ohio”. A player may win more than $10 per play but cannot be AWARDED more than $10 per play. You could clarify this in your definition of “award” Example: A player plays a game and wins 100 points. He would play the game 9 more times at a minimum just to receive 90 points (it would take him 10 points at 1 point per play) This may be confusing and I am happy to explain further.

**Game Accounting**

1. A credit meter may only be increased by additional currency inserted into a skill-based amusement machine (prize value may not increase a credit meter)

There are ways for manufacturers to provide games that keep track of meters “money in” as well as “amount played” so as they can be separate items and provide the OCC with as much accounting as you would like to see. A similar oversight was corrected in the first set of rules under section 3772-50-01 to include replays of a skill based amusement machine are considered a merchandise prize

Andromeda, thank you, Director Schuler, and the Ohio Casino Commission for your transparency in this process by allowing me to provide input.

Sincerely,

David A. George
President,
Bell Music Company
ATTACHMENT B

Hammon, Dylan

From: Cincione, Karen A. <kacincione@vorysadvisors.com>
Sent: Thursday, January 05, 2017 5:50 PM
To: Morrison, Andromeda
Cc: Jay Tobin; Kevin Bachus; Niehaus, Thomas E.
Subject: Comments to proposed skill game rules

Andromeda – On behalf of Dave & Buster’s, thank you for the opportunity to submit additional comments to the Ohio Casino Control Commission’s proposed skill game rules. We appreciate that the Commission is trying to create clear and reasonable rules that will empower the Commission to shut down illegal operators and, at the same time, without unreasonable burden, will permit lawful operators to continue to offer skill games to customers.

Changes to OAC 3770-50-01, 05, 11, 18, 19 and 20 proposed by the Commission December 2016

OAC 3770-50-11(A)(5) – Dave & Buster’s appreciates that the Commission narrowed this provision requiring applicants and licensees to report civil litigation to the Commission on an ongoing basis. However, Dave & Buster’s continues to question why the Commission needs information about litigation that is not related in any way to gaming. Accordingly, Dave & Buster’s requests that this provision be deleted or further narrowed to information related to the regulation of skill gaming.

OAC 3770-50-18(C) and 19(C) – Dave & Buster’s supports the amendment to the first sentence of this paragraph and suggests amending the second sentence with consistent language so that the paragraph would read:

(C) Maintain a record of changes to the mechanical or electrical components described in paragraph (E) of rule 3772-50-17 of the Administrative Code for each skill-based amusement machine it operates. The record shall provide for the time and date of the access change, the names of all persons who had access made the change, and the purpose of the access change.

OAC 3770-50-19(E)(6) – Dave & Buster’s is concerned about the blanket prohibition on shipping prizes. While Dave & Buster’s policy is for people to redeem prizes at store locations, there are some occasions when a customer is unable to take a prize from a location at the time of play and requests that it be shipped. Currently, Dave & Buster’s works with customers to accommodate hardship-type cases and would like to be able to continue to do so. For example, an active duty military person visits a Dave & Buster’s in Ohio while on leave, earns tickets to purchase an item that is not physically present at the location, but cannot return to a store to redeem and pick up the prize because the person must return to base that is not near a Dave & Buster’s location.

Continued concerns that were not addressed in the rule changes proposed by the Commission in December 2016

OAC 3770-50-13(C)(3) – Dave & Buster’s supports the Commission’s intent to require documentation of prize purchases, inventory and redemptions but continues to have concerns about the wording of this provision.

OAC 3770-50-14(B)(3) – Dave & Buster’s continues to be concerned about the Commission’s ability to summarily impound, seize and remove game machines from an operator’s premises.
ATTACHMENT B

OAC 3770-50-16(Q) – Dave & Buster’s objects to this provision to the extent it would prohibit a customer from exchanging a prize for restoration of the customer’s tickets that were redeemed for the prize that the customer is returning. Dave & Buster’s requests that the Commission permit this type of exchange. This situation occurs most often when a customer redeems tickets for a prize that breaks or a child redeems a prize that a parent later disapproves. Sometimes when a customer returns a prize, the customer cannot decide on a replacement immediately or doesn’t want the other prizes that are available at that time. In those situations, it is common for customers to ask Dave & Buster’s to restore their tickets to them. The tickets are not a form of currency, cash or a cash equivalent. Dave & Buster’s is restoring to the customer exactly what the customer had before redeeming the prize. It is simply a way to unwind the transaction.

Comments to Rule Package OAC 3770-50-26 - 28

OAC 3770-50-28 – Dave & Buster’s continues to be concerned regarding this rule’s forfeiture provisions. Dave & Buster’s requests that, if the Commission determines that a machine does not meet the Commission’s requirements, an operator would have the opportunity to remove the offending machine 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.

Comments to Rule Package OAC 3770-50-21 – 25

OAC 3770-50-23(E) - Dave & Buster’s objects to this provision which would prohibit a certified independent skill-based amusement machine testing laboratory from testifying against the Commission or any other Ohio agency. One of the main benefits of certifying laboratories is to assure competence in testing. If there is ever a dispute regarding the nature of a game machine such that testing is required or obtained by a party, that party should be able to provide the results of such tests, with testimony from the testing laboratory, in proceedings regarding the dispute regardless of whether the testing laboratory is testifying for or against the Commission or any other interested party.

OAC 3770-50-24 and Appendix A – Dave & Buster’s is still reviewing proposed Appendix A and is seeking input from a wider group of company representatives in order to review its games in light of Appendix A. We will supplement this submission with comments regarding Appendix A as soon as possible.

OAC 3770-50-25(D) - Dave & Buster’s suggests that the Commission (1) add a requirement that the Commission review the submitted certification and supporting documentation for completeness and notify the applicant regarding completeness within a specified number of days, and (2) add the timeframe within which the Commission will make a decision after complete documentation submitted.

OAC 3770-50-25(J) - Dave & Buster’s recommends that the Commission add a second sentence to this provision to state that after a game machine or game-related technology has been approved by the Commission, any licensed vendor or operator may sell or use the approved game machine or technology without certification or testing.

Thank you for consideration of these comments. Please contact me with any questions or if you would like to discuss. Respectfully,

Karen
Vorys Advisors LLC is a wholly owned affiliate of Vorys, Sater, Seymour and Pease LLP. Vorys Advisors is not engaged in the practice of law or the provision of legal services.

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From: Prince, Christy <CPrince@keglerrbrown.com>
Sent: Thursday, January 05, 2017 5:14 PM
To: Morrison, Andromeda
Cc: David Deck; Zatezalo, Mike; Tugend, Steve; Pierre-Louis, Lloyd; Kelley, Robin
Subject: CEC comments to Rules 21-25
Attachments: SCAN_152.pdf

Andromeda,

Please find attached the comments that CEC is offering to Rules 21 through 25, including Appendix A. Please contact me if you have any questions.

Thanks,
Christy

---

Christy A. Prince | Director
KEGLER BROWN HILL + RITTER | a legal professional association
65 E. State Street | Suite 1800 | Columbus, OH 43215
phone 614.462.5444 | fax 614.464.2834 | CPrince@keglerrbrown.com
January 5, 2017

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: CEC Entertainment, Inc. dba Chuck E. Cheese’s Comments to Skill-Based Amusement Machines Rules numbered 3772-50-21 to -25

Dear Ms. Morrison:

Thank you for the opportunity to provide comments to the Ohio Casino Control Commission in connection with the draft rules numbered 3772-50-21 through -25. 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. As you know, 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.

CEC’s comments focus on Appendix A, which contains the technical standards for skill based amusement machine (“SBAM”) gaming.

The definition of “currency” within Appendix A includes virtual representation of a token, coin, or bill. Please clarify whether virtual representation includes a “swipe” card with points or credit that can be used to activate an SBAM.

Appendix A’s section regarding Software Verification states that the software version information for an SBAM employing a video monitor or display mechanism “shall be accessible to be displayed.” CEC requests clarification of the term “accessible.” For example, would it be sufficient if the software version information is available by unlocking the SBAM and downloading or transferring information regarding the software version to a separate unit? In addition, CEC requests clarification as to the requirement that “[t]he electronic game shall have the ability to allow for an independent integrity check of its software/program storage media from an outside source.”

Section 1 of Appendix A regarding Game Outcome states, “Each game or play shall not award a merchandise prize, or redeemable voucher for a merchandise prize, with a wholesale value in excess of $10.00. This includes aggregating prizes such as bonus pool style awards.” CEC
recommends revision of this section to state, “Each game or play shall not award, including bonus pools, a merchandise prize, or redeemable voucher for a merchandise prize, with a wholesale value in excess of $10.00. This includes aggregating prizes such as bonus pool style awards.”

Section 2 of Appendix A regarding Game Outcome states, “At no point can a player be awarded (even if that award is not obtained until subsequent games or plays have occurred) an amount over $10.00 as a result of a game or play.” CEC recommends revision of this section to state, “At no point can a player be awarded (even if that award is not obtained until subsequent games or plays have occurred) an amount over $10.00 as a result of a single game or single play including a bonus pool.”

Section 10 of Appendix A regarding Game Outcome states, “Skill-based amusement machines that utilize player reaction time in whole or in part to determine the game outcome shall allow a minimum of 200 ms for all player input steps to occur.” While CEC is confident that the SBAMs it places in its locations comply with this requirement, CEC is investigating to confirm the same and respectfully reserves the right to offer comment if necessary.

The Player Safety section of Appendix A states, “Electrical and mechanical parts and design principals of the skill-based amusement machine must not subject a player to any physical hazards.” CEC respectfully suggests that this statement is overly broad and could include any aspect of SBAM gaming whether or not it poses a danger to players. CEC suggests that existing law, including tort law, sufficiently protects players from physical hazards and injury that an SBAM could cause.

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,

Christy A. Prince

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

Please find attached a letter containing comments on your latest draft Regulations.

Thanks in advance for your consideration and cooperation.

Kevin

Kevin B. Morse
3506 NE Greenville Blvd.
Greenville, NC 27834

Cell: 336.508.6464

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January 4, 2017

Ms. Andromeda Morrison
Director of Skill Games
Ohio Casino Control Commission
10 West Broad Street, 6th Floor
Columbus, Ohio 43215

RE: Comment on Draft Skill-Based Amusement Machines Rules 3772-50-21 through 3772-50-25.

Dear Ms. Morrison,

Thank you very much for the opportunity to comment upon your draft regulations pertaining to games of skill in Ohio. Thanks also for taking the time to talk with me by phone last month.

As an overall statement, I will first say that the draft regulations are very ambiguous in places but overall, clearly prohibit any type of skill game in the State of Ohio, including those in places such as “Chuck E. Cheese” and similar establishments. If passed, you will not have any skill games in Ohio for you to “Direct.”

It has been my impression in the past, based on our discussions by phone and in person, that you wanted to regulate skill games in Ohio on a basis like the regulation of skill-based amusement games by the Georgia Lottery Corporation in Georgia. Based on that impression, I am somewhat confused because these draft regulations clearly prohibit those Georgia COAM type games in Ohio.

In particular, with regard to:

*Advertised Prize*

A prize that can be awarded by a skill-based amusement machine and that is explicitly advertised to the player by the game.
What does “explicitly advertised” mean?

In the alternative, I would respectfully suggest:

“A prize that can be awarded, based upon the player’s skill, and which the player can know the value of before playing the game, or spending any consideration.”

With regard to:

**Game Outcome**

1. Each game or play shall not award a merchandise prize, or redeemable voucher for a merchandise prize, with a wholesale value in excess of $10.00. This includes aggregating prizes such as bonus pool style awards.

and

2. At no point can a player be awarded (even if that award is not obtained until subsequent games or plays have occurred) an amount over $10.00 as a result of a game or play.

These draft provisions are clearly at odds with established Ohio law and should be removed. It is clear, based upon Ohio Supreme Court opinion, that players may accumulate $10.00 prizes and exchange for larger prizes as long as this does not result in award of prize value in excess of an average of $10.00 per play of the game.

With regard to:

3. **Game outcome shall be solely dependent upon a player’s skill.**

There is virtually no game in the world that is “Solely dependent” upon a player’s skill. Perhaps “Primarily Dependent” is more accurate and would achieve the ends desired by the Commission.

With regard to:

4. **Prizes drawn from a pre-randomized pool of outcomes are prohibited.**

There is absolutely no reason for this rule to exist. In fact, just to remind you Ms. Morrison, when we spoke on the phone and I asked you what this rule meant and why was it in the draft regulations, you confessed that you had no idea. It must be deleted.
With regard to:

5. An RNG, whether used prior to or during play, shall not impose any limitations on a player’s ability to skillfully obtain any outcome.

