

# ***THE GEARHISER LAW FIRM, INC.***

*Attorney at Law*

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May 3, 2017

Ms. Whitney Paterson  
Senior Rule Procewssor  
JCARR Committee

(sent via electronic mail [wpaterson@jcarr.state.oh.us](mailto:wpaterson@jcarr.state.oh.us))

Dear Ms. Paterson:

I have attached my written comments and objections to the proposed Casino Control Commission Rule 3772-50-01(H). I would like to make a comment to the JCARR Committee on Monday, May 8, 2017. I plan to be in attendance to comment on the Rule and answer any questions the Committee may have following my comments.

Thank you for your time and consideration. If you need to contact me I can be reached at 614-221-5151 (office) or 614-975-4168 (cell).

Respectfully,



Kurt O. Gearhiser

KOG/af  
Attachment

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Mike Duffey, Chair  
Joe Uecher, Vice-Chair  
Representative Boggs  
Representative Gavarone  
Representative Manning  
Representative Ramos  
Senator Balderson  
Senator Kunze  
Senator Shindell  
Senator Thomas

Dear Senators and Representatives:

I am submitting comments on Ohio Casino Control Commission Rule 3772-50-01(H). This rule exceeds the agency's statutory authority and conflicts with legislative intent of ORC 2915.01(UU), (VV) and (WW). It is my hope that the Committee will make a recommendation to invalidate the rule for the reasons that follow.

The Ohio Legislature defined "Merchandise Prize" in R C 2915.01(VV):

"(VV) 'Merchandise Prize' means any item of value, but shall not include any of the following:

- (1) Cash, gift cards, or any equivalent thereof;
- (2) Plays on games of chance, state lottery tickets, bingo, or instant bingo;
- (3) Firearms, tobacco, or alcoholic beverages; or
- (4) A redeemable voucher that is redeemable for any of the items listed in division (VV)(1), (2), or (3) of this section."

Any item of value can be given as a merchandise prize except for the eleven prohibited items. The Casino Control Commission (CCC) in Rule 3772-50-01(H) added the following prohibited prizes; redeemable vouchers and gold and silver bullion coins,

rounds, bars or ingots. None of these newly prohibited prizes by rule are prohibited by R C 2915.01(VV).

In many paragraphs of ORC 2915.01(UU) the legislature discusses the usage of merchandise prizes and redeemable vouchers for merchandise prizes. Redeemable voucher is defined at R C 2915.01(WW) as:

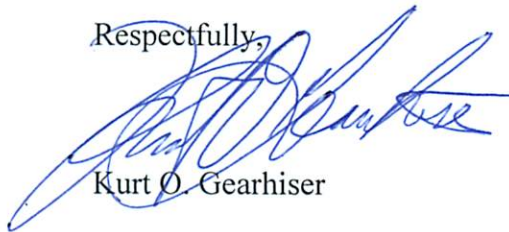
“(WW) ‘Redeemable voucher’ means any tickets, token, coupon, receipt, or other noncash representation of value.”

However the CCC has by Rule prohibited giving redeemable vouchers as a prize whereas ORC 2915.01(UU) and (VV) allow redeemable vouchers as prizes.

Similarly the CCC has prohibited gold and silver bullion, coins, rounds, bars and ingots from being given away as merchandise prizes. Gold and silver are clearly items of value and not prohibited by R C 2915.01(VV). The legislature prohibited eleven items specifically and did not prohibit gold and silver. Therefore gold and silver should be allowed as merchandise prizes and not prohibited by Rule 3772-50-01(H).

Rule 3772-50-01(H) exceeds the CCC’s statutory authority and conflicts with the legislative intent of ORC 2915.01(UU), (VV) and (WW). I respectfully request that the Committee will make a recommendation to invalidate this rule.

Respectfully,



Kurt O. Gearhiser

KOG/af  
Attachment

# OHIO CASINO CONTROL COMMISSION



John R. Kasich  
*Governor*

June E. Taylor  
*Chair*

May 5, 2017

## VIA ELECTRONIC MAIL

Larry Wolpert, Executive Director  
Joint Committee on Agency Rule Review  
77 S. High St., Concourse Level  
Columbus, OH 43215

Re: Testimony on proposed rule 3772-50-01(H) by Kurt O. Gearhiser

Dear Director Wolpert:

Thank you for this opportunity to provide further information regarding proposed rule 3772-50-01(H).

