



Common Sense  
Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

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## Business Impact Analysis

Agency, Board, or Commission Name: Liquor Control Commission

Rule Contact Name and Contact Information:

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

2022 Change Rule 53

Rule Number(s): 4301:1-1-53

Date of Submission for CSI Review: 7/6/22

Public Comment Period End Date: 7/13/22

Rule Type/Number of Rules:

New/   rules

No Change/   rules (FYR?   )

Amended/1 rules (FYR? Y)

Rescinded/   rules (FYR?   )

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

### **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.*

**4301:1-1-53 Gambling, gambling devices and promotional contests** generally prohibits illegal gambling and gambling devices on a liquor permit premises in Ohio but sets forth the requirements for gambling otherwise authorized by law.

**Proposed Amendment** to paragraph (E) would allow certain licensed charitable organizations that are authorized to sell alcoholic beverages to conduct bingo in the portion of its premises where alcohol is being sold and consumed. The amendment is proposed to ensure that the rule is consistent with newly enacted legislation in H.B. 110, 133<sup>rd</sup> General Assembly. Also, a proposed amendment submitted by Hollywood Casino will harmonize the rule with the changes in Ohio law governing conduct specifically authorized by the Ohio Constitution and the Casino Control Commission via the edition of a new paragraph (J).

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.

<u>Rule Number</u>	<u>Amplifies</u>	<u>Statutory Authority</u>
4301:1-1-53	4301.03, Chapter 2915	4301.03

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

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

No and No.

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

N/A

**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)?**

This rule reflects the policy and intent of the Commission to protect public health and safety, to maintain effective control over the manufacture, sale, and distribution of alcoholic beverages, and to prevent abuses caused by the unregulated sale of such products. Alcoholic beverages are unique products that require strict regulation to promote temperance by preventing consumption by underage persons and by discouraging abusive consumption by adults; to promote orderly markets by requiring transparent, accountable, and stable distribution and pricing practices; and to prevent unfair competition.

The purpose of the proposed amendment to Rule 53 is to update the rule consistent with newly enacted legislation that authorizes certain charitable organizations to conduct bingo while alcohol is being served and consumed and to update the rule consistent with the constitutional implementation of casino gaming in Ohio for conduct specifically authorized by licensure through the Ohio Casino Control Commission. Also, to correct a typographical error in paragraph (I).

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

The general provisions in the rule are already implemented, and active state supervision already exists. The Division of Liquor Control (DOLC) implements the permitting process, monitors the sale and distribution of alcoholic beverages in Ohio, and may initiate actions of

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“administrative” nature. The Department of Public Safety, Ohio Investigative Unit (OIU) also investigates and may initiate enforcement actions for violations of these provisions. Data related to violations as well as related sanctions are routinely collected and reported. The Commission can measure the success of the regulation by continuing to monitor cases brought against permit holders for gambling violations to determine any trends in compliance and enforcement. The Commission can monitor the number of citations against permit holders, the number of cases brought before the Commission, and the number of repeat violations to determine any patterns.

Through a fair and consistent application of the rule, the Commission will ensure a common understanding among liquor permit holders, members of the public, and law enforcement concerning the restrictions against illegal gambling on a permit premises. The cost-benefit of non-compliance by the regulated community is significant because the Commission may suspend or revoke an entity’s liquor license for violations of state rules and regulations.

- 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.*

The Commission initially sought comments at its August 18, 2017 public hearing, regarding the rules under 5-year review by posting a Notice to the Commission’s website and by sending an email blast to a comprehensive list of stakeholders and permit holders’ counsel, including representatives from industry associations, such as the Wholesale Beer and Wine Association of Ohio, the Ohio Licensed Beverage Assn., the Ohio Restaurant Assn., the Ohio Council of Retail Merchants, Ohio Grocers Assn., the Ohio Wine Producers Assn., Ohio Craft Brewers Assn., Southern Wine and Spirits, the Distilled Spirits Council of the United States, Ohio Assn. of Chiefs of Police, the Drug Free Action Alliance, Ohio Township Assn., liquor permit holders, and governmental entities such as the Departments of Agriculture, Commerce, and Taxation. The Commission also solicited comments from the Attorney General’s Office, Charitable Law Section, the Department of Public Safety, Ohio Investigative Unit, and the

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Department of Commerce, Division of Liquor Control as the agencies directly impacted by Commission rules.

The Commission sought additional written comments from stakeholders and invited public testimony at the Commission's public hearings on September 14 and December 13, 2017, March 9, June 13, August 18, September 14, and December 14, 2018, and on March 10 and June 16, 2022. Additionally, all stakeholder comments and proposals, and Notices of Commission hearings are posted to the Commission's website.

**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 comment without any opposition from Hollywood Casino updating rule language consistent with ORC 3772 for lawful casino gaming operations and for correcting a typographical error. The proposed change has been incorporated into Rule 53 – Gambling.

No stakeholders have objected to the final proposed amendments to the rule.

**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?**

No scientific data was used.

**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?**

The Commission did not consider alternative regulations as the proposed changes to Rule 53 simply clarify the rule regarding authorized casino gambling and bingo on licensed permit premises.

