

CSI - Ohio

The Common Sense Initiative

Business Regulation Impact Analysis

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

Regulation/Package Title: Passive Investors, License Credentials and Advertising

Rule Number(s): 3772-3-06 (New); 3772-5-06 (New); 3772-8-06 (New); 3772-10-03

(Amended); 3772-10-29 (New); 3772-11-42 (Amended); 3772-13-02 (Amended)

Date: _____

Rule Type:

New

Amended

5-Year Review

Rescinded

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

Regulatory Intent

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

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

The proposed rules contained within “Passive Investors, License Credentials and Advertising” relate directly to the minimum internal controls standards that casino operators must employ while conducting casino gaming. These rules require adherence to and

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implementation of minimum internal controls to protect the integrity of casino gaming and casino patrons.

- **3772-3-06** would prohibit passive investors in a casino operator, management company, holding company, or gaming-related vendor licensee or applicant from exercising influence over the affairs of the casino operator, management company, holding company, or gaming-related vendor licensee or applicant.
- **3772-5-06** would require a key employee licensee to display their key employee license credential while on duty at their employer's property and would require a casino operator licensee to establish procedures for the issuance of a temporary key employee license for misplaced, forgotten, or lost key employee license credentials.
- **3772-8-06** would require a casino gaming employee licensee to display their casino gaming employee license credential while on duty at their employer's property and would require a casino operator licensee to establish procedures for the issuance of a temporary casino gaming employee license for misplaced, forgotten, or lost casino gaming employee license credentials.
- **3772-10-03** would require a casino operator licensee's or applicant's internal control system to include a regulatory compliance department and would establish procedures a casino operator licensee must follow in the event of a vacancy in any of the operator's mandatory department supervisory positions.
- **3772-10-29** would proscribe the requirements for slot machine tournaments.
- **3772-11-42** would require the documentation of buy-ins at an imprest bank used to process poker tournament buy-in transactions.
- **3772-13-02** would require each casino operator licensee or applicant to provide the commission with a copy of all proposed advertisements at least five business days in advance of the advertisement's public dissemination.

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.

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Not applicable.

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

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

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

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

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

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

Development of the Regulation

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

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

3772-3-06, 3772-5-06, 3772-8-06, 3772-10-03, 3772-10-29, 3772-11-42, and 3772-13-02:

Casino Operators:

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

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Gaming-Related Vendors:

- AC Coin & Slot
- American Gaming Systems
- Aristocrat Technologies, Inc.
- Aruze Gaming America, Inc.
- Bally Gaming, Inc.
- Galaxy Gaming, Inc.
- Gaming Partners International USA
- Gemaco
- Global Cash Access
- Happ Control, Inc.
- Hopbet
- IGT
- Interblock USA, Inc.
- JCM
- KGM Gaming
- Konami Gaming, Inc.
- Midwest Gaming Supply
- Multimedia Games, Inc.
- NRT
- Paltronics
- Shuffle Master, Inc.
- Spielo International USA, LLC
- TCS Huxley
- Tech Art
- US Playing Cards
- WMS Gaming, Inc.

The above listed stakeholders (gaming-related vendors and operators) were contacted via email, with PDF document attachments of the proposed rules, on November 5, 2012, at 1:47 P.M. Notably, the stakeholders were permitted to review and comment on the rules before submission to the members of the Commission for consideration of initial filing, at the November 14, 2012 Commission Meeting.

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

After sending all of the above listed stakeholders an email on November 5, 2012 with a PDF document attachment of the proposed rules, the commission received the following feedback:

On November 7, 2012, Steve Tugend of Kegler Brown Hill & Ritter, counsel for gaming related vendors, contacted commission staff, via email, expressing concern with proposed rule 3772-5-06. Mr. Tugend suggested language that would clarify the rule's intended regulated community. After speaking with Mr. Tugend the commission amended 3772-5-06(A) by adding "employed by a casino operator licensee."

On November 6, 2012, Dan Reinhard, Vice President of Legal and Government Affairs for Rock Gaming LLC contacted commission staff, via telephone, to express concern about the proposed rules. On November 7, 2012, John Oberle of Ice Miller LLP, counsel for Penn National Gaming Inc. ("Penn Gaming"), contacted Commission staff, via telephone, expressing concern about the proposed rules. Commission staff requested that all comments be submitted in writing.

On November 8, 2012, Susan Carletta, Vice President, Compliance and Deputy Chief Regulatory & Compliance Officer for Caesars Entertainment, submitted comments, via electronic mail, on behalf of Rock Ohio Caesars Cleveland, LLC. On November 14, 2012, Mr. Oberle submitted written comments, via hand delivery, on behalf of Penn Gaming.