Again, there is absolutely no reason for this rule to exist. What does “any outcome” mean? Any outcome in the world? Any outcome that the machine is capable of awarding? Any outcome that the player has been made aware they are playing for? What is the harm prevented by this regulation? It must be deleted.

With regard to:

6. The player shall have the ability to achieve every advertised prize on each paid game.

I would respectfully suggest a minor change based on my change to “advertised prize” above. I would respectfully suggest the following: “The player shall have the ability to achieve the advertised prize on each paid game.”

With regard to:

**Bonus Games**

3. The machine or device may award free games or free plays only if a method is in place to ensure an award of a merchandise prize, or redeemable voucher for a merchandise prize, with a wholesale value in excess of $10.00 cannot occur.

I would respectfully suggest a minor change here also. I would respectfully suggest the following: “The machine or device may award free games or free plays only if a method is in place to ensure an award of a merchandise prize, or redeemable voucher for a merchandise prize, with a wholesale value in excess of an average of $10.00 per play of the game by a player, cannot occur.”

With regard to:

**Game Accounting**

1. A credit meter may only be increased by additional currency inserted into a skill-based amusement machine (prize value may not increase a credit meter).

This regulation would prevent the replay of credits won by the player on another play of the game. This would, in effect, be the end of this type skill-based amusement game in the State of Ohio. The State of Washington has regulated skill-based amusement games and included this same provision in the regulations resulting in the virtual total absence of these games in
Washington State. If a player cannot replay credits won, they quickly lose interest in playing the game at all.

Further, this provision was included in earlier draft regulations by the Commission and was then removed based upon comments. This provision should be removed also.

With regard to:

**3772-50-25 Approval and testing.**

Subsection (F)(4)

*Engage no more than one certified independent skill-based amusement machine testing laboratory to perform scientific testing and technical evaluation of any particular device, version of software, hardware, or other technology to be used in Ohio without prior written authorization from the commission, executive director of the commission, or his or her designee.*

What is the reason for this draft regulation? There is always the possibility of a dispute between a manufacturer and a certified testing lab. To limit a manufacturer’s right to hire another lab is most likely an unconstitutional limit on that manufacturer’s free speech. This section should clearly be deleted since there is no rational reason for it and it is probably unconstitutional.

Regarding Draft Sections 3772-50-21 through 3772-50-23, which would regulate laboratory certification of skill-based amusement machines, there are only three laboratories in the country which could possibly perform these certifications. These three labs are already licensed and approved to conduct business in Ohio and already do certifications for gambling equipment in Ohio’s casinos. To create a whole new process for certification of the labs which could then do skill-based amusement machine certification seems completely unnecessary and duplicitous.

All those draft regulations concerning certification are simply unnecessary and some, such as 3772-50-23(C) and (D), for example, are patently unconstitutional. They should all be eliminated. I respectfully submit that you should simply create certification standards and then promulgate a regulation that states that skill-based machines must be certified compliant by any lab which is approved to test and evaluate slot machines in Ohio.

In closing, I would suggest that if the Commission intends to regulate these type games out of business, so be it. You will only be limited by the laws of the State of Ohio. However, if my initial impression was correct and you do intend to regulate a healthy skill-based gaming market in the State of Ohio to eliminate the wide spread use of illegal gaming devices in Ohio, maybe a collective, collaborative effort would be the best way to achieve that goal. We would certainly
be happy to participate in such effort with you, other manufacturers, Gaming Labs International and other stakeholders.

Once again, thank you very much for this opportunity and thanks in advance for your consideration and cooperation in this matter.

Sincerely,

Kevin Morse
Hammon, Dylan

From: Mark Jefferson <mark.jefferson@primerogames.com>
Sent: Thursday, January 05, 2017 3:34 PM
To: Morrison, Andromeda
Subject: Primero Comments on Proposed Skill Game Rules
Attachments: Letter to CCC (1-5-17).pdf

Dear Ms. Morrison:

Attached please find Primero Games’ comments to the proposed skill game rules and standards. Please contact me if you have any questions.

Thank you.

Mark E. Jefferson, Esq.
In-House Counsel
Primero Games, LLC
770-476-0311 (office)
470-554-3305 (direct)
770-862-4072 (mobile)

This email has been checked for viruses by Avast antivirus software.
www.avast.com
January 5, 2017

Ms. Andromeda Morrison  
Director of Skill Games  
Ohio Casino Control Commission  
10 West Broad Street, 6th Floor  
Columbus, OH 43215


Dear Ms. Morrison:

Primero Games, LLC (“Primero”) has reviewed the proposed Rules and Machine Standards, and we are confused about the goals of the Ohio Casino Control Commission (the “CCC”). If the CCC is trying to severely curtail the skill game industry in Ohio, it has done a good job of furthering that goal. Primero, a market-leading supplier of skill games in the State of Georgia, had believed we would see Rules and Machine Standards that (i) promote a viable skill game industry, (ii) create a level playing field, and (iii) increase enforcement actions against illegal gaming machines. The proposed Rules and Machine Standards do not accomplish these objectives. As you know, the skill-based amusement industry is very vibrant in Ohio and employs many people all over the State. Primero believes that the industry and its employees will be hurt by the proposed Rules and Machine Standards in their current form.

Set forth below are Primero’s comments and suggestions concerning the proposed Rules and Machine Standards. We have divided our comments into two categories, specific comments and general comments. We hope you find these comments and suggestions helpful. We know that rules and standards for the coin operated amusement machine (“COAM”) market in Georgia have created a viable and lawful skill game market, which is regulated by the Georgia Lottery Corporation (“GLC”). We hope to see the same outcome in Ohio.

Specific Comments Under “Appendix A: Skill-Based Amusement Machines Technical Standards”

A. Game Outcome (Items #1 and #2) - The Machine Standards should be revised to clearly allow the player to win any amount. The actual reward of amounts won should be limited to $10 per play (i.e., a $10 hand count). It should be clearly stated that the $10 reward can be accumulated based on the hand count. The Ohio Supreme Court has recognized the
hand count concept in Pickaway County Skilled Gaming v. Cordray, 936 N.E.2d 944 (Ohio 2010).

B. Game Outcome (Item #3) - The rule should be clarified so that the sentence “Game outcome shall be solely dependent upon a player’s skill.” does not preclude a finite pool and a pay table. The clarification should clearly state that (i) a prize may not be won without the exercise of some skill, and (ii) such sentence does not prohibit the manufacturer from designing a game that controls what prizes are presented to the player on any given play of the game. It is extremely difficult for law enforcement to determine skill level in a game. Thus, it makes sense to require only a minimal level of skill to achieve the game outcome.

C. Game Outcome (Item #4) - The Machine Standards should clearly allow a finite pool with a pay table that ranges from approximately 85% to approximately 97% prize payout to winners. Again, if there are 20,000+ skill games in the State of Ohio, it will be difficult for law enforcement to confirm whether or not a game has a finite pool. Thus, the Machine Standards should not prevent features that cannot be easily confirmed by law enforcement.

D. Game Outcome (Item #6) - The statutory language that prevents the value of the prize awarded from being “…controlled by a source other than the player playing the game” should be interpreted to mean that a source (other than the player) cannot control the value of the prize once play has begun. While some games allow the player to change the value of the prize based on performance during game play, many of the skill games currently in the Ohio market have a predetermined pay table. Skill is used to achieve the predetermined potential prize. This statutory language should not be interpreted to mean that a game must have all prizes available for each play of the game. Finally, it has been suggested that each game can have a “preview” feature that will satisfy this requirement. However, players do not look at preview features, and the requirement for a preview feature creates a possible monopoly for certain patent holders. The Rules and Machine Standards should be used to create a level playing field, not a favorable position to a few lucky patent holders. Thus, we believe this rule should be eliminated.

E. Game Accounting (Item #1) - The ability to replay winnings is essential to game play. We can think of no reason to prevent the replay of winnings. Therefore, this rule should be clarified to specifically allow the replay of credits won, and the use of winnings for additional play should not be considered part of the initial game (i.e., it is a new game and may increment the hand count).

General Comments

- Over-Reliance on Testing Labs – The Rules and Machine Standards place way too much reliance on testing labs. In Georgia, the testing labs were used to test the SAS
communication requirements only. The labs are not required to test the game itself. Some manufacturers, including Primero, obtained lab reports for the game itself, but such reports were not required by law or regulation. Also, the GLC COAM division does not spend time and resources approving or disapproving individual games. The reliance on lab reports seems more suited to casino floors than the amusement market and may not achieve its desired goal. Even if a lab report is obtained, how will law enforcement know if the game in the field is the same as the game that has been approved by the CCC? Unless a game is confiscated and tested, that determination will be extremely difficult to make. In summary, Primero does not oppose game testing, but we believe that the Rules and Machine Standards should not rely primarily on game testing to regulate the market.

- **Rules Should be Clear and Consistent** - Currently, the Rules and Machine Standards are very strict, but we have been advised that your office is willing to interpret various portions to lessen the impact on the skill game industry. Primero desires that the Rules and Machine Standards be very clear and (to the extent possible) not subject to various interpretations that might change depending on the CCC's internal changes or local law enforcement's views. Also, it will be very expensive for the industry to change the software once it has been distributed in the field.

- **Ease of Enforcement** – Law enforcement should have the ability to quickly determine if a game in the field is legitimate by looking at (i) the location license on the wall, (ii) the operator license on the game cabinet, (iii) the machine sticker on the game cabinet, (iv) the manufacturer license as displayed in the software, (v) the hand count on the screen, and (vi) the skill requirement as shown by game play. If the CCC has a database of the necessary information, then, before law enforcement walks into a location, it will know (a) if the location has a license, (b) the number of games in the location, (c) who the games belong to, and (d) the manufacturer of the games. Once in the location, law enforcement can tell if the games are complaint with a quick inspection. Additional requirements, that are not easily verifiable by a quick inspection by law enforcement, offer an opportunity for rogue operators to compete with unlawful products while legitimate manufacturers must toe the line with legal games.

- **Limit on Number of Machines per Location** – Primero would like to see a limitation on the number of skill games in a location, if Ohio law provides such rule making power to the CCC. If needed, a carve-out can be drafted for family entertainment centers and theme parks such as Chuckie Cheese and Dave & Busters. Establishments with a large number of skill-based games creates a casino like atmosphere, and will drive the industry to large game rooms. This will make it difficult for small retail locations to compete. Also, route operators will find it difficult to compete because routes, by their nature, require travel and increased expenses. Georgia limits the number of COAMs to nine per location. Also, this restriction is easily enforced by a quick visual inspection.
• More Enforcement Authority and Penalties – Those who choose not to play by the rules should be punished severely (monetary fines; revocation of license, etc.). That is the only way to get the entire industry to play by the rules and create a fair regulatory system. There is a reason why the GLC hired a former GBI agent to oversee its COAM division. The CCC should have the ability to audit business records and tax returns and should have a telephone hotline for tips. Also, the CCC should require reporting of skill game income by the location and the operator to prevent cash payouts and tax evasion.

• Testing Labs – As stated above, there seems to be excessive focus on testing labs and their certification, which in our opinion is an ineffective method of regulating the skill game market. It seems logical that if the CCC has licensed one or more Independent Test Laboratories (“ITL”) for testing casino gaming devices, they should be automatically certified to test skill-based amusement machines. Also, the GLC authorized the three major ITLs: GLI, BMM and Eclipse Compliance Testing. It is our understanding that these same three labs are licensed with the Ohio CCC to test gaming devices. There does not appear to be a need to vet the labs already licensed and certified to test gaming devices. Further, why should a lab be prohibited from testifying against the Ohio CCC or any other state agency? It is acknowledged that the ITLs are experts in game classification, and as such, they should be able to testify in their expert capacity under unrelated circumstances. Perhaps they should be restricted from testifying against classification decisions on skill-based amusement machines rendered by the CCC, but no other restrictions should be imposed upon the testimony of an ITL.

Thank you for allowing Primero to voice its concerns and for considering our comments and suggestions. Please contact me if you have any questions.

Sincerely,
PRIMERO GAMES, LLC

By: Mark E. Jefferson, Esq., In-House Counsel
mark.jefferson@primerogames.com

cc: Kurt Gearhiser, Esq.
Dear Ms. Morrison,

Thank you for allowing Eclipse Compliance Testing the opportunity to provide comments on the proposed SBAM rules at 3772-50-21 through 25. Attached is a document identifying our suggested revisions to these proposed rules. It is our hope that the Ohio Casino Control Commission will implement our suggestions in future revisions of the SBAM rules at 3772-50-21 through 25.

If you should have any questions or require additional information, please feel free to contact me.

