



Common Sense Initiative

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Business Impact Analysis

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

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

Ohio Adm.Code 3775-4-05 (Mobile management services provider licensure.

Rule Number(s): Ohio Adm.Code 3775-4-05 (amend)

Date of Submission for CSI Review: November 20, 2023

Public Comment Period End Date: December 6, 2023

Rule Type/Number of Rules:

New/ 0 rules

No Change/ 0 rules (FYR? N/A)

Amended/ 1 rules (FYR? No)

Rescinded/ 0 rules (FYR? N/A)

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

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Reason for Submission

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

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

The rule(s):

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

Regulatory Intent

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

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

This rule is being amended to make a technical change, applying the “use or lose” provision to all mobile management services providers (“MMSPs”), and not just second designated MMSPs. The original language that narrowly tailors the reference to designated second MMSPs was a simple rule drafting oversight.

- **3775-4-05, titled “Mobile management services provider licensure.”** This rule governs the application and licensure of mobile management services providers (“MMSP”). The rule states that these applicants complete any applicable forms, pay an application fee of one hundred and fifty thousand dollars, and establish their suitability by clear and convincing evidence. In evaluating an applicant, the Commission will consider several statutory factors and factors common in the gaming industry, largely echoing the suitability requirements in the state’s Casino Control Law (R.C. Chapter 3772). Pursuant to statute, the rule makes a distinction between first and second designated MMSPs, requiring that second designated MMSPs, in conjunction with their proprietor, prove an incremental economic benefit to the state to be issued a license. The rule also recognizes the statutory appointing professional sports organization exception by requiring that MMSPs that are serving as a designee operator for those organizations ensure sufficient guardrails are in place to segregate the professional sports organization from the operation of sports gaming.

Next, the rule outlines certain statutory requirements licensees must undertake upon licensure, including payment of license fees and a surety bond and that the MMSP and their proprietor enter into and maintain a contract by which the MMSP may offer sports gaming on behalf of the proprietor. This contract must include a description of what duties each party is responsible for. The rule, pursuant to R.C. 3775.05(E), sets a maximum number of MMSP licenses a person may have at four and sets the application fee for those subsequent applications at seventy-five thousand dollars—recognizing the Commission will not need to do additional licensing work for the subsequent licenses, but will have additional expenses related to ensuring the ongoing compliance requirements. The “use or lose” provision of this rule gives the executive director the authority to take action against a MMSP licensee that has not actively offered sports gaming to the economic benefit of the state under the license for a period of one year or more. The purpose of this rule is to implement R.C. sections 3775.03, 3775.04, 3775.041, and 3775.05 and to ensure that only eligible, suitable, and otherwise qualified persons are operating online sports pools in Ohio—through approved agreements with licensed type A sports gaming proprietors.

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

R.C. 3775.03, 3775.04, 3775.041, 3775.05, 3775.09, and 3775.14.

**4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?
*If yes, please briefly explain the source and substance of the federal requirement.***

Not applicable.

5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

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

R.C. Chapter 3775 requires the Commission to ensure the integrity of sports gaming and to prescribe rules for how sports gaming should be conducted, including rules related to licensing, the approval of sports gaming equipment, and the approval of wager and event types. To ensure the integrity of sports gaming and requirements of R.C. Chapter 3775, it is imperative to protect sports gaming patrons by ensuring sports gaming is conducted only by eligible and suitable persons. It is also imperative to ensure the integrity of sports gaming equipment by ensuring sports gaming equipment meets the statutory requirements of R.C. Chapter 3775.

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

Overall, the Commission will measure the success of the rule in terms of whether they help the Commission meet its statutory mission to ensure the integrity of sports gaming. This can be done in two ways: first, through evaluating whether the public benefit of implementing and enforcing these rules outweigh their administrative and business costs. And second, through analyzing the regulated community's comments about requests for amendments to the rules or for waivers or variances to or from the rules.

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

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

No.

Development of the Regulation

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

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

In reviewing the proposed amendment, an email was sent on November 3, 2023, to stakeholders. Stakeholders were asked to submit any written comments to the rule by 5:00 p.m. on November 7, 2023. (Exhibit 1). These stakeholders included employees or representatives from sports gaming operators, management companies, and holding companies. (Exhibit 2). Finally, stakeholders had the opportunity to comment during the Commission's public meeting on November 15, 2023.

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

The Commission received no comments or input regarding this amendment.