Commission staff invited representatives from the casino operators to a meeting on November 29, 2012, at the commission's Columbus office, to discuss the comments that were submitted on November 8, 2012 and November 14, 2012. Six individuals representing Penn Gaming and Rock Ohio Caesars attended the November 29, 2012 meeting, including Don Wescott, Caesars' Director of Regulatory Compliance and Scott Saunders, Assistant General Manager of Hollywood Casino Columbus.

At the November 29, 2012 meeting, commission staff requested that additional comments be submitted by December 6, 2012. Caesars Entertainment submitted their additional comments on December 6, 2012, via email, which included hypothetical examples that could be affected by 3772-3-06. Penn Gaming submitted their additional comments on December 7, 2012, via electronic mail, including hypotheticals that could be affected by 3772-3-06 and submitted amended language for rules 3772-10-03 and 3773-13-02.

After considering the comments submitted in writing and comments made at the November 29, 2012 meeting, the commission amended its original draft of 3772-10-03. In the original draft, 3772-10-03(B)(9) required the regulatory compliance department to be responsible for the casino's compliance with federal, state and local law, as well as commission approved internal controls. The casino operators expressed concern with the commission's requirement that each regulatory compliance department be responsible for compliance with federal, state and local law. Because the casino operators only listed examples of federal law, including the Family Medical Leave Act, Americans with Disabilities Act and FEMA to show how proposed rule was too broad, the commission deleted the word "federal." Now the proposed rule will require the regulatory compliance department to be responsible for "the casino's compliance with state and local law, including chapter 3772 of the Revised Code and Administrative Code ..."

The commission also amended 3772-10-03(C)(3). The casino operators opposed the language requiring vacant key positions to be filled within 60 days of the vacancy. Representatives at the November 29, 2012 meeting suggested 90 days. Because other gaming jurisdictions including Kansas and New Jersey also require 60 days, the commission did not amend the 60 days to 90 days; instead, language was added that permits an extension of time at the discretion of the executive director which "should not be unreasonably withheld," which the operators also requested.

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

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

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

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

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

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

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

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

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

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

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

The casino operators, gaming-related vendors, and passive investors of a casino operator, management company, holding company, or gaming-related vendor licensee or applicant are the impacted business community with respect to these proposed rules.

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

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

monetary costs to the operators.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

3772-3-06 Passive investor

3772-3-06 was drafted because, pursuant to the enactment of H.B. 386 of the 129th General Assembly and associated changes to R.C. 3772.03, the commission is required to prescribe standards regarding what employees, members, or owners of passive investors of a casino operator, management company, holding company, or gaming-related vendor may do and shall not do in relation to casino facilities and casino gaming in this state. Therefore, the commission drafted and has proposed 3772-3-06.

3772-5-06 Key employee license temporary credential and 3772-8-06 Casino gaming employee license temporary credential.

Proposed rules 3772-5-06 and 3772-8-06 have been proposed to provide the same requirements for key employees and casino gaming employees.

The first requirement of the rules require licensed key and casino gaming employees to display their license credentials while on duty at their employer’s property. License credentials are provided by the commission as a part of the licensure process, and as such, this requirement does not have any additional monetary effect on the employee or the casino operator.

However, the potential exists in the remaining sections of these rules for a nominal cost of compliance, and therefore by extension, a nominal negative impact on business. The ultimate cost of compliance with these rules lies with the decision that the operator licensee or applicant must make for instituting a process for the issuance of temporary credentials. Through previous experience in other jurisdictions, the commission staff has estimated that the total cost of making an average temporary credential is approximately fifty cents per credential.

Other costs associated with these rules include employee time for meeting the requirements of the commission approved internal controls as well as the log

requirement. The commission anticipates this role will most likely be filled by security personnel, who would search for the employee in the casino control licensure database, verify the licensed employee, create the credential, and complete the credential log. In addition, the casino's regulatory compliance officer would ensure compliance to the rules. The amount of staff time required to develop and implement these standards, procedures, and systems depend on a number of factors, including whether the operators already have well-developed internal controls. For this, we must defer to the casino operators for estimates on the staff time involved in creating and implementing procedures for the issuance of temporary credentials.

3772-10-03 Casino operator or casino operator applicant's organization

All three current casino operator licensees in Ohio and the one remaining casino operator applicant already employ or are in the process of filling the position of regulatory compliance officer as a part of normal business operation. It is industry standard to employ such a position. In addition, while the rule requires a regulatory compliance "department" there is no requirement that this department be made up of any more staff than the required regulatory compliance officer position. As a result, the following analysis will estimate the negative impact on business with regards to the minimum staffing required to comply with the proposed rule.

While the actual salary of this position is based on each individual situation and is, in general, the private business of the operator licensees or applicant, the commission has historically estimated the salary of this position to be approximately \$100,000 per year. Total benefits for this position could be estimated to be approximately \$42,045 per year, as the U.S. Department of Labor Bureau of Labor Statistics estimates that salary makes up approximately 70.4% of average total compensation¹. Therefore, if this rule were to force a licensee or applicant to hire or maintain this position, which the commission notes that at the current time all three current operators and the remaining operator licensee applicant already employ or are in the process of filling the position, the total impact on the operator licensee would be estimated at approximately \$142,045 per year.

