

1 AN ACT relating to the regulation of game machines and declaring an emergency.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 528.010 is amended to read as follows:

4 The following definitions apply in this chapter unless the context otherwise requires:

- 5 (1) "Advancing gambling activity" -- A person "advances gambling activity" when,
6 acting other than as a player, he ***or she*** engages in conduct that materially aids any
7 form of gambling activity. The conduct shall include, but is not limited to, conduct
8 directed toward the establishment of the particular game, contest, scheme, device,
9 or activity involved; toward the Acquisition or maintenance of premises,
10 paraphernalia, equipment, or apparatus therefor; toward the Solicitation or
11 inducement of persons to participate therein; toward the actual conduct of the
12 playing phases thereof; toward the arrangement of any of its financial or recording
13 phases or toward any other phase of its operation. A person who gambles at a social
14 game of chance on equal terms with other participants does not otherwise advance
15 gambling activity by performing acts, without remuneration or fee, directed toward
16 the arrangement or facilitation of the game as inviting persons to play, permitting
17 the use of premises therefor and supplying equipment used therein;
- 18 (2) "Bookmaking" means advancing gambling activity by unlawfully accepting bets
19 upon the outcome of future contingent events from members of the public as a
20 business;
- 21 (3) "Charitable gaming" means games of chance conducted by charitable organizations
22 licensed and regulated under the provisions of KRS Chapter 238;
- 23 (4) (a) ***"Coin-operated amusement machine" means a lawful machine or device***
24 ***that requires the direct or indirect payment of consideration, including but***
25 ***not limited to the insertion of a coin, currency, ticket, token, or similar***
26 ***object, or the depositing of funds with the operator or owner of the device,***
27 ***and which contains no element of chance and automatically, by or through***

1 some mechanical operation, affords music or amusement of some character
2 with or without vending any merchandise, but in addition to any
3 merchandise.

4 (b) A coin-operated amusement machine shall not deliver or entitle the person
5 playing or operating the game to receive cash, cash equivalents, gift cards,
6 vouchers, billets, tickets, tokens, electronic credits to be exchanged for cash,
7 merchandise, or something of value.

8 (c) A coin-operated amusement machine may entitle the person playing to a
9 noncash, merchandise prize or a voucher, billet, ticket, token, or electronic
10 credit redeemable only for a noncash, merchandise prize that shall not:

- 11 1. Exceed the cost of playing the game or the total aggregate cost of an
12 individual player playing multiple games;
- 13 2. Include an alcoholic beverage;
- 14 3. Be eligible for purchase or repurchase; or
- 15 4. Be exchangeable for any cash, cash equivalents, or something of
16 value whatsoever;

17 (5) (a) "Gambling" means staking or risking something of value upon the outcome of
18 a contest, game, gaming scheme, or gaming device which is based upon an
19 element of chance, in accord with an agreement or understanding that
20 someone will receive something of value in the event of a certain outcome.
21 "Gambling" includes playing or offering for play any skill game.

22 (b) "Gambling does not include:

- 23 1. A contest or game in which eligibility to participate is determined by
24 chance and the ultimate winner is determined by skill;
- 25 2. Charitable gaming which is licensed and regulated under the
26 provisions of KRS Chapter 238;
- 27 3. Skill-based contests; or

1 4. The use or operation of any devices or machines that are described in
2 subsection (6)(b) of this section~~shall not be considered to be gambling.~~

3 ~~(b) Gambling shall not mean charitable gaming which is licensed and regulated~~
4 ~~under the provisions of KRS Chapter 238;~~

5 (6) (a) ~~{(5)}~~ "Gambling device" means:

6 1.~~{(a)}~~ Any so-called slot machine or any other machine or mechanical
7 device~~an essential part of which is a drum or reel with insignia thereon,~~
8 ~~and~~ which when operated may deliver, as a result of the application of
9 any~~an~~ element of chance, any money or property, or by the operation
10 of which a person may become entitled to receive, as the result of the
11 application of any~~an~~ element of chance, any money or property;