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

This question does not apply to this rule because no scientific data was necessary to develop or measure its outcome. Instead, Commission staff reviewed the Commission's statutory mandates, the rules currently in effect in its other regulatory frameworks and looked at how other jurisdictions approached the topics in these rules. This included several jurisdictions stakeholders themselves recommended to the Commission, including New Jersey, Arizona, Colorado, Michigan, Indiana, and Illinois. Additionally, as outlined above, staff also reviewed, considered, and used the comments of stakeholders in developing these rules. In so doing, the Commission 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 and the Commission's general procedures.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

Commission staff carefully reviewed and considered the statutes and rules adopted in other jurisdictions, in particular those jurisdictions listed in Question 11. In reviewing these statutes and rules, staff considered past practices of the Commission in its other regulatory frameworks, any stakeholder comments, and the current trends in the sports gaming regulatory environment. As such, Ohio is unique regarding the use of the MMSP license. R.C. 3775.04 requires licensees to offer sports gaming to patrons within one year. If sports gaming is not offered for a continuous period of one year, the Commission shall take steps to revoke the license. Hence, the rule was drafted with adaptations for Ohio law and current industry trends.

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

This question largely does not apply to this rule because it is being amended to make a technical change, applying to the "use or lose" provision to all MMSPs, and not just designated second MMSPs.

14. 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 ensures any issues that arise are funneled through the respective division director and vetted with the Legal Division before being brought to the Executive Director, so that he can coordinate a consistent response and have staff conduct outreach to the regulated community. Specifically, those issues related to licensing are handled by the Commission's licensing staff, which is overseen by a single director in the Commission's central office. And any issues related to compliance are managed by the Commission's compliance staff, again overseen by a single director in the Commission's central office. Moreover, the issuance, denial, or sanctioning of any license (other than the issuance of provisional licenses) can only be approved by the Commission at a public meeting through a vote. Therefore, the regulated community can expect consistent and transparent licensing and compliance decisions

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

The regulated business community is limited to MMSPs who may conduct sports gaming in Ohio under this rule and those contracted with an MMSP licensed under this rule.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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.

The Commission, again, anticipates a business impact from this required licensing rule, relating to the payment of an application and license fee, payment of a surety bond, and the submission of an application and information necessary to ensure the Commission can evaluate the statutory factors for licensure. License fees are, again, statutorily set, but the Commission is given the ability to set both the application fee and surety bond amount. Taking notes from the General Assembly, the Commission set the application fee in a way that it is even with the fee for type A proprietors: \$150,000. Again, the fee is needed and justified to cover the Commission's costs related to investigating the application and ensuring the applicant meets the ongoing compliance requirements of the statute and rules for the five-year licensure period. The bond amount, however, is set significantly lower than the type A proprietor bond requirements, as the Commission recognizes that, even should a services provider fail to pay its license fee, and, thus, have its license suspended and revoked, a proprietor would likely seek a new services provider for licensure, ensuring the state education fund still receives the fees expected. Additionally, the costs for the submission of information, which will likely vary widely depending upon the business model of the MMSP, are also justified as the General Assembly specifically required the Commission to evaluate several different factors regarding eligibility, suitability, and economic development, spanning R.C. 3775.03, 3775.041, 3775.05 and 3775.09. One factor that will vary the cost of the information needing to be provided by a MMSP is whether the services provider is a first or second designated by their type A proprietor. If second designated, both the MMSP and the proprietor will undergo additional costs to prove the economic benefit required by the statute. In proving this economic benefit, the Commission has elected a flexible approach, letting MMSPs prove this benefit through tax revenue, job creation, capital expenditures, and any other factor the Commission approves. Another factor that may change the extent of the business impact is whether the MMSP is a designee operator for a professional sports organization. If so, the sports organization and the MMSP will have to submit and adhere to a conflicts of interest policy, as required by the statute. R.C. 3775.05. In sum, since all these impacts are statutorily required, or at least statutorily authorized, and are necessary for the Commission to ensure the integrity of sports gaming, these business impacts are justified. Additionally, as this rule has already been in effect for over a year, the impact to the businesses is not new and they have already been subject to such.

The proposed amendment to this rule simply applies an already-existing consequence (potential revocation of the license) to all MMSP licensees, instead of just some, preventing uneven application of the rule.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

The proposed changes to this rule do not reduce the regulatory burden imposed on the business community. The proposed changes to this rule are to make a technical change, applying to the “use or lose” provision to all MMSPs and not just the designated second MMSP. The original language that narrowly tailors the reference to designated second MMSPs was a drafting oversight. Correcting this oversight ensures that all licensees are held to the same standard.

