

OHIO CASINO CONTROL COMMISSION

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The Ohio Casino Control Commission's proposed technical standards for skill-based amusement machines

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 (131st 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.

In addition to licensing and compliance-based administrative rules, the Commission has proposed technical standards that each skill-based amusement machine must meet prior to being made available for play. A skill-based amusement machine vendor or operator can seek approval of a game directly from the Commission or through the use of an independent skill-based amusement machine testing laboratory certified by the Commission. Once approved, a game version may be bought, sold, or operated by any licensed entity. This process ensures that all games marketed as skill-based comply with all requirements under Ohio law.

The Commission consulted with Gaming Laboratories International, Inc. ("GLI"), an independent testing laboratory with knowledge of the skill-based market as well as technical expertise, to develop the proposed skill-based amusement machine technical standards. The technical standards are designed to provide objective, testable criteria to determine whether a game is truly skill-based or is, instead, a slot machine masquerading as a skill-based game.

A key cornerstone of the technical standards prohibits a game from allowing a player to win more than ten dollars per play. Although R.C. 2915.01(UU) has long required skill-based amusement machines to award merchandise prizes with a value of ten dollars or less, many illegal operators have subverted the ten dollar limit and operate games with the lure of prizes of hundreds of dollars. Commonly called a "hand count," games with this feature allow a player to "win" any amount, but mandate that a player is not allowed to receive the value won until they have played enough games to average ten dollars per play. For example, a game

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may allow a player to “win” one hundred dollars during a single play, but require that player to play a minimum of nine additional times in order to “cash out” the whole value of their winnings. The larger the prize, the more games the player is required to play. In this manner, hand counts allow a game to offer the lure of a large-value prize (like a slot machine) and encourage compulsive behavior (because a player must keep playing in order to claim their winnings) by subverting Ohio law.

Members of the industry often mistakenly rely on dicta in an Ohio Supreme Court opinion, *Pickaway Cty. Skilled Gaming, L.L.C. v. Cordray*, 127 Ohio St.3d 104, 2010-Ohio-4908, to support their use of hand counts. In *Pickaway County*, the Court upheld the ten dollar prize value limitation for skill-based amusement machines as rationally related to legitimate government interests, including as a prophylactic measure against illegal gambling. The Court determined that the prize value limit was calculated to eliminate the lure of large prizes, minimizing irresponsible play and preventing illegal gaming. Contrary to the assertions of many members of the industry, the case does not support the use of hand counts or exempt such practice from any provision of R.C. Chapter 2915. Rather, the case briefly discusses the possibility that a player could accumulate enough redeemable vouchers to obtain a prize valued in excess of ten dollars as part of the existing legal framework.

The Court’s analysis supports the requirements under R.C. 2915.01(UU) that the ten dollar merchandise prize limit applies to each play of a skill-based amusement machine. A play is statutorily defined as “one event from the initial activation of the machine until the results of play are determined without the payment of additional consideration...” Thus, the potential prize for each play of a skill-based amusement machine is capped by the prize-value limit upheld in *Pickaway County*. Under the Court’s discussion, a large prize is winnable only after several plays of a game and accumulating enough vouchers to obtain the prize (such as playing Skee-ball enough times to win a large stuffed animal). Hand counts are inconsistent with this analysis. Through the use of hand counts, a large prize is winnable immediately, even upon the first play of a game, but the game will only “pay out” that prize in increments. Essentially, hand counts create the lure of the large prizes the statute was crafted to prevent by subverting the ten dollar prize value limitation upheld in *Pickaway County*.

Eliminating the lure of large prizes is an important step to curtail illegal gambling and mitigate the risk of compulsive behavior. The Commission is committed to ensuring the integrity of skill-based amusement machine gaming in part by mandating technical requirements that demonstrate that a proposed game is not a slot machine. The Commission’s proposed technical standards, including the prohibition of hand counts, is a vital step to validate legitimate skill-based gaming and eliminate illegal casinos.