Best regards,

Nick Farley
President
(440) 914-TEST (8378)
NickF@EclipseTesting.com
www.EclipseTesting.com

eclipse Compliance Testing
6401 Davis Industrial Parkway
Solon, Ohio 44139

Integrity, Impartiality & Independence

*****************************************************************
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*****************************************************************
January 5, 2017

Ms. Andromeda Morrison  
Director of Skill Games  
Ohio Casino Control Commission  
10 West Broad Street, 6th Floor  
Columbus, Ohio 43215

Re: Comments on Skill-Based Amusement Machines Rules 3772-50-21 through 3772-50-25.

Dear Ms. Morrison,

Thank you for providing us with a copy of proposed Sections 3772-50-21 through 3772-50-25 for skill based amusement machines (SBAM) to be regulated by the Ohio Casino Control Commission.

Based upon what has been prepared and presented for comment, we offer the following suggestions for improving these rules:

An overall comment/suggestion is that these rules are quite prohibitive and do not promote growth of the skill-based amusement machine industry in Ohio. Overall they are quite restrictive and limiting. The restrictions on Independent Testing Laboratories not being able to testify at any administrative hearing or court proceeding against the commission or any other agency of the State of Ohio seem overbearing, restrictive and ambiguous.

More specific comments that we would like to offer are as follows:

Section 3772-50-21(B) states that an ITL recognized for testing gaming devices is not recognized for testing SBAM devices. This implies that the OCCC does not want certain laboratories involved in testing SBAM devices, and appears to target a favored lab for SBAM testing. It seems logical that the OCCC should rely upon its vetted and licensed ITLs for all forms of testing, whether gaming or SBAM. If the OCCC is seeking additional revenue from ITLs, perhaps it should adjust its fees for licensing, but not limit the areas of testing. Therefore, we recommend that Section 3772-50-21 (B) be stricken in its entirety from the SBAM rules.

Section 3772-50-21 (C) re-enforces the statements made in 3772-50-21 (B). Therefore, we suggest that 3772-50-21 (C) be stricken in its entirety from the SBAM rules for the same reasons asserted previously with Section 3772-50-21 (B).

Integrity, Impartiality & Independence
Section 3772-50-21 (D) lists the requirements of an ITL. As we believe that an ITL licensed to test gaming devices should automatically be qualified to test SBAM devices, we suggest that all specific references to skill based amusement machines be stricken to reflect the acceptance of a licensed lab to test either gaming devices or SBAM devices.

Sections 3772-50-21 (E) through 3772-50-21 (M) should be consolidated with the ITL requirements for gaming devices, as we believe it is unnecessary and burdensome to establish different requirements for a licensed ITL for SBAM devices when such an ITL has already been licensed to test gaming devices.

Section 3772-50-22 in its entirety should be consolidated with the ITL requirements for gaming devices, as the requirements for SBAM device testing are redundant with the ITL requirements for gaming device testing.

Section 3772-50-23 (D) states that “A certified independent skill-based amusement machine testing laboratory shall not testify at any administrative hearing or court proceeding against the commission or any other agency of the state of Ohio.” This requirement is quite restrictive and limits the business of an ITL. Further, it is adverse to the independence of an ITL, as it prohibits an ITL from expressing its independent opinions on game classification. As the Commission is aware, the three (3) currently certified ITLs for gaming devices are also recognized experts in the field of game classification and offer expert witness and consultation services as part of their business offerings. To prohibit these ITLs from offering such expert services that may be adverse to any Ohio agency would be improper. Therefore, we suggest that Section 3772-50-23 (D) be stricken in its entirety. If the Commission desires to prevent an ITL from posing an adverse position to a SBAM classification decision, then this section could be revised to read as follows: “A certified independent skill-based amusement machine testing laboratory shall not testify against the commission with regard to the classification of any skill-based amusement machine in which the commission has rendered a ruling.”

Sections 3772-50-23 (E) and 3772-50-23 (F) are too broad and ambiguous. If these requirements are to remain in the rules they should be limited to SBAM devices intended for use in the State of Ohio under Sections 2915 and 3772. As written, they are all-encompassing of an ITLs testing practices for all jurisdictions and product testing.

Section 3772-50-24 Appendix A Game Outcome Item 2: This requirement that “At no point can a player be awarded (even if that award is not obtained until subsequent games or plays have occurred) an amount over $10.00 as a result of a game or play” seems to be inconsistent with Ohio law and court decisions rendered for skill games used in Ohio. We suggest that this section be stricken in its entirety.

Section 3772-50-24 Appendix A Game Outcome Item 4: This requirement that “Prizes drawn from a pre-randomized pool of outcomes are prohibited” will limit the type of games to be offered, and will prohibit such games as trivia games from being used in Ohio. Such games are currently in use legally, and should not be eliminated by these rules. We suggest that this section be stricken in its entirety.
Section 3772-50-24 Appendix A Game Outcome Item 6: This requirement that "The player shall have the ability to achieve every advertised prize on each paid game" is unnecessary, arbitrary and capricious. This rule will eliminate games that are currently operating legally in the State of Ohio. Many games offered to the public are designed to offer only a specific prize, or a subset of available prizes for a successful outcome. Not all prizes are available to be awarded at all times on many legal games currently in use in Ohio.

Section 3772-50-24 Appendix A Additional Requirements For Type-B Skill-Based Amusement Machines Item 4: This requirement that "Rolling or spinning reels or wheels shall not be simulated, displayed, or utilized in any facet of the game" is arbitrary and capricious; as such it should be stricken in its entirety.

Section 3772-50-25 (F) (4) states that “Engage no more than one certified independent skill-based amusement machine testing laboratory to perform scientific testing and technical evaluation of any particular device, version of software, hardware, or other technology to be used in Ohio without prior written authorization from the commission, executive director of the commission, or his or her designee.” This language is unnecessary and further lends itself to a favored lab of the Commission. SBAM vendors should have the freedom to select any licensed and certified ITL for any project, and should be permitted to utilize the services of any or all of the licensed and certified labs to ensure competition. We agree that no vendor should submit test results from more than one lab, but the vendors should be free to use any or all of the ITLs licensed and certified by the OCCC.

Section 3772-50-25 (K) states that "Notwithstanding any of the other requirements under this rule, a skill-based amusement machine vendor shall seek approval of a type-B or type-C skill-based amusement machine pursuant to this rule within ninety days of the issuance of its first skill-based amusement machine vendor license." The ninety day requirement is arbitrary and capricious and should be stricken. This section should be revised as follows: "Notwithstanding any of the other requirements under this rule, a skill-based amusement machine vendor shall seek approval of a type-B or type-C skill-based amusement machine pursuant to this rule within ninety days of the issuance of its first skill-based amusement machine vendor license prior to operating any skill-based amusement machine."

If you should have any questions or require additional information, please feel free to contact our office.

Sincerely,

Nick Farley
President

eclipse Compliance Testing
www.eclipsetesting.com
Good afternoon Andromeda, Happy New Year! Attached are comments from OCMA regarding the recently proposed administrative rules 3772-50-21 to 3772-50-25. Please let us know if you have questions. Thanks and we’ll see you soon. DPC

David P. Corey, Exec VP
Ohio Coin Machine Association
3757 Indianola Ave.
Columbus, OH 43214
614.784.9772
fax 784.9771
www.the-ocma.org
ocma@the-ocma.org
Ms. Andromeda Morrison
Director of Skill Games
Ohio Casino Control Commission
10 West Broad St.
Columbus, OH 43215

Ms. Andromeda Morrison:

On behalf of the members of the Ohio Coin Machine Association (OCMA), we want to thank you for the opportunity to comment on the initial draft of administrative rules 3772-50-21 through 3772-50-25.

1. Appendix A: Game Outcome, #1 & #2: These items once again seem to be adding a definition to Ohio law. We mentioned this to you when you released the first draft of rules in July and you amended it back then. Not sure why it has crept back in again?

2. Appendix A: Game Outcome, #3: Please clarify. We don’t understand what this means.

3. Appendix A: Game Outcome, #4 & #5: Why would this provision be included as there is no prohibition of pre-randomized pool of outcomes in the Ohio Revised Code? This section seems to be adding a definition to Ohio law. 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.

4. Appendix A: Game Accounting, #1: Manufacturers provide games that keep track with different and separate meters (e.g. “money in”, “amount played”, etc.) This is done to provide the CCC with complete and thorough accounting. We mentioned this to you when you released the first draft of rules in July and you amended it back then under Section 3772-50-01 to include replays of a skill based amusement machine to be considered a merchandise prize. Not sure why it has crept back in again?
ATTACHMENT B

Thank you again for allowing us to make comments. 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,

[Signature]

David P. Corey
Executive VP
Hi Andromeda,

I have one comment regarding the Skill-based Amusement Machines rules. Just a suggestion to add the Ohio Problem Gambling Helpline number 1-800-589-9966 to the sticker with a complaint number that must be displayed on the machines as stated below — or to require signage elsewhere that displays the Helpline number. Thank you.

Stacey

3772-80-19, 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 changes to game program or software; 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.

Stacey Frohnapfel-Hasson, MPA
Chief, Bureau of Problem Gambling
Office of Prevention & Wellness
Ohio Department of Mental Health and Addiction Services
30 East Broad St. 8th Floor
Columbus, OH 43215
614/644-8456
614/284-8313 CELL
1-800-589-9966 OHIO PROBLEM GAMBLING HELPLINE
http://mha.ohio.gov
http://the95percent.org

[Image of Ohio MENTAL HEALTH & ADDICTION SERVICES MHAS]

Promoting wellness and recovery
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Annie Fawley  
Paralegal  
520 East Rich Street  
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(614)221-5151  
(614)220-4057 - facsimile  
anniefawley@yahoo.com
Ms. Andromeda Morrison
Director of Skill Games
Ohio Casino Control Commission

(sent via electronic mail: Andromeda.Morrison@Casinocontrol.Ohio.gov)

Dear Andromeda:

I am responding to the release of the draft rules and our recent phone conversations. I apologize up front about the length of this letter but I wanted to discuss the apparent intent of the rules. There are some terms with which I am not familiar so I have tried to interpret them.

I have no comment on Section 3772-50-21. I have a question about 3772-50-22(N). I believe the labs should maintain records for three years but I do not know why the word “previous” is used. Certainly the testing labs have signed nondisclosure documents so that information is not disclosed to other competitors, manufacturers, etc. Anything prior to licensing should not be required to be held.

I discussed with you 3772-50-23(D). I agree that a lab should not testify against the Commission or other agency but it must be limited to the machine in question. Therefore this language should be added to (D): “in relation to the equipment tested by the laboratory for licensing of skill games”.

I discussed with you 3772-50-23(D). I agree that a lab should not testify against the Commission or other agency but it must be limited to the machine in question. Therefore this language should be added to (D): “in relation to the equipment tested by the laboratory for licensing of skill games”.

Under “Definitions” I believe some changes are in order for clarification. Advertised Prize – remove “by the” before the word game and replace with “for each”. I believe the intent is to make sure the player knows the prize for each play/game. As an example, play 1 the player is playing for 50 fifty cents worth of merchandise prize, and on play 2, $1.00 worth. The player must be able to see on the game play screen, that the play/prize is 50 cents on play 1 and must see on play 2 that the prize is $1.00.

On “Game Accounting – Total Played” this should be added to the end of the definition: “and separately which includes credits won and replayed”. This would allow credits replayed to be accounted for separately. As we discussed the Ohio Casino Control Commission removed credits won from a previous draft of illegal prizes. Credit replays are legal and quite frankly must be allowed or there is no skill game industry. I
understand your need for an accounting of them but as the Ohio Casino Control Commission heard several months ago credit replay is a necessity.

I am somewhat confused under “Appendix A – Game Outcome”, sections 4 and 5. I believe there are finite and infinite systems. However, manufacturers will have far more knowledge than me. You have a finite pool of plays say 1 - 500 plays which can be set 1, 2, 3 – 500 with a prize available and advertised on each play. The second option on finite plays is a random pull of these plays from the finite pool 1, 19, 54, 3, 400. These same two options are available for infinite systems.

With an infinite system you can also have the games played in order 1, 2, 3, 4 – or by random pull, the games just go on forever repeating or with the 500 plays being “refilled”.

I do not see why #4 is listed. I do not know why there is a problem with a “pre-randomized pool”. Although I’m not positive of that definition. Was the Ohio Casino Control Commission trying to prohibit finite pools? Plays have to be drawn from a finite or infinite pool like my example of 500 plays. Please let me know how it is legal to present those plays to the player. With #5 it is my understanding that the RN is just an algorithm or software design that picks the games/plays. The player must have total control of successfully solving or failing to solve a game puzzle.

It is my understanding with #6 that each paid game must have an advertised prize and the player must have the ability to achieve such prize. It does not mean that the player would have the opportunity to win the maximum prize of $10.00 of merchandise prizes on every play.

