

CHAPTER 4

(HB 594)

AN ACT relating to the regulation of game machines.

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

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

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

- (1) "Advancing gambling activity" -- A person "advances gambling activity" when, acting other than as a player, he **or she** engages in conduct that materially aids any form of gambling activity. The conduct shall include, but is not limited to, conduct directed toward the establishment of the particular game, contest, scheme, device, or activity involved; toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor; toward the solicitation or inducement of persons to participate therein; toward the actual conduct of the playing phases thereof; toward the arrangement of any of its financial or recording phases or toward any other phase of its operation. A person who gambles at a social game of chance on equal terms with other participants does not otherwise advance gambling activity by performing acts, without remuneration or fee, directed toward the arrangement or facilitation of the game as inviting persons to play, permitting the use of premises therefor and supplying equipment used therein;
- (2) "Bookmaking" means advancing gambling activity by unlawfully accepting bets upon the outcome of future contingent events from members of the public as a business;
- (3) "Charitable gaming" means games of chance conducted by charitable organizations licensed and regulated under the provisions of KRS Chapter 238;
- (4)
 - (a) ***"Coin-operated amusement machine" means a lawful machine or device that requires the direct or indirect payment of consideration, including but not limited to the insertion of a coin, currency, ticket, token, or similar object, or the depositing of funds with the operator or owner of the device, and that contains no material element of chance and automatically, by or through some mechanical operation, affords music or amusement of some character with or without vending any merchandise, but in addition to any merchandise.***
 - (b) ***A coin-operated amusement machine shall not deliver or entitle the person playing or operating the game to receive cash, cash equivalents, gift cards, or vouchers, billets, tickets, tokens, electronic credits or any item that can be exchanged for cash, cash equivalents, gift cards, merchandise, or something of value, unless otherwise provided under this section.***
 - (c) ***A coin-operated amusement machine may entitle the person playing to a noncash, merchandise prize or a voucher, billet, ticket, token, or electronic credit redeemable only for a noncash, merchandise prize under the following rules:***
 1. ***The wholesale value of a merchandise prize awarded as a result of the single play of a machine, either directly or as a result of redemption of a redeemable voucher, does not exceed twenty-five dollars (\$25);***
 2. ***Redeemable vouchers are not redeemable for any merchandise prize that has a wholesale value of more than twenty-five dollars (\$25) times the fewest number of single plays necessary to accrue the redeemable vouchers required to obtain that prize; and***
 3. ***Any redeemable vouchers or merchandise prizes are distributed at the site of the coin-operated amusement machine at the time of play.***
 - (d) ***The noncash merchandise prize shall not be:***
 1. ***An alcoholic beverage;***
 2. ***Eligible for purchase or repurchase; or***
 3. ***Exchangeable for any cash, cash equivalents, or something of value whatsoever;***
- (5) (a) ***"E-sports competition" means a league, competitive circuit, tournament, or similar competition in which:***

1. *Two (2) or more participants or teams of participants compete directly against each other for entertainment and prizes in the same video game at the same time, typically for spectators;*
 2. *Results are determined solely on the basis of the skill of the players;*
 3. *The number of participants is fixed before the beginning of the competition;*
 4. *Any fee collected to participate in the competition shall be collected from all participants before the competition begins;*
 5. *At least one (1) participant shall receive something of value based on the results of the competition; and*
 6. *The value of any prize shall be predetermined before the competition begins.*
- (b) *E-sports shall not include traditional casino games which include but are not limited to poker, roulette, craps, or blackjack;*
- (6) (a) "Gambling" means staking or risking something of value upon the outcome of a contest, game, gaming scheme, or gaming device which is based upon an element of chance, in accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome. **"Gambling" includes playing or offering for play any game, contest, or competition utilizing a gambling device.**
- (b) **"Gambling" does not include:**
1. A contest or game in which eligibility to participate is determined by chance and the ultimate winner is determined by skill;
 2. **Charitable gaming which is licensed and regulated under the provisions of KRS Chapter 238;**
 3. **E-sports competitions;**
 4. **Skill-based contests; or**
 5. **The use or operation of any devices or machines that are described in subsection (7)(b) of this section**~~[shall not be considered to be gambling.~~
- ~~(b) Gambling shall not mean charitable gaming which is licensed and regulated under the provisions of KRS Chapter 238;~~
- (7) (a) ~~[(5)]~~ "Gambling device" means:
- 1.~~[(a)]~~ Any so-called slot machine or any other machine or mechanical device~~[an essential part of which is a drum or reel with insignia thereon, and]~~ which when operated may deliver, as a result of the application of **any**~~[an]~~ element of chance, any money or property, or by the operation of which a person may become entitled to receive, as the result of the application of **any**~~[an]~~ element of chance, any money or property;
 - 2.~~[(b)]~~ Any mechanical or electronic device permanently located in a business establishment, including a private club, that is offered or made available to a person to play or participate in a simulated gambling program in return for direct or indirect consideration, including but not limited to consideration paid for Internet access or computer time, or a sweepstakes entry, which when operated may deliver as a result of the application of **any**~~[an]~~ element of chance, **regardless of whether the result is also partially or predominantly based on skill**, any money or property, or by the operation of which a person may become entitled to receive, as the result of the application of **any**~~[an]~~ element of chance, **regardless of whether the result is also partially or predominantly based on skill**, any money or property;~~[or]~~
 - 3.~~[(c)]~~ Any other machine or any mechanical, **electronic**, or other device, including but not limited to roulette wheels, gambling tables and similar devices, designed and manufactured primarily for use in connection with gambling and which when operated may deliver, as the result of the application of **any**~~[an]~~ element of chance, any money or property, or by the operation of which a person may become entitled to receive, as the result of the application of **any**~~[an]~~ element of chance, any money or property; **or**
 4. **Any electronic, computerized, or mechanical contrivance, terminal, machine, or other device that:**

