

OHIO CASINO CONTROL COMMISSION

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Legality of “pre-reveal” and “no-chance” electronic gambling devices

For many years, the state, local governments, and law enforcement have worked to eliminate illegal gaming in Ohio, including illegal “skill games.” Since 2006, significant efforts have been made to prohibit illegal gambling through criminal enforcement. However, illegal gambling operations continue to proliferate throughout Ohio, with very little oversight and recourse for consumers.

To address the issue of illegal gambling establishments posing as legitimate operators, H.B. 64 (131st General Assembly) granted the Ohio Casino Control Commission (“Commission”) the authority to regulate skill-based amusement machines. To fulfill this obligation, the Commission has promulgated administrative rules to amplify the requirements in R.C. Chapter 2915. These rules became effective April 23, 2018.

The rules establish licensing and compliance requirements for all businesses and individuals conducting or participating in the conduct of skill-based amusement machines. As part of this framework, all games that purport to be a skill-based amusement machine are subject to approval by the Commission under Ohio Adm.Code 3772-50-25. The Commission has received numerous inquiries on whether games that utilize a “pre-reveal” feature or that advertise as “no-chance” must be approved by the Commission under this rule. This document outlines the Commission’s position on these games.

The Commission has been advised that “pre-reveal” or “no-chance” games operate under the general premise that a player may either choose or is required to view the outcome of the next play before committing consideration to play that game. Discussions have also revealed that there is no opportunity for a player to “skip” or move past the immediate game to play the next—each game must be played. In essence, although a player could opt to stop playing the game once learning that the next play will result in no winnings, the player must play the game, even if it is a losing game, in order to see the outcome of the next game and so on.

Unless otherwise expressly authorized under Ohio law, every mechanical, electronic, video, or digital gaming device is a slot machine, unless it is a “skill-based amusement machine.” R.C. Chapter 2915 defines a “slot machine” as:

Any 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, R.C. 2915.01(QQ)(1)(a); or

Any 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 bingo or a scheme or game of chance, R.C. 2915.01(QQ)(1)(b).

The provision further provides that “‘Slot machine’ does not include a skill-based amusement machine” R.C. 2915.01(QQ)(2). Thus, any mechanical, electronic, video, or digital gaming device is either a “slot machine” or “skill-based amusement machine” unless otherwise expressly provided by statute. The Commission is not aware of any statutory provision that expressly permits “pre-reveal” or “no-chance” style games as a legal form of gaming in Ohio. Therefore, the question is whether these games constitute “skill-based amusement machines” under Ohio law.

R.C. 2915.01(UU) provides that a “skill-based amusement machine” is a mechanical, electronic, video, or digital device that rewards players, if at all, solely on their application of skill. The statute requires a skill-based amusement machine to:

- Award, as a result of a single play, a merchandise prize with a wholesale value of ten dollars or less;
- Base the award of a prize solely on the player achieving the object of the game;
- Not impact the ability of success based on the number of prior wins or losses;
- Make a player aware of all game features that affect a player’s ability to succeed; and
- Not determine game outcome based upon chance.

A game that does not allow a player, based on their skill, to win on each play of the game is not a skill-based amusement machine. The games in question reveal to the player that they will win or lose on the next play no matter the amount of skill they possess. This determination is made by the game itself, not the skill of the player. Therefore, “pre-reveal” or “no-chance” games are not “skill-based amusement machines” under Ohio law.

Some members of the industry argue that “pre-reveal” and “no-chance” games are not gambling because there is “no chance” as to whether the game is a winner. This argument ignores the reality that the game itself, by chance, pre-determines whether a game will be a winner or a loser. Knowing the outcome in advance does not remove that chance-based determination. Further, being able to remove consideration upon learning of the outcome does not remove the element of chance because, as designed, the game requires a player to move past the immediate game for the chance that the next will be a winning game.

By operation of Ohio law, “pre-reveal” and “no-chance” games are slot machines. The four constitutionally created casinos in Ohio are the only entities authorized by law to operate slot machines. Any person who establishes, promotes, or operates or knowingly engages in conduct that facilitates any “scheme of chance” (i.e., slot machine¹) has violated R.C. Chapter 2915 and

¹ In addition to the definition of slot machine defined earlier, Chapter 3772 defines “Slot machine” as “any mechanical, electrical, or other device or machine which, upon insertion of a coin, token, ticket, or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, makes individual prize determinations for individual participants in cash, premiums, merchandise, tokens, or any thing of value, whether

3772 and runs the risk of criminal prosecution for unlawful gambling. R.C. 2915.02 (A) and (K); R.C. 3772.99(E)(12). If the person is licensed by the Commission, the commission is required revoke the license after the first offense. R.C. 3772.99(E)(12).

the payoff is made automatically from the machine or in any other manner, but does not include any device that is a skill-based amusement machine, as defined in section 2915.01 of the Revised Code.” *See* R.C. 3772.01(X).