“Game Accounting in Appendix A” needs to be amended so win credits may be replayed. The Ohio Casino Control Commission can account for credits being replayed by requiring the addition suggested in the Game Accounting definition. The new #1 in Game Accounting should be amended to “A credit meter may only be increased by additional currency inserted into a skill-based amusement machine or by credits won.”

I don’t see the reason why Type B skill based games cannot have symbols or characters as winning or losing symbols, or cannot have rolling or spinning reels or wheels. I am not positive if these features are used now but I just want to know a reason they should be excluded in Type B games.

We also briefly discussed Regulation 3772-50-25(F)(4). It is my understanding that a manufacturer is permitted to use multiple laboratories overall, but is not permitted to take the same device, software version, hardware or other technology to multiple labs. So long as the manufacturer has the option to take different devices or different versions of software to separate manufacturers I do not have a problem.
ATTACHMENT B

Andromeda, I am sorry to be so lengthy and technical but I wanted to have these issues reviewed now to avoid misunderstandings later. I appreciate your efforts and those of Director Schuler, et. al. on these issues. Please do not hesitate to contact me on any of these issues.

Respectfully,

[Signature]

Kurt O. Gearhisser

KOG/af
Andromeda - below are Dave & Buster's comments re Appendix A. Thanks,

Karen

Sent with Good (www.good.com)

From: Karen Cincione
Sent: Monday, January 09, 2017 10:16:33 PM
To: Cincione, Karen A.
Subject: Comments on Appendix A Game Standards

Andromeda:

Dave & Buster’s has a number of concerns and requests for clarification regarding the proposed game machine standards. We’ve highlighted the main issues below. Further, we would like to set up a meeting with you at one of the local Dave & Buster’s locations in order to show you, on existing game machines, why Dave & Buster’s is concerned about some of the proposed standards and its ability to comply.

I. Main Issues of Concern

Page 4. Common Requirements (Type B and Type C) Game Outcome

3. Game outcome shall be solely dependent upon a player's skill.

This standard is unrealistic. Game outcome, for almost any game, is never dependent solely on skill. There are always some variable factors that contribute to success or failure. While Dave & Buster’s games are won based predominantly upon the skill of the players, the games are played in an environment that impacts play. For example, noise levels may fluctuate and air pressure in game balls may vary. Ohio’s definition of “skill-based amusement machine” supports this interpretation and does not require game outcomes to be solely dependent upon a player’s skill. Ohio law sufficiently defines prohibited behavior. This proposed requirement seems to go beyond the what the law prohibits and sets an unrealistic standard.
7. Game outcome and game-related parameters cannot be altered autonomously based on prior play. This does not preclude the implementation of bonus pool style awards.

This standard is very problematic for Dave & Buster's. The Commission may have developed this standard to prohibit “autopercentaging.” However, it is impractical for Dave & Buster’s to comply with this standard as written. There is a wide spectrum of autonomous adjustment and it is critical that Dave & Buster’s games be able to continue to operate with autonomous adjustment. Many games automatically calibrate their degree of difficulty. If players are not skillful enough, the games will become easier, generally allowing them to win more easily. If players demonstrate more skill and put up more of a fight, the games will become more challenging. Ultimately, the players must still achieve the game’s objective through skill to get a favorable outcome. The game adjustments will never preclude a win but they may make it more challenging. The only alternative, which is far more expensive and time-consuming (and would often result in a less satisfying customer experience), would be to require technicians to continually and constantly go to each game to make adjustments manually.

10. Skill-based amusement machines that utilize player reaction time in whole or in part to determine the game outcome shall allow a minimum of 200ms for all player input steps to occur.

This standard is much too generous. Even players who are not very good at timing-based games would win every time if given 1/5 of a second to hit a button. They might also stop playing because it would not be a challenging experience. Dave & Buster’s has games with expert players who are able to win within 5ms windows. Dave & Buster’s suggests removing a numerical standard and rely upon the criteria set forth in the governing law, including prohibiting games that, to win, require a skill that no reasonable player could exercise.
1. Electronic Player Interaction Devices that impact game outcome shall: (a) Be capable of calibration to effect and maintain appropriate function and accuracy.

Many games will not be able to meet this standard because they have devices that do not have a calibration function and cannot be calibrated. For example, joysticks and track balls either work or fail but they are not calibrated.

2. Non-electronic player interaction devices that impact game outcome shall: (a) Be of uniform size, shape, weight, function, and conform to the manufacturer's specifications.

As a practical matter, it is impossible to guarantee complete uniformity and conformity. A more aspirational standard may be more appropriate here in order to account for real life situations where balls or other parts received from a manufacturer are not exactly uniform, or replacement balls or parts are different from prior orders, balls deflate or are not always all inflated exactly the same, customers switch balls from one machine to another, or any number of other situations where devices are not completely uniform.

II. Issues for Clarification

Page 3. Common Requirements (Type B and Type C) Software Verification

1. If the skill-based amusement machine contains a video monitor or similar display mechanism, the software version information shall be accessible to be displayed.

Dave & Buster's is seeking clarification regarding where and to whom this information must be displayed. For Dave & Buster's current game machines, it is possible for Dave & Buster’s personnel to permit an inspector to view this information, upon request, by opening the game and pulling it up electronically through an operator menu. Please confirm that this type of display will comply with this standard.

2. The electronic game shall have the ability to allow for an independent integrity check of its software/program storage media from an outside source.

Many of Dave & Buster’s games store their programs on microchips or hard drives. Please confirm that the Commission would consider it acceptable if, upon request for an integrity check, Dave & Buster’s could remove a hard drive for review or remove a chip from the machine so it could be reviewed via an EEPROM programmer device.
1. Game rules must be prominently displayed and/or readily available and shall clearly and accurately state the rules of the game, fees charged for play and the number or value of redeemable vouchers or available prizes.

We would appreciate some clarification regarding the detail the Commission will require. As you know, many of Dave & Buster’s game rules/instructions are synthesized down to a few words, such as "Press Button When Target Is Lit." Please confirm this is acceptable.

Page 4. Common Requirements (Type B and Type C) Game Outcome

8. Once a game is initiated, no function of the skill-based amusement machine related to game outcome shall be altered during play based on the demonstrated skill of the player.

Dave & Buster’s is not sure what this provision prohibits. Dave & Buster’s does not believe that its games’ “functions” change during the course of a game and it does not change game settings during the course of a game. However, many games are designed and programmed to become more difficult during the course of the game. For example, most games become more difficult as a player moves progresses through higher levels and increasingly more difficult levels of a game. It is important that games may continue to operate in this way. Please confirm that this type of progressive game play is permitted.

Thank you for considering Dave & Buster’s concerns. We would like to talk with you about the standards and request that you meet with us at one of Dave & Buster’s store locations so that Dave & Buster’s can show you its concerns using current operating games as examples. Please let me know your availability and we will make sure to have the right people from Dave & Buster’s available. In the meantime, if you have any questions or would like to discuss these or other comments, please contact me. Respectfully,

Karen

[VORYS_Advisors_4c (2)]

Karen A. Cincione, Principal
Vorys Advisors LLC
52 East Gay Street | Columbus, Ohio 43215
Direct: 614.464.6201 | Fax: 614.719-5110 | Email: kacincione@vorysadvisors.com
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**From:** David P. Corey [mailto:dpc@pacainc.com]  
**Sent:** Wednesday, March 15, 2017 4:16 PM  
**To:** Morrison, Andromeda <Andromeda.Morrison@casinocontrol.ohio.gov>  
**Subject:** BCAO Rule Comments

BCAO Rule Comments attached. Thanks. DPC

David P. Corey  
BCAO Executive VP  
Bowling Centers Association of Ohio  
3757 Indianola Ave.  
Columbus, OH 43214  
614.784.9772  
fax 784.9771  
[www.bowlohio.com](http://www.bowlohio.com)  
[dpc@pacainc.com](mailto:dpc@pacainc.com)
Ohio’s Bowling and Family Entertainment Industries are very sympathetic to the effort of the Ohio Casino Control Commission (OCCC) to rid Ohio of illegal gambling. We continue to make every effort to educate and support them. However, the rules as set forth are burdensome, over bearing and in places the OCCC has over-stepped its rule making authority and changed law. The true intent of these rules and their far reaching effects have only recently come to light, thus some of these comments are for rules that have passed but need re-evaluation.

The following areas are as that the OCCC over-steps its rule making authority:

Section:

50-1 (W) Eliminates fuel cards as a prize for type B games but ORC 2915 explicitly allows fuel cards as a prize.

50-24 (Appendix A) Game Outcome #3 - Directs that a skill game outcome be determined SOLEY upon a player’s skill. The word SOLEY does not appear in ORC 2915.

50-24 (Appendix A) - Game Accounting #1 - Adds replay of credits on a skill game to list of prohibited prizes. This is contrary to ORC 2915. The general assembly was very explicit as to what is allowed and not allowed as a prize. The legislature even went as far to explain that awarding a play on a game of chance is illegal (VV)(2) but does NOT prohibit a replay on a game of skill. In the OCCC’s first draft of definition 50-01 (H), it originally included “Does not include replays of a skill based amusement machine.” That language is initially deleted in 50-01 and the proposed rule advanced without it due to its inconsistencies with ORC 2915.01. Although this issue was resolved in 50-01, it has now reappeared in this section.

The following areas are extremely overbearing and burdensome to Ohio’s Bowling and Family Entertainment Industries:

50-4 To be a class C skill game operator will cost over $20,000 to operate games that don’t come close to generating revenue similar to casinos. These games are placed in bowling centers and family entertainment complexes with names like “Down the Clown, Big Bass Wheel and Skee Ball”.

50-4 To have a class B skill game license to operate cranes with stuffed animals and other prize-awarding devices, Ohio’s Bowling and Family Entertainment Industries will be subjected to an intrusive licensing process and other “over the top” administrative procedures which is
ATTACHMENT C

inconsistent with the types of prizes awarded. The industry will also have a “duty to update” which will result in added red tape and is excessive to operate prize-awarding devices.

50-5 & 11 The requirements to obtain a license are overwhelmingly restrictive for key employees and owners. Bowling Centers are NOT casino operations. The manner in which applications can be revoked or licenses denied is too broad for a non-gaming industry. Having a gaming license denied or revoked by a governing body is a serious issue and non-gaming, Ohio, family bowling centers and entertainment companies shouldn’t be exposed to those risks that threaten their mere existence and their employees’ livelihoods.

50-10 The entire waiver process opens the door to inconsistent application of the rules and unfair business practices. The potential for unequal treatment under the law and competitive advantages to select companies will be an immediate by-product of the waiver process. The family entertainment industry operates equipment that will require waivers that may not be granted to other industries. There will be thousands of waiver requests, which will be expensive (and potentially cost prohibitive) especially at a $100 fee for each equipment request.

50-12 & 13 Due to significant revenue declines, Ohio’s Bowling & Family Entertainment businesses will be forced to significantly reduce its employees, however it will be forced to retain extra payroll specifically to keep up with the burdensome record keeping. Being forced to remit revenue records on class B prize-awarding devices, like cranes, while having to keep track of each individual prize, the price paid for that prize, etc is more than burdensome, it could actually put Ohio companies out of business. There are several hundred bowling centers that will have to have this data tracked.

50-14 Allows the OCCC and its agents to randomly show up at Ohio family-owned bowling centers and demand access to records for operating class B prize-awarding machines. This is an extremely excessive measure for a non-gaming industry. It grants considerable latitude to the Commission what they can do to Ohio businesses.

50-19 Forces businesses to keep onerous records of entry to the tens of thousands of skill game devices in Ohio. Our collectors, technicians and management can enter an individual device several times in one day trying to clean it, repair it, collect funds from it and replace parts. The paperwork would be immense and impossible to meet the requirements being demanded by the OCCC.
Andromeda

Thank You for the opportunity to submit more comments. The Ohio Coin Machine Association went into further detail in this document now that the intent of the OCCC has become more clear.

We have retained a large law firm to provide guidance on a few of the items we mention in this document and they will reach out to the OCCC as soon as those briefs are done so we can continue discussions to try to help rid Ohio of any illegal gambling while trying to preserve our businesses.

It still my belief that the illegal casinos, which it's your mission to shut down, will find ways around the rules being drafted and the end result of all this hard work will be just over burdensome regulation on Ohio's small businesses that were doing this the right way already.

Sincerely,

David A. George

---

I am using the Free version of SPAMfighter.  SPAMfighter has removed 8291 of my spam emails to date.