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

The Commission did not consider performance-based regulations as the rule is not for performance, but rather, to ensure compliance with existing Ohio law, and to continue a system of regulation that exists to ensure effective control over the sale of alcoholic beverages.

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

The Commission coordinated with the Department of Commerce, Division of Liquor Control, the Department of Public Safety, Ohio Investigative Unit, and the Attorney General's Office, Charitable Law Section, and confirms no duplication has occurred.

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

The general provisions of the rule prohibiting illegal gambling on a liquor permit premises are currently in effect and do not require any change to implement existing regulations. The Commission and the Department of Public Safety, Ohio Investigative Unit (which may investigate and enforce the rule) have been fully engaged in drafting the proposed changes in conjunction with permit holder representatives and will ensure consistency and predictability for the licensed permit holders.

Any updates would be made available to various stakeholders and interested parties via email blast and posting to the Commission's website.

**Adverse Impact to Business**

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

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

The scope of the impacted community includes liquor permit premises.

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

No new costs or fees are being implemented with this rule.

**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.*

Each liquor permit premises is required to comply with the applicable regulations to ensure the public health and safety within establishments selling and serving alcoholic beverages. The adverse impact of the regulation is a result of the conduct of the permit holder and would primarily be quantified in terms of any penalty – financial forfeiture, suspension, or revocation – imposed on permit holders who conduct illegal gambling. The Commission does not have data to provide a specific quantified potential impact for reasonable compliance costs.

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

The regulatory intent of the rule justifies any potential impact because the sale of alcoholic beverages is a unique industry that requires strict regulation for the health, safety, and protection of the public. Gambling is also a highly regulated industry in Ohio and the state has a well-recognized and compelling interest against allowing illegal gambling activity to be conducted in liquor permit premises.

**Regulatory Flexibility**

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

No. The rule is intended to create a level playing field for all market participants, regardless of size.

**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?**

Ohio Revised Code Section 119.14 is not applicable to this rule since there is no penalty associated with the paperwork necessary pursuant to the rule.

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

The Ohio Liquor Control Commission –

Website at: <http://lcc.ohio.gov>

Building location: 77 S. High Street, 18<sup>th</sup> Floor, Columbus, OH 43215

Telephone: 614-466-3132

The Commission Quarterly Public Hearings – March, June, September and December

The Division of Liquor Control Office –

Website at: <http://www.com.ohio.gov/liquor>

Building location: 6606 Tussing Road, Reynoldsburg, OH 43068

Telephone: 614-644-2360

The Ohio Department of Public Safety, Ohio Investigative Unit –

Alcohol Server Knowledge (ASK) Program, free for permit holders and their employees

Website at: <http://oiu.ohio.gov>

Building location: 1970 West Broad Street, Room 429, Columbus, OH 43223

Telephone: 614-644-2415

Industry provided resources available to permit holders and their employees include the following alcohol training programs:

TIPS Alcohol Training (Training for Intervention Procedures)

TAM Server Training (Techniques of Alcohol Management)

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4301:1-1-53

**Gambling, gambling devices and promotional contests.**

- (A) Conviction in any court of competent jurisdiction of any holder of any permit, or of any agent or employee of a permit holder, or of any person, for keeping, exhibiting for gain, or operating gambling devices, or conducting or permitting on the liquor permit premises any gambling in violation of Chapter 2915. of the Revised Code, shall be grounds for suspension or revocation of such permit.
- (B) No person authorized to sell alcoholic beverages shall have, harbor, keep, exhibit, possess or employ, or allow to be kept, exhibited, or used in, upon or about the premises of the permit holder of any gambling device as defined in division (F) of section 2915.01 of the Revised Code which is or has been used for any gambling in violation of Chapter 2915. of the Revised Code.
- (C) This rule does not apply to the selling of lottery tickets authorized and issued by the Ohio state lottery commission and as provided in section 4301.03 of the Revised Code.
- (D) This rule shall not be construed to prohibit a game or contest sponsored and conducted in accordance with division (D) of section 2915.02 of the Revised Code, provided that such game or contest strictly complies with all of the provisions of division (D) of section 2915.02 of the Revised Code and shall not prohibit the conducting of games of chance by charitable organizations as defined in division (H) of section 2915.01 of the Revised Code so long as there is strict compliance with Chapter 2915. of the Revised Code.
- (E) This rule shall not be construed to prohibit instant bingo, other than at a bingo session, that is sponsored and conducted by charitable organizations as defined in division (H) of section 2915.01 of the Revised Code and where a license pursuant to section 2915.08 of the Revised Code has been obtained, provided that such instant bingo is conducted in strict compliance with Chapter 2915. of the Revised Code. ~~However, no person authorized to sell alcoholic beverages shall sell or serve beer or intoxicating liquor or permit beer or intoxicating liquor to be consumed or seen in the same location in its premises where a bingo game, as described in division (S)(1) of section 2915.01 of the Revised Code, is being conducted.~~
- (F) The foregoing paragraphs do not prohibit conduct by any person authorized to sell alcoholic beverages in the original container or for consumption on the permit premises to the extent that the permit holder may sponsor or conduct upon the permit premises promotional games or contests which are neither games nor schemes of chance and which do not constitute gambling or public gaming as prescribed in Chapter 2915. of the Revised Code, provided that:
  - (1) The promotion or contest does not require the participant to pay money or

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something of value other than visiting the premises for the privilege or opportunity to participate in such promotions or contests or for receiving the award or prize therefrom; and

- (2) Alcoholic beverages are not an element of such a game or contest either directly or indirectly; and
- (3) The game or contest is sponsored or designed and run by a permit holder who is licensed for the sale of alcoholic beverages, a manufacturer whose main product line is not alcoholic beverages or their advertising agent or representative.

