

109:4-3-31

Skill-based amusement games.**(A) Statement of Basis and Purpose:**

It is a violation of Chapter 1345. of the Revised Code to represent, either explicitly or implicitly, a skill-based amusement machine as being legal when in fact it is illegal. Supplying an illegal slot machine while representing it to a consumer to be a "skill-based amusement machine" is an unfair and deceptive act or practice. Slot machines are defined by statute in Chapter 2915. of the Revised Code and these definitions, set forth below, are part of the basis for this rule defining an unfair and deceptive act or practice in a consumer transaction:

- (1) Division (A) of section 2915.02 of the Revised Code prohibits, among other things, any person from acquiring, possessing, controlling or operating any gambling device for the purpose of engaging in gambling as defined in divisions (A)(1), (A)(2), (A)(3) or (A)(4) of section 2915.02 of the Revised Code;
- (2) Divisions (F)(3) and (F)(4) of section 2915.01 of the Revised Code include within the definition of a gambling device, a "slot machine, or other apparatus designed for use in connection with a game of chance" and "any equipment, device, apparatus, or paraphernalia specially designed for gambling purposes";
- (3) Division (VV)(1) of section 2915.01 of the Revised Code defines a slot machine as "[a]ny mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player who gives the thing of value in the hope of gain, the outcome of which is determined largely or wholly by chance; or [a]ny mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct or dispense bingo or a scheme or game of chance";
- (4) Division (VV)(2) of section 2915.01 of the Revised Code declares that skill-based amusement machines are not slot machines;
- (5) Section 2915.03 of the Revised Code prohibits the owner, lessee, or anyone having custody, control, or supervision of any premises from using or occupying the premises for gambling in violation of section 2915.02 of the Revised Code or recklessly permitting the premises to be used or occupied for gambling in violation of section 2915.02 of the Revised Code.

(B) It shall be an unfair and deceptive act or practice in connection with a consumer transaction for a supplier to misrepresent that any mechanical or electronic game is a skill-based amusement machine if it fails to meet the requirements of this rule.

(C) It shall be an unfair and deceptive act or practice in connection with a consumer transaction for a supplier to:

- (1) guarantee a return of any percentage of consideration paid by any consumer to the machine's owner, operator, distributor, manufacturer or any other party, other than the consumer,
 - (2) fail to maintain records that document the gross income and redeemable vouchers received and issued by each skill-based amusement machine,
 - (3) fail to maintain records of the redemption rate and inventory of the wholesale value of any merchandise prizes,
 - (4) fail to comply with any liquor control regulation, any cease and desist order, any court order or other applicable statutory or legal requirement,
 - (5) provide consumers with any information related to any skill-based amusement machine that is incomplete, confusing, or misleading, or
 - (6) fail to display in plain view, in a single area on the premises where any skill-based amusement game is played, all merchandise prizes for which redeemable vouchers obtained by playing any such machine may be redeemed and the number of redeemable vouchers required to obtain each merchandise prize.
- (D) For the purpose of enforcing this rule, the following terms shall be defined as follows:
- (1) A "skill-based amusement machine" means a mechanical or electronic game that rewards the player or players, if at all, only with merchandise prizes or with redeemable vouchers redeemable only for merchandise prizes, provided that,
 - (a) with respect to rewards for playing this game:
 - (i) any reward of redeemable vouchers is based solely on the player achieving the object of the game or the player's score,
 - (ii) the wholesale value of a merchandise prize awarded as a result of the single play of a machine does not exceed ten dollars,
 - (iii) redeemable vouchers awarded for any single play of a machine are not redeemable for a merchandise prize with a wholesale value of more than ten dollars, and
 - (iv) redeemable vouchers are not redeemable for a merchandise prize that has a wholesale value of more than ten dollars times the fewest number of single plays necessary to accrue the redeemable vouchers required to obtain that prize.

(b) The machine shall not be considered a skill-based amusement machine if one or more of the following apply:

(i) the ability of any consumer to succeed at the game is impacted by the number or ratio of prior wins to prior losses of consumers playing that machine;

(ii) the outcome of the game can be controlled by a source other than any consumer playing the game;

(iii) the success of any player is or may be determined by a chance event which cannot be altered by player actions;

(iv) the ability of any consumer to succeed at the game is impacted by game features not visible or known to the reasonable consumer, or

(v) the ability of consumer to succeed at the game is impacted by the exercise of skill that no reasonable consumer could exercise.

(c) Other factors which may be considered to determine if a mechanical or electronic game is skill-based include, but are not limited to:

(i) the results of analysis by any independent testing authority retained by the State to evaluate the level of skill required for the consumers of a particular game to improve their odds of winning;

(ii) whether the game can be completed without physical interaction by the consumer. Depressing buttons or other input devices is physical interaction for purposes of this rule, however, merely activating the machine is not.

(2) A "reasonable consumer" shall mean the first-time consumer of average levels of intelligence, physical and mental skills, reaction time and dexterity.

(3) A "merchandise prize" is any item of value but may not include:

(a) cash, gift cards, or any equivalent thereof,

(b) plays on games of chance, state lottery tickets, bingo, or instant bingo,

(c) firearms, tobacco, or alcoholic beverages, or

(d) a redeemable voucher which is redeemable for any of the items listed in sections (a), (b) and (c) immediately above.

- (4) A "redeemable voucher" is any ticket, token, coupon, receipt, or other non-cash representation of value.
- (5) A "supplier" shall include the manufacturer, distributor, owner, lessor, lessee, or any other person or entity which directly or indirectly facilitates a consumer transaction utilizing a skill-based amusement machine.
- (E) This rule is not intended to authorize any new forms of gambling which are not already expressly permitted by the Chapter 2915 of the Revised Code.
- (F) This rule is not intended to prohibit conduct in connection with gambling expressly permitted by sections 2915.02, 2915.07, 2915.08, 2915.092 and 2915.12 of the Revised Code.

Effective:

R.C. 119.032 review dates:

WITHDRAWN ELECTRONICALLY

Certification

03/18/2009

Date

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