Do you have a slow PC? Try a free scan!
Ohio’s Coin Machine Association and our customers in the family entertainment industry are very sympathetic to the effort of the Ohio Casino Control Commission (OCCC) to rid Ohio of illegal gambling. We continue to make every effort to educate and support them. However, the rules as set forth are burdensome, over bearing and in places the OCCC has over-stepped its rule making authority and changed law. The true intent of these rules and their far reaching effects have only recently come to light, thus some of these comments are for rules that have passed but need re-evaluation.

The following are areas that the OCCC over-steps its rule making authority:

Section:

50-1 (H) Adds prohibited prizes inconsistent with ORC chapter 2915.

50-1 (W) Eliminates fuel cards as a prize for type B games but ORC 2915 explicitly allows fuel cards as a prize.

50-24 (Appendix A) Game Outcome #3 - Directs that a skill game outcome be determined SOLEY upon a player’s skill. The word SOLEY does not appear in ORC 2915.

50-24 (Appendix A) - Game Accounting #1 - Adds replay of credits on a skill game to list of prohibited prizes. This is contrary to ORC 2915. The general assembly was very explicit as to what is allowed and not allowed as a prize. The legislature even went as far to explain that awarding a play on a game of chance is illegal (VV)(2) but does NOT prohibit a replay on a game of skill. In the OCCC’s first draft of definition 50-01 (H), it originally included “Does not include replays of a skill based amusement machine.” That language is initially deleted in 50-01 and the proposed rule advanced without it due to its inconsistencies with ORC 2915.01. Although this issue was resolved in 50-01, it has now reappeared in this section.

The following areas are extremely overbearing and burdensome to small second and third generation family-owned Ohio businesses:

50-4 To be a class C skill game operator will cost over $20,000 to operate games that don’t come close to generating revenue similar to casinos. These games are placed in bowling
centers and family entertainment complexes with names like “Down the Clown, Big Bass Wheel and Skee Ball”.

50-4 To have a class B skill game license to operate cranes with stuffed animals and other prize-awarding devices, the industry will be subjected to an intrusive licensing process with criminal background checks and other “over the top” administrative procedures which is inconsistent with the types of prizes awarded. The industry will also have a “duty to update” which will result in added red tape and is excessive to operate prize-awarding devices.

50-5 & 11 The requirements to obtain a license are overwhelmingly restrictive for key employees and owners. The industry members aren’t casino operations. The manner in which applications can be revoked or licenses denied is too broad for a non-gaming industry. Having a gaming license denied or revoked by a governing body is a serious issue and non-gaming, Ohio, family entertainment companies shouldn’t be exposed to those risks that threaten their mere existence and their employees’ livelihoods.

50-10 The entire waiver process opens the door to inconsistent application of the rules and unfair business practices. The potential for unequal treatment under the law and competitive advantages to select companies will be an immediate by-product of the waiver process. The family entertainment industry operates equipment that will require waivers that may not be granted to other industries. There will be thousands of waiver requests, which will be expensive (and potentially cost prohibitive) especially at a $100 fee for each equipment request.

50-12 & 13 Due to significant revenue declines, the industry will be forced to significantly reduce the number of its employees, however it will be forced to retain extra payroll specifically to keep up with the burdensome record keeping. Being forced to remit revenue records on class B prize-awarding devices, like cranes, while having to keep track of each individual prize, the price paid for that prize, the location the prize was awarded etc is more than burdensome, it could actually put Ohio companies out of business. There are several thousand locations that will have to have this data tracked.

50-14 Allows the OCCC and its agents to randomly show up at Ohio family-owned businesses and demand access to records for operating class B prize-awarding machines. This is extremely excessive measure for a non-gaming industry. It grants considerable latitude to the Commission what they can do to Ohio businesses.

50-19 Forces businesses to keep onerous records of entry to the tens of thousands of skill game devices in Ohio. Our collectors, technicians and management can enter an individual device several times in one day trying to clean it, repair it, collect funds from it and replace parts. The paperwork would be immense and impossible to meet the requirements being demanded by the OCCC.
Seifert, Berena

From: Morrison, Andromeda
Sent: Wednesday, March 15, 2017 4:28 PM
To: Seifert, Berena
Subject: FW: Comments to Proposed Rules 3772-50-21 through 3772-50-25, Submitted on Behalf of Eclipse Compliance Testing
Attachments: 20170315144251181.pdf

-----Original Message-----
From: James Simon [mailto:jsimon@bdblaw.com]
Sent: Wednesday, March 15, 2017 3:02 PM
To: Morrison, Andromeda <Andromeda.Morrison@casinocontrol.ohio.gov>
Cc: Nick Farley <nickf@eclipsetesting.com>; 'Janice Farley' <janicef@eclipsetesting.com>
Subject: Comments to Proposed Rules 3772-50-21 through 3772-50-25, Submitted on Behalf of Eclipse Compliance Testing

Dear Ms. Morrison,

The undersigned and the law firm of Buckingham, Doolittle & Burroughs, LLC have the pleasure of representing Eclipse Compliance Testing and its owners, Nick and Janice Farley. I have attached our comments to the above-referenced rules for your and the Commission's review. Please acknowledge receipt of this email and please feel free to call or email me with any questions or should you want to discuss any of these comments in further detail.

Very truly yours,

Jim Simon

James S Simon
Partner
Buckingham, Doolittle & Burroughs, LLC
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ATTACHMENT C

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-----Original Message-----
From: copier-A104@bdblaw.com [mailto:copier-A104@bdblaw.com]
Sent: Wednesday, March 15, 2017 2:40 PM
To: James Simon
Subject: Message from "RNP0026737D3DF9"

This E-mail was sent from "RNP0026737D3DF9" (MP C4503).

Scan Date: 03.15.2017 14:40:23 (-0400)
Queries to: copier-A104@bdblaw.com
March 15, 2017

VIA EMAIL (Andromeda.Morrison@casinocontrol.ohio.gov)
Ms. Andromeda Morrison, Director of Skill Games
Ohio Casino Control Commission
10 West Broad Street, 6th Floor
Columbus, Ohio 43215

Re: Comments to Proposed Rules 3772-50-21 through 3772-50-25.

Dear Ms. Morrison,

The undersigned and the law firm of Buckingham, Doolittle & Burroughs, LLC have the pleasure of representing Eclipse Compliance Testing (“Eclipse”) and its owners, Nick and Janice Farley. We are aware of the comments that Eclipse submitted on January 5, 2017. This letter supplements those comments.

We appreciate the revisions which have been made to Proposed Rules 3772-50-23 (D) and (E) in order to attempt to respond to our prior comments and the deletion of Game Outcome item #4 in the former version of Proposed Rule 3772-50-24, Appendix A. Notwithstanding the Commission’s steps to fix the infirmities contained within Proposed Sections 3772-50-21 through 3772-50-25, these proposed rules continue to contain many problematic provisions to which I will respond below.

Further, I am in receipt of the Commission’s “position paper” released on March 7, 2017. We note the reference to the Commission’s consultation with Gaming Laboratories International, Inc. (“GLI”). We believe that the Commission’s reliance on GLI as an authority in the field of skill-based amusement machines (“SBAM”) is both misplaced and improper. GLI is known as an industry-leading, international consultant and contractor to both the lottery and casino segments of the gaming industry, both of which view SBAM as an unwelcome competitor. We also understand that substantially more of GLI’s revenue is derived from its work connected to the lottery and casino segments of the gaming industry than its work connected with the skill-based amusement game segment of this industry, creating a natural conflict for GLI and a natural bias on GLI’s part in favor of the lottery and casino segments of the gaming industry and against skill-based amusement machines. We believe that this bias, and the influence of the casino industry, has shown itself clearly in Proposed Rules 3772-50-21 through 3772-50-25, as these proposed rules are unduly restrictive and do not promote the growth of a skill-based amusement machine industry in Ohio.
Before commenting on specific provisions of Proposed Rules 3772-50-21 through 3772-50-25, I want to raise two significant constitutional infirmities in these proposed rules.

Proposed Rule 3772-50-23(D)

The most recent iteration of this proposed rule says that

"[a] certified independent skill-based amusement machine testing laboratory shall not testify at any administrative hearing or court proceeding against the commission with respect to any matter in which the commission has authority under Chapters 2915. or 3772. of the Revised Code and the rules adopted thereunder."

Thus, in order to be certified as an independent skill-based amusement machine testing laboratory ("ITL"), the tester must give up any ability to serve as an adverse fact or expert witness in matters involving the Commission – in essence, the rule prohibits an ITL from expressing its independent opinions on machine classification. Clearly, this proposed rule would violate the free speech rights of any ITL without any basis other than to undermine ITL’s independence by preventing them from disagreeing with the Commission in a public forum.

Further, this proposed rule would violate the freedom of contract for any ITL, such as Eclipse, which provides consulting and expert witness services. As the Commission is aware, the three (3) currently certified ITLs for gaming devices are also recognized experts in the field of game classification and offer expert witness and consultation services as part of their business offerings. Again, there is no significant or legitimate purpose for this restriction.

Our primary recommendation to the Commission would be to strike this overbroad and constitutionally-inform provision. However, if the Commission is unwilling to strike this provision, we recommend that the provision be limited as follows:

"A certified independent skill-based amusement machine testing laboratory shall not testify against the commission with regard to the classification of any skill-based amusement machine for which the commission has rendered a ruling."

Proposed Rule 3772-50-25(E)(4)

This proposed rule provides that a SBAM vendor seeking testing or testing evaluation services cannot engage

"more than one certified independent skill-based amusement machine testing laboratory to perform scientific testing and technical evaluation of any particular device, version of software, hardware, or other technology to be used in Ohio without prior written authorization from the commission, executive director of the commission, or his or her designee."
This proposed rule improperly eliminates competition among ITLs and unnecessarily restricts a vendor’s ability to use the services of different ITLs. For example, an ITL may not be responsive to a vendor’s business needs (such as timeframe, etc.), or an ITL’s cost structure may not meet a particular vendor’s needs. The proposed rule as written would mean that the vendor would basically be stuck with their original ITL despite these issues. Moreover, the proposed rule provides no objective criteria by which the Commission or its executive director may permit a variance from this rule. Thus it improperly vests absolute discretion on these matters within the Commission and its executive director.

This rule interferes with Eclipse’s and other ITLs’ constitutionally-protected freedom to pursue contracts. Further, this proposed rule interferes with vendors’ freedom to pursue contracts, as vendors most obviously stand to benefit from competition among testers.

Our primary recommendation to the Commission would be to strike this overbroad and constitutionally inform provision. However, if the Commission is unwilling to strike this provision, we recommend that the provision be limited as follows:

“Submit results from no more than one certified independent skill-based amusement machine testing laboratory to perform scientific testing and technical evaluation of any particular device, version of software, hardware, or other technology to be used in Ohio without prior written authorization from the commission, executive director of the commission, or his or her designee.”

In addition to the comments offered above, we provide the following additional comments:

**Proposed Rules 3772-50-21 and 3772-50-22.**

In general, these rules operate under the misguided assumption that an ITL recognized for testing gaming devices should not be automatically certified to test SBAMs and must be separately certified. There is no rational basis for such a dual track system, as testing both gaming devices and SBAMs require the same competencies.

Setting up parallel structures is inefficient, confusing and creates opportunities for inconsistency. It would also be unduly burdensome for ITLs. These proposed rules also appear to imply that the Commission does not want certain laboratories involved in testing SBAMs, and, consistent with the concerns regarding GLI expressed above, appears to target a favored lab for SBAM testing. It seems only logical that the Commission would rely upon its vetted and licensed ITLs for all forms of testing, whether gaming or SBAM, as both forms of testing require the same skills and capacities.

If the Commission is seeking additional revenue from ITLs, perhaps it should adjust its fees for licensing, but not limit the areas of testing. Therefore, we recommend that Sections 3772-50-21 (B) – (M) and Section 3772-50-22 be stricken in its entirety from the proposed rules.
Turning to the specific provisions of each rule, we comment further as follows:

- **Proposed Rule 3772-50-21(B)** states that an ITL recognized for testing gaming devices is not recognized for testing SBAM devices. This requirement imposes redundancy to ITLs that are currently certified to test casino gaming devices to endure a second investigation for certification to test SBAMs to the same requirements. Independent testing laboratories certified to test casino gaming devices are subjected to the requirements for an independent testing laboratory as outlined in Chapters 2915 and 3772, which are the exact same requirements for certification of an ITL to test SBAMs. Therefore, we recommend that Proposed Rule 3772-50-21 (B) be stricken in its entirety from the SBAM rules.

- **Proposed Rule 3772-50-21 (C)** re-enforces the statements made in 3772-50-21 (B). Therefore, we suggest that 3772-50-21 (C) be stricken in its entirety from the SBAM rules for the same reasons asserted previously with Proposed Rule 3772-50-21 (B).