(G) Except for alcoholic beverage products, paragraph (F)(1) of this rule shall not prohibit the purchase of the manufacturer's product at the customary retail price by the participant for the opportunity to participate in a promotional game or contest, the outcome of which is not determined largely or wholly by chance.

(H) For the purposes of this rule, the phrase "something of value" means money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein or involving extension of a service, entertainment or a privilege of playing at a game of chance without charge.

(I) Nothing in the rule shall be construed as prohibiting those entities properly licensed under sections ~~3720.03~~3770.03 and 3770.21 of the Revised Code and Chapters 3770:2-1 to 3770:2-12 of the Administrative Code from operating video lottery games in accordance with those provisions.

(J) Nothing in the rule shall be construed as prohibiting those entities properly licensed under Chapter 3772. of the Revised Code from operating casino gaming in accordance with those provisions.

**PROPOSED AMENDMENT  
TO RULE 53 SUBMITTED  
BY HOLLYWOOD CASINO**

## **4301:1-1-53 Gambling, gambling devices and promotional contests.**

(A) Conviction in any court of competent jurisdiction of any holder of any permit, or of any agent or employee of a permit holder, or of any person, for keeping, exhibiting for gain, or operating gambling devices, or conducting or permitting on the liquor permit premises any gambling in violation of Chapter 2915. of the Revised Code, shall be grounds for suspension or revocation of such permit.

(B) No person authorized to sell alcoholic beverages shall have, harbor, keep, exhibit, possess or employ, or allow to be kept, exhibited, or used in, upon or about the premises of the permit holder of any gambling device as defined in division (F) of section 2915.01 of the Revised Code which is or has been used for any gambling in violation of Chapter 2915. of the Revised Code.

(C) This rule does not apply to the selling of lottery tickets authorized and issued by the Ohio state lottery commission and as provided in section 4301.03 of the Revised Code.

(D) This rule shall not be construed to prohibit a game or contest sponsored and conducted in accordance with division (D) of section 2915.02 of the Revised Code, provided that such game or contest strictly complies with all of the provisions of division (D) of section 2915.02 of the Revised Code and shall not prohibit the conducting of games of chance by charitable organizations as defined in division (H) of section 2915.01 of the Revised Code so long as there is strict compliance with Chapter 2915. of the Revised Code.

(E) This rule shall not be construed to prohibit instant bingo, other than at a bingo session, that is sponsored and conducted by charitable organizations as defined in division (H) of section 2915.01 of the Revised Code and where a license pursuant to section 2915.08 of the Revised Code has been obtained, provided that such instant bingo is conducted in strict compliance with Chapter 2915. of the Revised Code. However, no person authorized to sell alcoholic beverages shall sell or serve beer or intoxicating liquor or permit beer or intoxicating liquor to be consumed or seen in the same location in its premises where a bingo game, as described in division (S)(1) of section 2915.01 of the Revised Code, is being conducted.

(F) The foregoing paragraphs do not prohibit conduct by any person authorized to sell alcoholic beverages in the original container or for consumption on the permit premises to the extent that the permit holder may sponsor or conduct upon the permit premises promotional games or contests which are neither games nor schemes of chance and which do not constitute gambling or public gaming as prescribed in Chapter 2915. of the Revised Code, provided that:

(1) The promotion or contest does not require the participant to pay money or something of value other than visiting the premises for the privilege or opportunity to participate in such promotions or contests or for receiving the award or prize therefrom; and

(2) Alcoholic beverages are not an element of such a game or contest either directly or indirectly; and

(3) The game or contest is sponsored or designed and run by a permit holder who is licensed for the sale of alcoholic beverages, a manufacturer whose main product line is not alcoholic beverages or their advertising agent or representative.

(G) Except for alcoholic beverage products, paragraph (F)(1) of this rule shall not prohibit the purchase of the manufacturer's product at the customary retail price by the participant for the opportunity to participate in a promotional game or contest, the outcome of which is not determined largely or wholly by chance.

(H) For the purposes of this rule, the phrase "something of value" means money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein or involving extension of a service, entertainment or a privilege of playing at a game of chance without charge.

(I) Nothing in the rule shall be construed as prohibiting those entities properly licensed under sections 3720.03 and 3770.21 of the Revised Code and Chapters 3770:2-1 to 3770:2-12 of the Administrative Code from operating video lottery games in accordance with those provisions.

(J) Nothing in the rule shall be construed as prohibiting those entities properly licensed under Chapter 3772. of the Revised Code from operating casino gaming in accordance with those provisions.