12 2.~~{(b)}~~ Any mechanical or electronic device permanently located in a
13 business establishment, including a private club, that is offered or made
14 available to a person to play or participate in a simulated gambling
15 program in return for direct or indirect consideration, including but not
16 limited to consideration paid for Internet access or computer time, or a
17 sweepstakes entry, which when operated may deliver as a result of the
18 application of any~~an~~ element of chance, regardless of whether the
19 result is also partially or predominantly based on skill, any money or
20 property, or by the operation of which a person may become entitled to
21 receive, as the result of the application of any~~an~~ element of chance,
22 regardless of whether the result is also partially or predominantly
23 based on skill, any money or property;~~{or}~~

24 3.~~{(c)}~~ Any other machine or any mechanical, electronic, or other device,
25 including but not limited to roulette wheels, gambling tables and similar
26 devices, designed and manufactured primarily for use in connection with
27 gambling and which when operated may deliver, as the result of the

1 application of any~~an~~ element of chance, any money or property, or by
 2 the operation of which a person may become entitled to receive, as the
 3 result of the application of any~~an~~ element of chance, any money or
 4 property; or

5 **4. Skill games, irrespective of the names used by the owner or operator to**
 6 **suggest that his or her use is not gambling or that the device is not a**
 7 **gambling device.**

8 **(b) The**~~(d) — But, the~~ following shall not be considered gambling devices
 9 within this definition:

- 10 1. Devices dispensing or selling combination or French pools on licensed,
 11 regular racetracks during races on said tracks;
- 12 2. Devices dispensing or selling combination or French pools on historical
 13 races at licensed, regular racetracks as lawfully authorized by the
 14 Kentucky Horse Racing Commission;
- 15 3. Electro-mechanical pinball machines specially designed, constructed, set
 16 up, and kept to be played for amusement only. Any pinball machine
 17 shall be made to receive and react only to the deposit of coins during the
 18 course of a game. The ultimate and only award given directly or
 19 indirectly to any player for the attainment of a winning score or
 20 combination on any pinball machine shall be the right to play one (1) or
 21 more additional games immediately on the same device at no further
 22 cost. The maximum number of free games that can be won, registered,
 23 or accumulated at one (1) time in operation of any pinball machine shall
 24 not exceed thirty (30) free games. Any pinball machine shall be made to
 25 discharge accumulated free games only by reactivating the playing
 26 mechanism once for each game released. Any pinball machine shall be
 27 made and kept with no meter or system to preserve a record of free

1 games played, awarded, or discharged. Nonetheless, a pinball machine
 2 shall be a gambling device if a person gives or promises to give money,
 3 tokens, merchandise, premiums, or property of any kind for scores,
 4 combinations, or free games obtained in playing the pinball machine in
 5 which the person has an interest as owner, operator, keeper, or
 6 otherwise;~~or~~

7 4. Devices used in the conduct of charitable gaming;

8 **5. Coin-operated amusement machines; or**

9 **6. Devices used for wagering exempted from the application of this**
 10 **chapter pursuant to KRS 436.480.**

11 ~~(7)~~ "Lottery and gift enterprise" means:

12 (a) A gambling scheme in which:

- 13 1. The players pay or agree to pay something of value for chances,
 14 represented and differentiated by numbers or by combinations of
 15 numbers or by some other media, one (1) or more of which are to be
 16 designated the winning ones; and
- 17 2. The ultimate winner is to be determined by a drawing or by some other
 18 method based upon the element of chance; and
- 19 3. The holders of the winning chances are to receive something of value;
 20 and

21 (b) A gift enterprise or referral sales plan which meets the elements of a lottery
 22 listed in paragraph (a) of this subsection is to be considered a lottery under
 23 this chapter;

24 ~~(8)~~ "Mutuel" or "the numbers games" means a form of lottery in which the
 25 winning chances or plays are not determined upon the basis of a drawing or other
 26 act on the part of persons conducting or connected with the scheme, but upon the
 27 basis of the outcome or outcomes of a future contingent event or events otherwise

1 unrelated to the particular scheme;

2 ~~(9)~~~~(8)~~ "Player" means a person who engages in any form of gambling solely as a
3 contestant or bettor, without receiving or becoming entitled to receive any profit
4 therefrom other than personal gambling winnings, and without otherwise rendering
5 any material assistance to the establishment, conduct, or operation of the particular
6 gambling activity. A person who engages in "bookmaking" as defined in subsection
7 (2) of this section is not a "player." The status of a "player" shall be a defense to any
8 prosecution under this chapter;

