

SKILL-BASED GAMES REGISTRATION REQUIREMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keith Grover

House Sponsor: _____

LONG TITLE**General Description:**

This bill enacts the Skill-based Games Regulation Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts provisions related to skill-based games, including registration and notification requirements;
- ▶ requires the Division of Consumer Protection to:
 - enforce the Skill-based Games Regulation Act;
 - make rules under the Skill-based Games Regulation Act;
 - contract with a third party to determine whether a game is a skill-based game under the Skill-based Games Regulation Act; and
- establish and maintain a database related to skill-based games registered under the Skill-based Games Regulation Act; and
- ▶ establishes that a skill-based game is not "fringe gambling" or "gambling" under Title 76, Chapter 10, Part 11, Gambling.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



Utah Code Sections Affected:

AMENDS:

13-2-1, as last amended by Laws of Utah 2020, Chapter 118

76-10-1101, as last amended by Laws of Utah 2020, Chapter 291

76-10-1110, as enacted by Laws of Utah 2020, Chapter 291

ENACTS:

13-58-101, Utah Code Annotated 1953

13-58-102, Utah Code Annotated 1953

13-58-201, Utah Code Annotated 1953

13-58-202, Utah Code Annotated 1953

13-58-301, Utah Code Annotated 1953

13-58-302, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-2-1** is amended to read:

13-2-1. Consumer protection division established -- Functions.

(1) There is established within the Department of Commerce the Division of Consumer Protection.

(2) The division shall administer and enforce the following:

(a) Chapter 5, Unfair Practices Act;

(b) Chapter 10a, Music Licensing Practices Act;

(c) Chapter 11, Utah Consumer Sales Practices Act;

(d) Chapter 15, Business Opportunity Disclosure Act;

(e) Chapter 20, New Motor Vehicle Warranties Act;

(f) Chapter 21, Credit Services Organizations Act;

(g) Chapter 22, Charitable Solicitations Act;

(h) Chapter 23, Health Spa Services Protection Act;

(i) Chapter 25a, Telephone and Facsimile Solicitation Act;

(j) Chapter 26, Telephone Fraud Prevention Act;

(k) Chapter 28, Prize Notices Regulation Act;

(l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

- (m) Chapter 34, Utah Postsecondary Proprietary School Act;
(n) Chapter 34a, Utah Postsecondary School State Authorization Act;
(o) Chapter 39, Child Protection Registry;
(p) Chapter 41, Price Controls During Emergencies Act;
(q) Chapter 42, Uniform Debt-Management Services Act;
(r) Chapter 49, Immigration Consultants Registration Act;
(s) Chapter 51, Transportation Network Company Registration Act;
(t) Chapter 52, Residential Solar Energy Disclosure Act;
(u) Chapter 53, Residential, Vocational and Life Skills Program Act;
(v) Chapter 54, Ticket Website Sales Act;
(w) Chapter 56, Ticket Transferability Act; [and]
(x) Chapter 57, Maintenance Funding Practices Act[-]; and
(y) Chapter 58, Skill-based Games Regulation Act.

Section 2. Section **13-58-101** is enacted to read:

CHAPTER 58. SKILL-BASED GAMES REGULATION ACT

Part 1. General Provisions

13-58-101. Title.

This chapter is known as "Skill-based Games Regulation Act."

Section 3. Section **13-58-102** is enacted to read:

13-58-102. Definitions.

As used in this chapter:

- (1) "Division" means the Division of Consumer Protection established in Section 13-2-1.
- (2) "Prize" means the same as that term is defined in Section 76-10-1101.
- (3) "Skill-based game" means a game:
- (a) a player plays:
- (i) on a machine or device; and
- (ii) in exchange for money or other thing of value;
- (b) the outcome of which is based wholly or predominantly on the skill of the player;
- (c) that does not:
- (i) generate an automatic winner;

- 90 (ii) award a prize without the application of the player's skill; or
91 (iii) appear to be a game described in Subsections [76-10-1101](#)(16)(e)(v)(A) through
92 (H); and
93 (d) in which:
94 (i) the number or ratio of previous players' wins or losses does not impact a player's
95 ability to succeed at the game;
96 (ii) a player is able to win more than the cost of play each time the player employs the
97 skill required to win the game;
98 (iii) the occurrence of a chance event that a player cannot alter does not determine the
99 success of the player or the outcome of the game; and
100 (iv) the output of a random number generator does not determine the success of the
101 player or the outcome of the game.