- **Proposed Rule 3772-50-21 (D)** lists the requirements of an ITL. First, these requirements are redundant as they are the same requirements for an ITL to be certified to test casino gaming devices. Second, these requirements should be stricken as they are vague, ambiguous and subjective. Requirements for certification should be objective and define the parameters for acceptance. The requirements for an ITL to test SBAMs, as written in Rule 3772-50-21 (D), are not objective and do not define parameters for acceptance. All seven (7) enumerated requirements for competency and qualifications of an ITL are vague, ambiguous and subjective and do not define any criteria for acceptance. Therefore, as we believe that an ITL licensed to test gaming devices should automatically be qualified to test SBAMs, we suggest that Proposed Rule 3772-50-21 (D) be stricken in its entirety for vagueness.

- **Proposed Rule 3772-50-21 (E)** should be stricken in its entirety as redundant. This rule merely refers to Proposed Rules 3772-50-22 and 3772-50-23.

- **Proposed Rule 3772-50-21 (F)** should be stricken as redundant. The information, documents and materials to be supplied by an ITL for certification to test SBAMs would have been provided to the Commission when the ITL underwent certification to test casino gaming devices, as the requirements for an ITL to test SBAMs are identical to the requirements for an ITL to test casino gaming devices.

- **Proposed Rule 3772-50-21 (G)** should be stricken as redundant and unduly burdensome. An ITL certified by the Commission to test casino gaming devices would have already paid a fee for certification to the exact same requirements for an ITL to test SBAMs.

- **Proposed Rule 3772-50-21 (H)** should be stricken as redundant. An ITL’s certification to test casino gaming devices expires three years after certification, the same as an ITL certified to test SBAMs. Therefore, there is no need to maintain a separate license for an ITL to test SBAMs from an ITL that is already certified to test casino gaming devices.
• **Proposed Rule 3772-50-21 (I)** should be stricken as redundant. Currently, an ITL is required to request renewal of its certification to test casino gaming devices at least 90 days in advance of expiration. Therefore, requiring an ITL to submit two likely identical applications to the same agency at the same time is not only redundant, but unduly burdensome.

• **Proposed Rule 3772-50-21 (J)** should be stricken as redundant and unduly burdensome. An ITL that has been certified by the Commission to test casino gaming devices would have been charged for costs associated with its certification. To require an ITL that is already authorized to test casino gaming devices to incur additional costs for likely the same investigation is unnecessary and burdensome.

• **Proposed Rule 3772-50-21 (K)** should be stricken as redundant. Currently, an ITL is required to undergo an investigation every three years to gain certification to test casino gaming devices. Therefore, requiring an ITL to submit two likely identical applications to the same agency at the same time in order to undergo what is likely the same investigation is not only redundant, but unduly burdensome.

• **Proposed Rule 3772-50-21 (L)** should be stricken as redundant. An ITL certified to test casino gaming devices is subject to the Commission reopening a certification investigation or adjudication at any time. Therefore, reopening a certification or adjudication for an ITL test SBAMs is redundant and unnecessary.

• **Proposed Rule 3772-50-21 (M)** should be stricken as redundant. It is understood that the certification of an ITL to test casino gaming devices is not transferrable, and any change in control subjects the ITL to undergo re-certification before the transfer of control. Therefore, this requirement is redundant and unnecessary.

• **Proposed Rule 3772-50-22 (A)** should be stricken as redundant. An ITL certified to test casino gaming devices is required to obtain and maintain “Professional Liability (Errors and Omissions) Insurance” in an amount of $1,000,000. Therefore, requiring an ITL that is already certified to test casino gaming devices to maintain such insurance in order to gain certification to test SBAMs is redundant.

• **Proposed Rule 3772-50-22 (B)** should be stricken as vague, ambiguous and subjective. To require an ITL to ensure that testing and support procedures are performed consistently at all locations assumes that an ITL has multiple locations, which suggests that the Commission has already determined the entities that it desires to certify as ITLs. Further, it is over-reaching in that it does not specify that such testing and support relate to Ohio SBAMs. Therefore, based upon vagueness it should be stricken as the requirements for an ITL to be certified to test casino gaming devices covers a laboratory’s requirement for consistency.
• **Proposed Rule 3772-50-22 (C)** should be stricken as redundant. An ITL certified to test casino gaming devices is required to maintain accreditation from a national accreditation body to ISO/IEC 17025 and ISO/IEC 17020. Therefore, requiring an ITL that is already certified to test casino gaming devices to maintain such accreditation to maintain certification to test SBAMs is redundant.

• **Proposed Rule 3772-50-22 (D)** should be stricken as vague, ambiguous and subjective. That an ITL should make available ALL policies, procedures and records is over-reaching in that it does not specify that such policies, procedures and records relate to Ohio SBAMs. Therefore, based upon vagueness it should be stricken as the requirements for an ITL to be certified to test casino gaming devices covers an ITL’s requirement for providing such information.

• **Proposed Rule 3772-50-22 (E)** should be stricken as redundant. The requirement to maintain a Quality Manager on staff is a requirement of the ISO standards (ISO/IEC 17025 Section 4.1.5 (i)). Therefore, such a requirement of the Commission is redundant, as a certified ITL is required to maintain ISO accreditation.

• **Proposed Rule 3772-50-22 (F)** should be stricken as vague, ambiguous and subjective. That an ITL should make available ALL test methods, standards, forms and other relevant documents is over-reaching in that it does not specify that such test methods, standards, forms and other relevant documents relate to Ohio SBAMs. Therefore, based upon vagueness it should be stricken as the requirements for an ITL to be certified to test casino gaming devices covers a laboratory’s requirement for providing such information. Further, this requirement is redundant, as an ISO-accredited ITL is required to maintain such information as a requirement for its ISO accreditation (ISO/IEC 17025 Section 5.4).

• **Proposed Rule 3772-50-22 (G)** should be stricken as vague, ambiguous and subjective. That an ITL should make available ALL inventory of equipment and authorized versions of software is over-reaching in that it does not specify that such inventory of equipment and authorized versions of software relate to Ohio SBAMs. Therefore, based upon vagueness it should be stricken as the requirements for an ITL to be certified to test casino gaming devices covers a laboratory’s requirement for providing such information. Further, this requirement is redundant, as an ISO-accredited ITL is required to maintain such information as a requirement for its ISO accreditation (ISO/IEC 17025 Section 5.5.5).

• **Proposed Rule 3772-50-22 (H)** should be stricken as vague, ambiguous and subjective. That an ITL should make available ALL records for testing equipment requiring calibration is over-reaching in that it does not specify that such records for testing equipment requiring calibration relate to Ohio SBAMs. Therefore, based upon vagueness it should be stricken as the requirements for an ITL to be certified to test casino gaming devices covers a laboratory’s requirement for providing such information. Further, this requirement is redundant, as an ISO-accredited ITL is required to maintain such information as a requirement for its ISO accreditation (ISO/IEC 17025 Section 5.5.5).
- **Proposed Rule 3772-50-22 (I)** should be stricken as redundant. An ITL certified to test casino gaming devices is required to assist the Commission in investigations when requested. Therefore, requiring an ITL that is already certified to test casino gaming devices to assist the Commission in investigations when requested in order to gain certification to test SBAMs is redundant.

- **Proposed Rule 3772-50-22 (J)** should be stricken as redundant. An ITL certified to test casino gaming devices is required to assist and train the Commission on the compliance and accounting/audit practices that should be used. Therefore, requiring an ITL that is already certified to test casino gaming devices to assist and train the Commission on the compliance and accounting/audit practices that should be used in order to gain certification to test SBAMs is redundant.

- **Proposed Rule 3772-50-22 (K)** should be stricken as redundant. An ITL certified to test casino gaming devices is required to have internal policies and controls that prohibit any one individual from having the sole responsibility for both review and approval of devices or technologies. Therefore, requiring an ITL that is already certified to test casino gaming devices to have internal policies and controls that prohibit any one individual from having the sole responsibility for both review and approval of devices or technologies in order to gain certification to test SBAMs is redundant.

- **Proposed Rule 3772-50-22 (L)** should be stricken as redundant. An ITL certified to test casino gaming devices is required to have physical security at each laboratory facility, including, but not limited to, surveillance systems and alarms, to minimize the risk that confidential information is misappropriated. Therefore, requiring an ITL that is already certified to test casino gaming devices to have physical security at each laboratory facility, including, but not limited to, surveillance systems and alarms, to minimize the risk that confidential information is misappropriated in order to gain certification to test SBAMs is redundant.

- **Proposed Rule 3772-50-22 (M)** should be stricken as redundant. An ITL certified to test casino gaming devices is required to ensure that all software media used in devices or technologies, along with the documentation and source code that is supplied on storage media, is labeled and archived in a safe or other locked, fire-proof, and monitored enclosure that shall only be accessible to approved laboratory personnel. Therefore, requiring an ITL that is already certified to test casino gaming devices to ensure that all software media used in devices or technologies, along with the documentation and source code that is supplied on storage media, is labeled and archived in a safe or other locked, fire-proof, and monitored enclosure that shall only be accessible to approved laboratory personnel in order to gain certification to test SBAMs is redundant.

- **Proposed Rule 3772-50-22 (N)** should be stricken as redundant. An ITL certified to test casino gaming devices is required to maintain all records about submissions for a minimum of three years. Therefore, requiring an ITL that is already certified to test
casino gaming devices to maintain all records about submissions for a minimum of three years in order to gain certification to test SBAMs is redundant.

- **Proposed Rule 3772-50-22 (O)** should be stricken as redundant. An ITL certified to test casino gaming devices is required to agree to not subcontract testing of any devices or technologies to be used in SBAM gaming without the prior written approval of the Commission. Therefore, requiring an ITL that is already certified to test casino gaming devices to agree to not subcontract testing of any devices or technologies to be used in SBAM gaming without the prior written approval of the Commission in order to gain certification to test SBAMs is redundant.

- **Proposed Rule 3772-50-22 (P)** should be stricken as redundant. An ITL certified to test casino gaming devices is required to maintain an electronic database containing testing data, reports, and related materials and provide access to the Commission. Data, reports, and related materials shall be provided in a format and through a mechanism approved by the Commission. Therefore, requiring an ITL that is already certified to test casino gaming devices to maintain an electronic database containing testing data, reports, and related materials and provide access to the Commission, with such data, reports, and related materials being provided in a format and through a mechanism approved by the Commission in order to gain certification to test SBAMs is redundant.

- **Proposed Rule 3772-50-22 (Q)** should be stricken as redundant. An ITL certified to test casino gaming devices is required to maintain any other records, information, or conditions the Commission determines is necessary. Therefore, requiring an ITL that is already certified to test casino gaming devices to maintain any other records, information, or conditions the Commission determines is necessary in order to gain certification to test SBAMs is redundant.

- **Proposed Rule 3772-50-22 (R)** should be stricken as redundant. An ITL certified to test casino gaming devices is required to provide immediate notification to the Commission of any breach or failure to meet any condition of certification and any additional condition imposed by the Commission. Therefore, requiring an ITL that is already certified to test casino gaming devices to provide immediate notification to the Commission of any breach or failure to meet any condition of certification and any additional condition imposed by the Commission in order to gain certification to test SBAMs is redundant.

**Proposed Rule 3772-50-23** should be stricken as redundant, vague, ambiguous and/or subjective. Proposed Rule 3772-50-23 restates the requirements of an ITL that is certified to test casino gaming devices and adds specific requirements that are not limited to SBAMs, and are thus over-reaching with respect to ITLs that already meet the requirements to be certified as an ITL to test casino gaming devices, but desire to also test SBAMs. These overbroad and over-reaching requirements restrict the trade and legal business practices of a truly independent ITL. More specifically:
• **Proposed Rule 3772-50-23 (A)** should be stricken as redundant. An ITL certified to test casino gaming devices is required to determine whether such devices comply with Chapters 2915. and 3772. of the Revised Code and the rules adopted thereunder. Therefore, requiring an ITL that is already certified to test casino gaming devices to determine whether such devices comply with Chapters 2915. and 3772. of the Revised Code and the rules adopted thereunder in order to gain certification to test SBAMs is redundant.

• **Proposed Rule 3772-50-23 (B)** should be stricken as redundant. An ITL certified to test casino gaming devices is required to provide a report to the Commission, in a format approved by the Commission, of its test results for such devices, and no such device shall be considered approved for use in Ohio until approved by the Commission. Therefore, requiring an ITL that is already certified to test casino gaming devices to provide a report to the Commission, in a format approved by the Commission, of its test results for such devices, and further providing that no such device shall be considered approved for use in Ohio until approved by the Commission in order to gain certification to test SBAMs is redundant.