9 ~~(10)~~~~(9)~~ "Profiting from gambling activity" -- A person "profits from gambling
10 activity" when, other than as a player, he or she accepts or receives or agrees to
11 accept or receive money or other property pursuant to an agreement or
12 understanding with any person whereby he participates or is to participate in the
13 proceeds of gambling activity;

14 ~~(11)~~~~(10)~~ "Simulated gambling program" means any method intended to be used by a
15 person playing, participating, or interacting with an electronic device that may,
16 through the application of any~~an~~ element of chance, either deliver money or
17 property or an entitlement to receive money or property;~~and~~

18 (12) "Skill" means the knowledge, dexterity, or any other ability or expertise of a
19 natural person;

20 (13) "Skill-based contests" means a competitive event among two (2) or more
21 individuals or teams of individuals in which eligibility to participate is determined
22 by chance and the ultimate winner is determined by skill, but the competitive
23 event shall not use a skill game;

24 (14) "Skill game" means an electronic, computerized, mechanical contrivance,
25 terminal, machine, or other device that requires the direct or indirect payment of
26 consideration which may include and shall not be limited to the insertion of a
27 coin, currency, ticket, token, or similar object, or by depositing funds with the

1 operator or owner of the device, to operate, play, or activate a game. The outcome
 2 of the game shall be determined by any element of skill of the player and may
 3 deliver or entitle the person playing or operating the device to receive cash, cash
 4 equivalents, or gift cards or vouchers, billets, tickets, tokens, or electronic credits
 5 to be exchanged for cash or to receive merchandise or something of value,
 6 whether the payoff is made automatically from the device or manually. Coin-
 7 operated amusement machines shall not be considered skill games; and

8 ~~(15)~~~~(11)~~ (a) "Something of value" means any money or property, any token, object,
 9 or article exchangeable for money or property, or any form of credit or
 10 promise directly or indirectly contemplating transfer of money or property or
 11 of any interest therein, or involving extension of a service, entertainment, or a
 12 privilege of playing at a game or scheme without charge.

13 (b) "Something of value" does not include the award of a free, extended, or
 14 continuous play which is awarded as a prize for playing a game or scheme
 15 for a charge.

16 ➔Section 2. KRS 528.100 is amended to read as follows:

17 (1) Any gambling device or gambling record possessed or used in violation of this
 18 chapter is forfeited to the state, and shall be disposed of in accordance with KRS
 19 500.090~~, except that the provisions of this section shall not apply to charitable~~
 20 ~~gaming activity as defined by KRS 528.010(3)].~~

21 (2) In addition to any other penalty provided by law, any person who conducts,
 22 finances, manages, supervises, directs, or owns a gambling device intended for
 23 use in the Commonwealth in violation of this chapter shall be subject to a civil
 24 penalty not to exceed twenty-five thousand dollars (\$25,000) for each device,
 25 payable to the county in which the device was operated.

26 (3) The Attorney General, the Commonwealth's attorney for any locality, or the
 27 county attorney for any locality may cause an action in equity to be brought in

- 1 *the name of the Commonwealth or of the locality, as applicable, to:*
- 2 *(a) Enjoin the operation of a gambling device in violation of this section;*
- 3 *(b) Request an attachment against all such devices and any moneys within*
- 4 *those devices pursuant to KRS 500.090; and*
- 5 *(c) Recover the civil penalty not to exceed twenty-five thousand dollars*
- 6 *(\$25,000) per device.*
- 7 *(4) In any action brought under this section, the Attorney General, the*
- 8 *Commonwealth's attorney, or the county attorney may recover attorney's fees and*
- 9 *reasonable expenses incurred by the state or local agency in investigating and*
- 10 *preparing the case.*

11 ➔Section 3. Whereas the number of illegal game machines in Kentucky continues
 12 to multiply at an exponential rate, an emergency is declared to exist, and this Act takes
 13 effect upon its passage and approval by the Governor or upon its otherwise becoming a
 14 law.