- a. *Requires the direct or indirect payment of consideration which may include and shall not be limited to the insertion of a coin, currency, ticket, token, or similar object, or by depositing funds with the operator or owner of the device, to operate, play, or activate a game; and*
- b. *Offers games the outcomes of which are determined by any element of skill of the player and may deliver or entitle the person playing or operating the device to receive cash, cash equivalents, or gift cards or vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or something of value, whether the payoff is made automatically from the device or manually.*

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

- 1. Devices dispensing or selling combination or French pools on licensed, regular racetracks during races on said tracks;
- 2. Devices dispensing or selling combination or French pools on historical races at licensed, regular racetracks as lawfully authorized by the Kentucky Horse Racing Commission;
- 3. Electro-mechanical pinball machines specially designed, constructed, set up, and kept to be played for amusement only. Any pinball machine shall be made to receive and react only to the deposit of coins during the course of a game. The ultimate and only award given directly or indirectly to any player for the attainment of a winning score or combination on any pinball machine shall be the right to play one (1) or more additional games immediately on the same device at no further cost. The maximum number of free games that can be won, registered, or accumulated at one (1) time in operation of any pinball machine shall not exceed thirty (30) free games. Any pinball machine shall be made to discharge accumulated free games only by reactivating the playing mechanism once for each game released. Any pinball machine shall be made and kept with no meter or system to preserve a record of free games played, awarded, or discharged. Nonetheless, a pinball machine shall be a gambling device if a person gives or promises to give money, tokens, merchandise, premiums, or property of any kind for scores, combinations, or free games obtained in playing the pinball machine in which the person has an interest as owner, operator, keeper, or otherwise;~~or~~
- 4. Devices used in the conduct of charitable gaming;
- 5. *Coin-operated amusement machines;*
- 6. *Devices used for wagering exempted from the application of this chapter pursuant to KRS 436.480;*
- 7. *Devices used in e-sports competitions; or*
- 8. *Devices used in skill-based contests, provided such devices do not meet the definition of gambling devices in paragraph (a) of this subsection;*

~~(8)~~~~(6)~~ "Lottery and gift enterprise" means:

(a) A gambling scheme in which:

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

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

~~(9)~~~~(7)~~ "Mutuel" or "the numbers games" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme;

- ~~(10)(9)~~ "Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct, or operation of the particular gambling activity. A person who engages in "bookmaking" as defined in subsection (2) of this section is not a "player." The status of a "player" shall be a defense to any prosecution under this chapter;
- ~~(11)(9)~~ "Profiting from gambling activity" -- A person "profits from gambling activity" when, other than as a player, he **or she** accepts or receives or agrees to accept or receive money or other property pursuant to an agreement or understanding with any person whereby he **or she** participates or is to participate in the proceeds of gambling activity;
- ~~(12)(10)~~ "Simulated gambling program" means any method intended to be used by a person playing, participating, or interacting with an electronic device that may, through the application of ~~any~~~~an~~ element of chance, either deliver money or property or an entitlement to receive money or property;~~and~~
- (13) "Skill" means the knowledge, dexterity, or any other ability or expertise of a natural person;**
- (14) "Skill-based contest" means a live, in-person competitive event among two (2) or more individuals or teams of individuals in which the ultimate winner is determined by skill and the competitive event does not utilize a gambling device; and**
- ~~(15)(11)~~ **(a)** "Something of value" means any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge.
- (b) "Something of value" does not include the award of a free, extended, or continuous play which is awarded as a prize for playing a game or scheme for a charge.**

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

- (1)** Any gambling device or gambling record possessed or used in violation of this chapter is forfeited to the state, and shall be disposed of in accordance with KRS 500.090~~, except that the provisions of this section shall not apply to charitable gaming activity as defined by KRS 528.010(3).~~
- (2)** *In addition to any other penalty provided by law, any person who conducts, finances, manages, supervises, directs, or owns a gambling device intended for use in the Commonwealth in violation of this chapter shall be subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each device, payable to the county in which the device was operated.*
- (3)** *The Attorney General, the Commonwealth's attorney for any locality, or the county attorney for any locality may cause an action in equity to be brought in the name of the Commonwealth or of the locality, as applicable, to:*
- (a)** *Enjoin the operation of a gambling device in violation of this section;*
- (b)** *Request an attachment against all such devices and any moneys within those devices pursuant to KRS 500.090; and*
- (c)** *Recover the civil penalty not to exceed twenty-five thousand dollars (\$25,000) per device.*

Signed by Governor March 16, 2023.