• **Proposed Rule 3772-50-23 (C)** should be stricken as vague, ambiguous and subjective. That an ITL should testify at any administrative hearing or court proceeding as requested by the Commission is over-reaching in that it does not specify that such testimony relate to Ohio SBAMs. Further, it does not offer any remuneration to an ITL for providing its expertise for the benefit of the Commission. Additionally, it inhibits the independent opinion of an ITL, as it is presumed that the testimony of the ITL will imply favor toward the Commission in order to maintain the ITL’s certification with the Commission. Therefore, based upon vagueness and restraint of trade it should be stricken.

• Our comments to **Proposed Rule 3772-50-23 (D)** are included earlier in this letter.

• **Proposed Rule 3772-50-23 (E).** While we appreciate the revisions to limit 3772-50-23(E), this Proposed Rule remains overly broad and ambiguous. As written, they are all-encompassing of an ITL’s testing practices for all jurisdictions and product testing. Further, an ITL certified to test casino gaming devices is required to annually review each of its employees, including criminal background checks, updated background forms, credits checks, and employee interviews. Therefore, requiring an ITL that is already certified to test casino gaming devices to annually review each of its employees, including criminal background checks, updated background forms, credits checks, and employee interviews in order to gain certification to test SBAMs is redundant. If these requirements are to remain in the rules they should be limited to SBAMs intended for use in the State of Ohio under Sections 2915 and 3772.

• **Proposed Rule 3772-50-23 (F)** should be stricken as vague, ambiguous and subjective. That an ITL should take corrective action whenever any nonconforming work is discovered, laboratory procedures are not followed, procedures are required to be changed, or other unsatisfactory conditions exist, and shall notify the Commission of any
of the foregoing issues and the corrective action taken is over-reaching in that it does not specify that such corrective actions pertain to Ohio SBAMs. Therefore, based upon vagueness it should be stricken. Additionally, as the requirements for an ITL to be certified to test casino gaming devices covers an ITL’s requirement for taking such action and providing such information to the Commission, requiring such in order to gain certification to test SBAMs is redundant. Further, this requirement is redundant, as an ISO-accredited ITL is required to take such action and maintain such information as a requirement for its ISO accreditation (ISO/IEC 17025 Section 4.9).

- **Proposed Rule 3772-50-23 (G) should be stricken as vague, ambiguous and subjective.** That an ITL should file and maintain an internal report of the issues described in paragraph (F) of this rule, describing why the problem occurred, what was done to resolve the problem, and how the problem will be prevented in the future, and that such report shall be made available to the Commission upon request is over-reaching in that it does not specify that such reports pertain to Ohio SBAMs. Therefore, based upon vagueness it should be stricken. Additionally, as the requirements for an ITL to be certified to test casino gaming devices covers an ITL’s requirement for maintaining such reports and providing such information to the Commission in order to gain certification to test SBAMs is redundant. Further, this requirement is redundant, as an ISO-accredited ITL is required to maintain such information as a requirement for its ISO accreditation (ISO/IEC 17025 Section 4.11).

- **Proposed Rule 3772-50-23 (H) should be stricken as vague, ambiguous and subjective.** That an ITL should establish and maintain a training program for its employees to ensure that the employees can adequately review skill-based amusement machine devices and new technologies in accordance with Chapters 2915. and 3772. of the Revised Code and the rules adopted thereunder, and that training records shall be maintained for all employees and made available to the Commission upon request is over-reaching in that it does not specify that such records pertain to Ohio SBAMs. Therefore, based upon vagueness it should be stricken. Additionally, as the requirements for an ITL to be certified to test casino gaming devices covers a laboratory’s requirement to establish and maintain a training program for its employees to ensure that the employees can adequately review devices and new technologies in accordance with Chapters 2915. and 3772. of the Revised Code and the rules adopted thereunder, and that training records be maintained for all employees and made available to the Commission in order to gain certification to test SBAMs is redundant. Further, this requirement is redundant, as an ISO accredited ITL is required to maintain such information as a requirement for its ISO accreditation (ISO/IEC 17025 Section 5.2.2).

- **Proposed Rule 3772-50-23 (I) should be stricken as vague, ambiguous and subjective.** That an ITL should test and verify that all testing equipment and software used internally is suitable for use, and that internal policies shall be developed by the ITL to verify that such equipment and software used by the ITL will perform as needed; and that the ITL shall maintain records of test cases involving the validation of equipment, software, and methods, and that all testing performed by the ITL shall be traceable to a test method that
has been suitably validated is over-reaching in that it does not specify that such verification and records pertain to Ohio SBAMs. Therefore, based upon vagueness it should be stricken. Additionally, as the requirements for an ITL to be certified to test casino gaming devices covers an ITL’s requirement to test and verify that all testing equipment and software used internally is suitable for use, and that internal policies shall be developed by the ITL to verify that such equipment and software used by the ITL will perform as needed; and that the ITL shall maintain records of test cases involving the validation of equipment, software, and methods, and that all testing performed by the ITL shall be traceable to a test method that has been suitably validated in order to gain certification to test SBAMs is redundant. Further, this requirement is redundant, as an ISO accredited ITL is required to perform such verification and maintain such information as a requirement for its ISO accreditation (ISO/IEC 17025 Section 5.4).

Proposed Rule 3772-50-24 Appendix A Game Outcome Item 2. The requirement that “At no point can a player be awarded (even if that award is not obtained until subsequent games or plays have occurred) an amount over $10.00 as a result of a game or play” appears to be inconsistent with R.C. Chapter 2915 and existing Ohio case law concerning skill games used in Ohio. We recommend that this proposed rule be stricken in its entirety. We note that a similar provision was initially struck from Proposed Rule 3772-50-01.

Proposed Rule 3772-50-24 Appendix A Game Outcome Item 5. This requirement that “The player shall have the ability to achieve every advertised prize on each paid game” is unnecessary, arbitrary and capricious. This rule will eliminate games that are currently operating legally in the State of Ohio. Many games offered to the public are designed to offer only a specific prize, or a subset of available prizes for a successful outcome. Not all prizes are available to be awarded at all times on many legal games currently in use in Ohio.

Proposed Rule 3772-50-24 Appendix A Additional Requirements For Type-B Skill-Based Amusement Machines Item 4. This requirement that “Rolling or spinning reels or wheels shall not be simulated, displayed, or utilized in any facet of the game” is arbitrary and capricious. There is no rational basis for this requirement. Accordingly, it should be stricken in its entirety.

Proposed Rule 3772-50-25 (K). This proposed rule states that “Notwithstanding any of the other requirements under this rule, a skill-based amusement machine vendor shall seek approval of a type-B or type-C skill-based amusement machine pursuant to this rule within ninety days of the issuance of its first skill-based amusement machine vendor license.” The ninety day requirement is arbitrary and capricious and should be stricken. This proposed rule should be revised as follows: “Notwithstanding any of the other requirements under this rule, a skill-based amusement machine vendor shall seek approval of a type-B or type-C skill-based amusement machine pursuant to this rule within ninety days of the issuance of its first skill-based amusement machine vendor license prior to operating any skill-based amusement machine.”

We appreciate your and the Commission’s time and attention in reviewing these comments. I would be happy to talk with you and any other appropriate parties within the Commission by phone or in person to discuss any of the comments provided herein in further detail.
ATTACHMENT C

Please call or email to discuss further.

Very truly yours,

[Signature]

James S. Simon

cc: Mr. and Mrs. Nick Farley, Eclipse Compliance Testing (via email).
I am disappointed. In my opinion the revision is simply a house keeping activity from the Ohio Casino Control Commission to clarify the laws. It’s not going to encourage new business and employment for the state.

Thx

Howard,

The prohibition on cash as prizes is contained within a statute, R.C. 2915.01, that can only be altered by the Ohio General Assembly. You may wish to contact your senator and representative in the General Assembly regarding your concern.

I thank you for providing feedback.

Andromeda

Andromeda Morrison
Director of Skill Games
Ohio Casino Control Commission
(614) 387-5616

I am not interested without the ability to pay out cash as a prize.
I suggest the Casino Control Commission allow cash as a prize. Otherwise it’s impossible for any business to make money. The casinos are able to pay out cash why can’t the skill game rooms? It’s a rigged system and frankly not fair.

Thank You

Howard,

Thank you for your inquiry. The statute that prohibits skill-based amusement machines from awarding cash as a prize is still in place so cash would not be permissible under the proposed rules. I am not a tax expert, but skill-based amusement machine businesses are subject to state and local level taxes, just like other businesses that operate in the state. Local governments also retain the ability to create zoning and other ordinances pertaining to businesses that operate in their jurisdictions. As I am not familiar with these issues, I would encourage you to consult with legal counsel who can provide you with appropriate advice.

Respectfully yours,
Andromeda

Hello:

I had a skill room a few years ago. At that time I was unable to pay out cash. Prizes and other payments did not work well. With the new rules is CASH ALLOWED AS A PAYOUT?

I would prefer a system where the employees do not pay out the cash. To many problems with employee theft.

Could counties, cites, villages of Ohio tax the skill rooms?

Could counties, cities, Villages of Ohio create ordinances, or laws to limit or disallow skill rooms?

The market could become saturated quickly with former internet café owners desiring to get back into the business. Is that a concern of the casino commission?

Thx

Howard
NP | new plaza management co.
"Our business is to give your business a home"

Howard Shafron

Corporate Office:
9425 Olde 8 Road, Unit 2
Northfield, Ohio 44067
m: 216-214-3806 f: 330-908-0763
e: howard@shafrongroup.com
Comment to add to 21-25

From: Cincione, Karen A. [mailto:kacincione@vorysadvisors.com]
Sent: Wednesday, March 15, 2017 5:18 PM
To: Morrison, Andromeda <Andromeda.Morrison@casinocontrol.ohio.gov>
Cc: Jay Tobin <Jay_Tobin@daveandbusters.com>; Kevin Bachus <Kevin_Bachus@daveandbusters.com>; Pete Stearns <Pete_Stearns@daveandbusters.com>; Niehaus, Thomas E. <teniehaus@vorysadvisors.com>
Subject: Game Outcome proposal

Andromeda – thank you again for our meeting Friday. I think it was very helpful and narrowed the issues of concern to Dave & Buster’s regarding the technical specifications in the draft Appendix. I wanted to provide you with a proposal from Dave & Buster’s to address both its and the Commission’s concerns regarding autonomous alteration. Dave & Buster’s proposes that the Commission amend Appendix A (Technical Standards): Game Outcomes by combining game outcomes paragraph numbers (4) and (6) so as to delete (6) and revise (4) to read as follows:

(4) Neither the use of an RNG, whether used prior to or during play, nor the autonomous alteration of game-related parameters based on prior play,

shall prevent a player from obtaining any game outcome through the exercise of the requisite skill.

Dave & Buster’s is still considering approaches to Game Outcomes paragraph number 3. I will be in touch again very soon on this provision. Thank you,

Karen
Seifert, Berena

From: Morrison, Andromeda
Sent: Thursday, March 16, 2017 9:54 AM
To: Seifert, Berena
Subject: FW: Testing lab provision

From: Cincione, Karen A. [mailto:kacincione@vorysadvisors.com]
Sent: Wednesday, March 15, 2017 5:20 PM
To: Morrison, Andromeda <Andromeda.Morrison@casinocontrol.ohio.gov>
Cc: Niehaus, Thomas E. <teniehaus@vorysadvisors.com>; Jay Tobin <Jay_Tobin@daveandbusters.com>; Kevin Bachus <Kevin_Bachus@daveandbusters.com>; Pete Stearns <Pete_Stearns@daveandbusters.com>
Subject: RE: Testing lab provision

Thank you Andromeda. The revised language addresses Dave & Buster’s concern.

Karen

Karen A. Cincione, Principal
Vorys Advisors LLC
52 East Gay Street | Columbus, Ohio 43215
Direct: 614.464.6201 | Fax: 614.719-5110 | Email: kacincione@vorysadvisors.com
www.vorysadvisors.com

From: Andromeda.Morrison@casinocontrol.ohio.gov [mailto:Andromeda.Morrison@casinocontrol.ohio.gov]
Sent: Monday, March 13, 2017 12:56 PM
To: Cincione, Karen A.
Cc: Niehaus, Thomas E.
Subject: Testing lab provision

Karen,

I hope you and your client found the discussion Friday to be beneficial. I am looking forward to the language revisions that Dave and Busters will put forward to help us move together in the right direction. In the meantime, I have been contemplating one of the issues discussed and wanted to get your thoughts. As I mentioned on the phone, one of our concerns is with certain members of the industry using multiple labs to try to create conflict and maintaining the Commission’s relationship with the labs as our scientific expert. It was never our intention that any party be precluded from using information submitted to the Commission in the course of a hearing, which I have tried to capture below. I also wanted to let you know that the Commission has not ignored or disapproved a game that a lab has submitted as meeting standards as we rely on the labs, as our technical expert, to provide the factual basis for our decision. Thank you for your consideration of the language below.