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 (131<sup>st</sup> General Assembly) mandated the Ohio Casino Control Commission ("Commission") to regulate skill-based amusement machines in a manner consistent with respect to the Commission's authority to regulate casino gaming. The Commission has developed proposed rules in order to fulfill this obligation, including proposed rule 3772-50-01, titled "Definitions." The purpose of the rule is to provide clear and consistent definitions for use throughout chapter 3772-50 of the Administrative Code.

In particular, 3772-50-01(H) states that, "'Merchandise prize' has the same meaning as in section 2915.01 of the Revised Code, but does not include a redeemable voucher; currency, including digital currency; and gold or silver bullion, coins, rounds, bars, or ingots." The rule amplifies the definition of "merchandise prize" in R.C. 2915.01(VV) which states that,

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(855) 800-0058 toll-free  
[www.casinocontrol.ohio.gov](http://www.casinocontrol.ohio.gov)

(VV) “Merchandise prize” means any item of value, but shall not include any of the following:

- (1) Cash, gift cards, **or any equivalent thereof;**
- (2) Plays on games of chance, state lottery tickets, bingo, or instant bingo;
- (3) Firearms, tobacco, or alcoholic beverages; or
- (4) A redeemable voucher that is redeemable for any of the items listed in division (VV)(1), (2), or (3) of this section.

(emphasis added).

In his testimony, Mr. Gearhiser asserts, incorrectly, that the Commission has exceeded its statutory authority by clarifying that a merchandise prize does not include redeemable vouchers, currency, or gold or silver bullion, coins, rounds, bars, or ingots. However, the proposed rule simply clarifies the statutory language in R.C. 2915.01(VV)(1) by further defining what constitutes the “equivalent” of cash or gift cards. After consulting with members of the stakeholder community, including members of Ohio law enforcement agencies, the Commission believes the clarification of this statutory definition is necessary to prevent past and present practices designed to subvert the intention of R.C. 2915.01 to prevent the payment of cash and gift cards as a reward for playing a skill-based amusement machine.

As part of this subversion, operators of illegal slot machines (masquerading as skill-based games) will offer patrons “redeemable vouchers” to local businesses that patrons can then use like a gift certificate or cash at other businesses for the purchase of goods or services. This practice essentially offers patrons a gift card but operators will call it a redeemable voucher to create confusion as to the legality of the practice. The testimony from Mr. Gearhiser highlights this confusion.

The testimony postulates that the Commission is seeking to prevent operators from offering redeemable vouchers for merchandise prizes in direct contravention to the language in R.C. 2915.01(UU) that allows a skill-based amusement machine operator to award a redeemable voucher for a prize. Redeemable vouchers can only be redeemed, at the site of play, for a merchandise prize. Nothing in the Commission’s proposed rule prevents an operator of legitimate skill-based amusement machines from offering a redeemable voucher for a merchandise prize as a reward for playing the game (for example, a player can win tickets after playing skee-ball and later exchange those tickets for a merchandise prize). The rules do prohibit the “redeemable voucher” from being the end prize available to a player (for example, a player could not receive a \$10 “redeemable voucher” to a restaurant and then use that voucher toward the purchase of a meal). This practice of rewarding players with gift cards but calling them “redeemable vouchers” is nothing more than an attempt to subvert the plain prohibition on cash, gift cards, and their equivalents.

The testimony further objects to the prohibition of gold or silver bullion, coins, rounds, bars or ingots as a form of merchandise prize. Again, this clarification of the prohibition on cash equivalents was developed because operators have been offering gold and silver as rewards and calling them “merchandise prizes” when, in fact, the reward of gold or silver is often another way to subvert the prohibition on cash and cash equivalents as a reward for playing the game.

The clarification in proposed rule 3772-50-01(H) is designed to aid the Commission, and members of Ohio's law enforcement community, in its efforts to eliminate illegal gambling under the guise of legal skill-based gaming. The use of "redeemable vouchers" and gold or silver bullion, coins, rounds, bars or ingots as a form of merchandise prize has, for too long, subverted the plain language and intent of R.C. 2915.01 to prohibit awarding players with cash or cash equivalents.

Thank you again for this opportunity. Please contact me if I can be of further assistance.

Respectfully yours,



Andromeda Morrison  
Director of Skill Games  
Ohio Casino Control Commission