3772-10-03(D):

The commission considers each of the positions required by this rule to be essential to the operation of a casino in Ohio. Further, the commission believes that the efficient hiring of a qualified candidate for such an essential position would provide substantial

¹ U.S. Department of Labor, BLS, Employer Costs for Employee Compensation – June 2012
<http://www.bls.gov/news.release/pdf/ecec.pdf>

benefit to the casino. Such benefits would counter the costs associated with compliance. However, the monetary cost of complying with the proposed rule is estimated through the following analysis.

The salaries of the required positions vary based on several factors including the specific position and employee qualifications. However, the commission believes that it can be estimated using an average annual salary of \$150,000. Based on the previously cited U.S. Department of Labor Bureau of Labor Statistics benefits average, the total yearly benefits are estimated to be \$63,068 for this average salary figure. The total compensation figure using this estimate comes to \$213,068 per year. As a result, the additional salary and benefit cost to the operator licensee is estimated to be approximately \$4,098 per week ($\$213,068 / 52$ weeks). Other costs to the licensee include those related to the potential for accelerated hiring activities related to the vacancy and the cost of assigning other staff to fulfill the critical duties on a temporary basis. However, the commission again notes that most if not all of these costs are expected to be outweighed by the positive effect of having the employee in place in an efficient manner.

3772-10-29 Slot machine tournaments

The proposed rule would require an operator licensee to satisfy certain regulatory requirements prior to and during the operation of a slot tournament. The following is an analysis related to the negative economic impact on business.

One requirement of the rule requires a written notice to be submitted to the executive director seven days before the proposed tournament. The commission anticipates compliance with this rule will be achieved by the casino operators planning tournaments in advance. It is the commission's assessment that the positive effect of this requirement and ensuring the integrity of gaming in Ohio outweighs any negative effect created by this requirement.

In regards to the remaining sections of the rule, the exact method used to achieve compliance is dependent on the operator's choice of procedures. However, the commission anticipates that the team members potentially involved in the approval and carrying out of the rule's requirements include the operator's director of slots, slot managers, slot technicians, slot attendants, and the property's regulatory compliance officer, who are already employed by the casino operators.

3772-11-42 Poker room; banks and transactions

The proposed amendment to 3772-11-42 is a reduction in the regulation of an imprest bank used for poker tournament buy-in funds.

The proposed amendment allows the casino operator licensee more flexibility to accept tournament buy-ins in its poker room bank. The total value of the imprest bank would be allowed to temporarily exceed the imprest value by the amount of the buy-ins, provided that certain documentation requirements and approved internal control standards are followed. Therefore the commission believes the rule has a positive impact on business.

Negligible costs related to compliance include certain administrative requirements related to documentation and the preparation of and adherence to commission approved internal control standards. It is important to note that these costs are only incurred by the operator if the operator chooses to utilize the flexibility given by this amendment. For this, we must defer to the two operators for estimates on the staff time involved.

3772-13-02 Advertising; promotion of responsible gaming

The proposed amendment to 3772-13-02 requires a casino operator licensee or applicant to provide the commission with a copy of an advertisement at least five business days in advance of the advertisement's public dissemination. R.C. 3772.03 requires the commission to adopt standards regarding the marketing materials of a casino operator and empowers the commission to prohibit marketing that harms the integrity of casino gaming.

The commission believes that ensuring the marketing materials are not misleading, include problem gambling information, and do not contain activities prohibited under Article XV, Section 6(C) of the Ohio Constitution and Chapter 3772. of the Revised Code, benefit the citizens of Ohio and casino patrons. Such benefits would counter the costs associated with compliance.

For determining the monetary cost of complying with the proposed rule, the commission must defer to the casino operators. It should be noted however that no monetary value was ever submitted by any of casino operators in the several correspondences and comments submitted to the commission. The commission anticipates compliance with the rule will be achieved by planning advertisements in advance.

At the November 29, 2012 meeting, representatives for the casino operators expressed concern that the rule may hinder the need for quick advertisement promotions, such as during the weekend. To accommodate the operators' concerns, the commission, while enforcing the five day requirement, will permit operators to submit templates that may be approved in advance by the commission. The commission believes this balances the need to ensure the integrity of casino gaming and protect patrons, while taking into the consideration the impact the rule may have on operators.

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

The first rule, 3772-3-06 is proposed as a result H.B. 386 of the 129th General Assembly, which amended R.C. 3772.03. Aside from the passive investor rule, each of the rules in this package is needed to correct current issues or to clarify the commission's interpretation of an issue.

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

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

Regulatory Flexibility

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

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

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

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

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

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

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

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

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