Andromeda
(D) A certified independent skill-based amusement machine testing laboratory shall not testify at any administrative hearing or court proceeding against the commission with respect to any matter in which the commission has authority under Chapters 2915. or 3772. of the Revised Code and the rules adopted thereunder. Nothing in this rule shall prohibit the use of a certified independent skill-based amusement machine laboratory report submitted to the commission as an exhibit by any party to an administrative hearing or court proceeding.

Andromeda Morrison  
Director of Skill Games  
Ohio Casino Control Commission  
(614) 387-5616

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Andromeda,

With your draft regs, you have certainly accomplished the task which you set out to complete.

I wish you well in completing the project and all your future endeavors!

Sincerely,

Kevin

Kevin B. Morse
3506 NE Greenville Blvd.
Greenville, NC  27834

Cell: 336.508.6464

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ATTACHMENT C

Seifert, Berena

From: Morrison, Andromeda
Sent: Friday, March 17, 2017 12:40 PM
To: Seifert, Berena
Subject: FW: Skill Game Rules
Attachments: Ltr A Morrison CCC.pdf

Please add to the rule comments and also print a few copies to add to the stakeholder packages

From: Luther Liggett [mailto:Luther@grafflaw.com]
Sent: Friday, March 17, 2017 12:06 PM
To: Morrison, Andromeda <Andromeda.Morrison@casinocontrol.ohio.gov>
Subject: Skill Game Rules

Andromeda:

Please find attached my letter on the current set of Skill Game rules, hard copy in the mail.
Thank you,
Luther

Luther L. Liggett, Jr.
Of Counsel
Graff & McGovern, LPA
604 E. Rich Street
Columbus OH 43215

614-228-5800 ext. 6 office
614-561-2892 mobile
Luther@GraffLaw.com
https://www.graffmcgovern.com/

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March 17, 2017

BY E-MAIL & U.S. MAIL
Andromeda Morrison, Esq., Director Skill Games
Casino Control Commission
10 West Broad Street, 6th Floor
Columbus, OH 43215

Dear Director Morrison:

I write on behalf of our client with observations and thoughts about the latest version of proposed administrative rules for Skill-Based Amusement Gaming.

• **OAC 3772-50-24, Standards, Appendix A, Game Accounting #1:** “A credit meter may only be increased by additional currency inserted into a skill-based amusement machine (prize value may not increase a credit meter).”

1. No statutory authority for this restriction exists.
2. No machine or software on the market today provides this limitation. This cannot be audited or managed in any meaningful way.
3. This requirement will terminate any and all skill-based business models, leaving only illegitimate operations. No legislative intent supports terminating this state’s skill-based industry.

• **OAC 3772-50-24, Standards, Appendix A, Game Outcome #3:** “Game outcome shall be solely dependent upon a player’s skill.”

1. No statutory authority for this restriction exists.
2. This restriction to “solely” is contrary to long-standing case precedent, and just insures litigation over the concept.

The central issue is whether these devices have an outcome determined largely or wholly by chance.*** Webster’s Dictionary defines "largely" as "mostly" and "primarily," and "wholly" as "completely" or "solely." *Ohio Vending Operators Group v. Department of Liquor Control*, 10th Dist. Franklin, 87-LW-2282, 87AP-64 (Aug. 13, 1987).

A device such as here in evidence offers opportunity to play a game, primarily one of skill, with little element of mechanical chance and so long as the device is not used for...
gambling purposes, it is not a gambling device per se merely because the player may win the right to play a free game. *Cavalier v. Board of Liquor Control*, 119 N.E.2d 131 (Franklin C.P. 1954).

But the real test is whether chance is the determining element in the outcome of the game, and not whether the game contains elements of chance or skill. *** But if skill, judgment, practice or adroitness is the determining element in the outcome of the game, then it is a game of skill. *** Games of skill are distinguished from games of chance in that the latter are games dependent upon chance or luck, and in which adroitness has no office at all." *Stubbs v. Dick*, 89 N.E.2d 480 (Mercer C.P. 1949).

- **OAC 3772-50-01, Definitions, (W)(2):** “The merchandise prize is not a card for the purchase of gasoline;

This provision simply violates state law. R.C. 2915.01(UU)(1)(d) “A card for the purchase of gasoline is a redeemable voucher…”

- **OAC 3772-50-19, Duties of Type-C Operators, (A)(2), Prizes.**

Maintaining records of “quantity” of a thousand, small, low-value prizes is impossible. Consider a kid’s rubber ball or plastic ring. There needs to be a materiality test or practical “safe harbor” here.

- **OAC 3772-50-19, Duties of Type-C Operators, (E)(3)-(6), Prizes, Physical inventory.**

1. Eliminates vouchers and coupons otherwise legal in statute. This changes the business operation without preventing any illegal activity.

2. “Available to redeem at the time of play” would require a warehouse, as current practice allows such a broad variety including catalogues for selection, such as Sam’s Club.

3. This rule penalizes the customer by limiting the results.

4. Prohibiting catalogues, brochures, signs, website is overly-broad and without any legal basis, and arbitrary as to rationale.

Thank you for your consideration.

Sincerely,

Luther L. Liggett, Jr.
Ms. Andromeda Morrison  
Director of Skill Games  
Ohio Casino Control Commission  
10 W. Broad St – 6th Floor  
Columbus, OH 43215  

Dear Ms. Morrison:

The Amusement and Music Operators Association (AMOA) is a 69-year-old national trade association representing professional operators, distributors, manufacturers and suppliers in the fun and entertainment venue industry. Our membership operates wholesome, family-friendly experiences that are present in virtually every community across the country.

We are writing you today regarding regulations the Ohio Casino Control Commission is preparing to adopt applying to Skill Based Amusement Machines.

AMOA does not favor rules and regulations that are hostile or impede good business practices within our industry like the ones being proposed by the Ohio Casino Control Commission. AMOA and our members in Ohio understand and support the philosophy of fair play and the entertainment it provides when customers win prizes in family entertainment centers and other family-friendly venues. The amusement industry in Ohio is extremely successful in self-regulating to ensure there is a balance between reasonable business profitability and fair play for customers.

It is our hope the Ohio Casino Control Commission will work together with the Ohio Coin Machine Association, an established 43-year-old Ohio trade association, moving forward in the implementation of these regulations to ensure family entertainment is not unfairly impacted.

Should you require any additional information, please feel free to contact the AMOA office.

Thank you.

Respectfully,

Lori Schneider  
Executive Vice President

380 Terra Cotta Road, Suite F, Crystal Lake, IL 800-937-2662 fax 815-893-6248 info@amoa.com www.amoa.com
March 31, 2017

Ms. Andromeda Morrison  
Director of Skill Games  
Ohio Casino Control Commission  
10 West Broad Street, Columbus, OH  
6th Floor  
Columbus, Ohio 43215

Dear Ms. Morrison,

I'm writing you today regarding regulations the Ohio Casino Control Commission is preparing to adopt applying to Pay-for-Play Amusement Games. I was first made aware of these regulations the week of March 12 during the Amusement Expo International – an annual industry trade show.

First, some background regarding who I am. My name is Peter Gustafson and I am the Executive Vice President for the American Amusement Machine Association – a 38 year-old trade association representing manufacturers, distributors, suppliers and family entertainment center owner/operators in the fun and entertainment venue industry. Our membership creates, distributes, and operates wholesome, family-friendly experiences present in virtually every community across the country.

I'm proud to share with you we're applying the final touches to AAMA's Fair Play Pledge. The Fair Play Pledge is a code of conduct all AAMA members will sign declaring the games they manufacture, distribute and operate ensure an opportunity exists that allows a player(s) to win by the application of skill such that the player(s) will have sufficient time to identify, recognize and react with every game play. By signing the Fair Play Pledge, AAMA member companies are taking a stand in support of our players – they can win when they play one of our games.

I'm concerned with the proposed regulations put forth by the commission. If adopted, I believe there will be significant and negative impacts to our member companies and the playing public. I appreciate the need to "rein in" bad actors but I believe the commissions language goes too far. If these regulations are adopted, they will have a profoundly punitive impact on family entertainment centers, street locations with amusement equipment, operators, distributors and manufacturers.

I would be happy to make myself and the leadership of AAMA available to you as a resource in the crafting of these regulations.

I believe there is much common ground between what the commission is attempting to do and the commitments to fair play our members are voluntarily adopting. It is imperative the commission get a full and unvarnished understanding of the ramifications these regulations – as written – could have if adopted.

Should you require any additional information, please contact me directly at (847) 847-2151. The leadership at AAMA welcomes the opportunity to have a conversation and expand on the above.

Respectfully,

Peter Gustafson  
Executive Vice President  
American Amusement Machine Association
March 31, 2017

Ms. Andromeda Morrison
Director of Skill Games
Ohio Casino Control Commission
10 West Broad Street, Columbus, OH
6th Floor
Columbus, Ohio 43215

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Respectfully,

Peter Gustafson
Executive Vice President
American Amusement Machine Association

American Amusement Machine Association
450 E. Higgins Road, Suite 201 | Elk Grove Village, IL 60007
P: +1(847) 290-9088 | F: +1(847) 290-9121
www.coin-op.org
Ms. Andromeda Morrison  
Director of Skill Games  
Ohio Casino Control Commission  
10 W. Broad St – 6th Floor  
Columbus, OH 43215  

Dear Ms. Morrison:  

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It is our hope the Ohio Casino Control Commission will work together with the Ohio Coin Machine Association, an established 43-year-old Ohio trade association, moving forward in the implementation of these regulations to ensure family entertainment is not unfairly impacted.

Should you require any additional information, please feel free to contact the AMOA office.
Thank you.

Respectfully,

[Signature]

Lori Schneider  
Executive Vice President

380 Terra Cotta Road, Suite F, Crystal Lake, IL 800-937-2662  fax 815-893-6248 info@amoacom  www.amoa.com
Andromeda – As a follow-up to prior comments after the meeting on March 10, 2017 between representatives from the Ohio Casino Control Commission and Dave & Buster’s, Dave & Buster’s proposes the following alternative to Appendix A Game Outcome Number 3:

3. The outcome of the game must be controlled solely by the player’s application of the requisite skill, with no material element of chance inherent in the game, and must be based solely on the player skillfully achieving the object of the game or on the player’s score.

Please let me know if you have any questions or would like to discuss. Thank you for your consideration.

Karen

Karen A. Cincione, Principal
Vorys Advisors LLC
52 East Gay Street | Columbus, Ohio 43215
Direct: 614.464.6201 | Fax: 614.719-5110 | Email: kacincione@vorysadvosiors.com
www.vorysadvosiors.com

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Andromeda:

Thank you for considering Dave & Buster’s feedback as the Commission further revised the draft Skill Game Testing and Standards Rules. Dave & Buster’s is comfortable with most of the revisions and offers the following comments regarding provisions of continuing concern:

Appendix to Rule 50-24, Game Rules 1 – Dave & Buster’s questions why “readily” was changed to “immediately.” “Readily” seems reasonable and is a preferable standard.

Rule 50-25 (C) – Dave & Buster’s appreciates the addition of the reference to “reasonable time.” However, to make this provision more meaningful and effective, we further request that the preceding “may” be changed to “shall”, so that the phrase will read, “...the Commission shall, within a reasonable time....”

Rule 50-25 – Dave & Buster’s suggests that this rule address confidentiality of requests for game approval and accompanying materials in situations where a vendor is seeking approval of a brand new game to be used solely by one company (such as, Dave & Buster’s develops a game solely for its use.) This might be accomplished by adding a new paragraph between (J) and (K) to read:

The Commission shall treat as confidential any application for approval by a skill-based amusement vendor that contains proprietary trade secret information, as identified by a vendor, including certifications and supporting materials and/or test results and reports, regarding a game that is not for sale to the public and will only be available at businesses owned by a single company. In addition, the Casino Control Commission shall not disclose its approval of such a game publicly until the date specified by the skill-based amusement vendor in its application, and the skill-based amusement vendor shall not advertise or make such a game available until after both the Commission’s approval and the date specified in the application.

Please let me know if you would like to talk about any of these recommendations. Thank you for your consideration.

Karen

Karen A. Cincione, Principal
Vorys Advisors LLC
52 East Gay Street | Columbus, Ohio 43215
Direct: 614.464.6201 | Fax: 614.719.5110 | Email: kacincione@vorysadvisors.com
www.vorysadvisors.com

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