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

The Commission, again, anticipates a business impact from this required licensing rule, relating to the payment of an application and license fee, payment of a surety bond, and the submission of an application and information necessary to ensure the Commission can evaluate the statutory factors for licensure. License fees are, again, statutorily set, but the Commission is given the ability to set both the application fee and surety bond amount. Taking notes from the General Assembly, the Commission set the application fee in a way that it is even with the fee for type A proprietors: \$150,000. Again, the fee is needed and justified to cover the Commission’s costs related to investigating the application and ensuring the applicant meets the ongoing compliance requirements of the statute and rules for the five-year licensure period. The bond amount, however, is set significantly lower than the type A proprietor bond requirements, as the Commission recognizes that, even should a services provider fail to pay its license fee, and, thus, have its license suspended and revoked, a proprietor would likely seek a new services provider for licensure, ensuring the state education fund still receives the fees expected. Additionally, the costs for the submission of information, which will likely vary widely depending upon the business model of the mobile management services provider (“MMSP”), are also justified as the General Assembly specifically required the Commission to evaluate several different factors regarding eligibility, suitability, and economic development, spanning R.C. 3775.03, 3775.041, 3775.05 and 3775.09. One factor that will vary the cost of the information needing to be provided by a MMSP is whether the services provider is a first or second designated by their type A proprietor. If second designated, both the MMSP and the proprietor will undergo additional costs to prove the economic benefit required by the statute. In proving this economic benefit, the Commission has elected a flexible approach, letting MMSPs prove this benefit through tax revenue, job creation, capital expenditures, and any other factor the Commission

approves. Another factor that may change the extent of the business impact is whether the MMSP is a designee operator for a professional sports organization. If so, the sports organization and the MMSP will have to submit and adhere to a conflicts of interest policy, as required by the statute. R.C. 3775.05. In sum, since all these impacts are statutorily required, or at least statutorily authorized, and are necessary for the Commission to ensure the integrity of sports gaming, these business impacts are justified. However, since this rule has already been in effect the proposed amendment simply corrects a drafting error that will ensure even application of the “use or lose” provision to all MMSP licensees. Further, the “use or lose” provision will not be triggered if the licensee offers sports gaming at least one time in a continuous year period—so this impact may not be realized by the regulated community if they offer sports wagers in Ohio.

Regulatory Flexibility

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

Yes, these rules provide exemption or alternative means of compliance through Ohio Adm. Code 3775-1-04 (as pending), which permits the Commission, upon written request, to grant waivers and variances from the rules adopted under R.C. Chapter 3775, including these rules, if doing so is in the best interest of the public and will maintain the integrity of sports gaming in the State of Ohio.

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

To the extent R.C. 119.14 would apply to a violation of these rules, the Commission will provide verbal and written notification to the small business to correct the paperwork violation. Thereafter, the Commission would allow the small business a reasonable amount of 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 administrative action would be taken unless the small business fails to remedy the violation within the reasonable time allotted by the Commission.

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

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

- Commission’s mailing address: 100 E. Broad St., 20th Floor, Columbus, OH 43215
- Commission’s toll-free telephone number: (855) 800-0058
- Commission’s fax number: (614) 485-1007

- Commission's sports gaming webpage:
<https://casinocontrol.ohio.gov/sportsgaming.aspx>, including [FAQs](#), [staff's presentation](#) on HB 29 and the rule making process, and all currently available draft regulations.
- Commission's email: info@casinocontrol.ohio.gov
- Commission's sports gaming listserv:
<https://casinocontrol.ohio.gov/sportsgaming.aspx>

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Exhibit 1

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OHIO CASINO CONTROL COMMISSION

Sports Gaming Stakeholders,

The Ohio Casino Control Commission is proposing [one amendment](#) to Ohio Adm.Code 3775-4-05. This amendment makes a technical change, applying the “use or lose” provision to all mobile management services providers (“MMSPs”), and not just designated second MMSPs. The original language that narrowly tailors the reference to designated second MMSPs was a simple rule drafting oversight.

If you would like to provide formal written comments on these amendments, please email them to rulecomments@casinocontrol.ohio.gov by 5:00 p.m., Tuesday, November 7, 2023.

As always, please feel free to forward this communication to anyone else you think may be interested.



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Exhibit 2

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