102 Section 4. Section **13-58-201** is enacted to read:

103 **Part 2. Registration**

104 **13-58-201. Registration of skill-based games -- Notification to division.**

- 105 (1) The owner of a skill-based game may not derive an economic benefit from the
106 operation of the game in this state without registering the game with the division.
107 (2) To register a skill-based game, the owner of the game shall submit to the division
108 an application for registration:
109 (a) in a manner the division determines; and
110 (b) that includes:
111 (i) an application fee in an amount:
112 (A) determined by the division in accordance with Sections [13-1-2](#) and [63J-1-504](#); and
113 (B) that includes the cost of determining whether the game is a skill-based game under
114 this chapter;
115 (ii) the trade name of the game;
116 (iii) the location of each game terminal in which the public has access to the game; and
117 (iv) anything else the division requires as established in rule made in accordance with
118 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
119 (3) Each year, the owner of a registered skill-based game shall renew the game's
120 registration by submitting to the division an application for registration renewal:

(a) in a manner the division determines; and
(b) that includes:
(i) a registration renewal fee in an amount:
(A) determined by the division in accordance with Sections 13-1-2 and 63J-1-504; and
(B) that includes the cost of determining whether the game is a skill-based game under this chapter; and
(ii) anything else the division requires as established in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 5. Section 13-58-202 is enacted to read:

13-58-202. Required notification -- Fees.

(1) The owner of a skill-based game registered in accordance with this chapter shall notify the division within 30 days after the day on which any of the following occurs:
(a) the game undergoes a hardware or software upgrade;
(b) the trade name of the game changes;
(c) the location of a game terminal in which the public has access to the game changes;

or

(d) the game is added to a terminal in which the public has access to the game.
(2) If a skill-based game registered in accordance with this section undergoes a hardware or software upgrade, in addition to notifying the division as described in Subsection (1) the owner of the game shall pay the division a fee in an amount:

(a) determined by the division in accordance with Sections 13-1-2 and 63J-1-504; and
(b) that includes the cost of determining whether the game is a skill-based game under this chapter.

Section 6. Section 13-58-301 is enacted to read:

Part 3. Division Duties

13-58-301. Enforcement.

In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection, the division may impose an administrative fine of up to \$500 for each violation of this chapter.

Section 7. Section 13-58-302 is enacted to read:

13-58-302. Rulemaking -- Determination of skill-based games -- Database.

(1) The division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) establish an application process for an owner of a skill-based game to register and renew registration of the skill-based game with the division, in accordance with Section 13-58-201;

(b) establish a process through which an owner may notify the division as required under Section 13-58-202; and

(c) carry out the provisions of this chapter.

(2) The division shall:

(a) contract, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, with a third party to determine whether a game is a skill-based game under this chapter; and

(b) have the contracted third party described in Subsection (2)(a) determine whether a game is a skill-based game under this chapter upon the division's receipt of:

(i) an application for registration described in Subsection 13-58-201(2);

(ii) an application for registration renewal described in Subsection 13-58-201(3); or

(iii) a notification described in Subsection 13-58-202(1)(a).

(3) (a) The division shall establish and maintain a database of all skill-based games registered in accordance with this chapter.

(b) The database described in Subsection (3)(a) shall include the location of each game terminal in which the public has access to the skill-based game.

Section 8. Section **76-10-1101** is amended to read:

76-10-1101. Definitions.

As used in this part:

(1) (a) "Amusement device" means a game that:

(i) is activated by a coin, token, or other object of consideration or value; and

(ii) does not provide the opportunity to:

(A) enter into a sweepstakes, lottery, or other gambling event; or

(B) receive any form of consideration or value, except an appropriate reward.

(b) "Amusement device" includes:

(i) a video game;

(ii) a driving simulator;

183 (iii) an electronic game;

184 (iv) a claw machine;

185 (v) a bowling game;

186 (vi) a shuffleboard game;

187 (vii) a skee-ball game;

188 (viii) a pool table;

189 (ix) a pinball machine;

190 (x) a target machine; and

191 (xi) a baseball machine.

192 (2) "Amusement facility" means a facility that:

193 (a) is operated primarily for the purpose of providing amusement or entertainment to
194 customers;

195 (b) is located on property that is open to customers for the purpose of providing
196 customers with an opportunity to use an amusement device;

197 (c) receives a substantial amount of the facility's revenue from the operation of
198 amusement devices; and

199 (d) does not provide an opportunity for, or a machine or device that enables, gambling
200 or fringe gambling.

201 (3) (a) "Appropriate reward" means a reward that:

202 (i) an individual receives as a result of the individual's participation in or use of an
203 amusement device; and

204 (ii) provides:

205 (A) full and adequate return for money, a token, or other consideration or value
206 invested into the amusement device;

207 (B) an immediate and unrecorded ability to replay a game featured on an amusement
208 device that is not exchangeable for value;

209 (C) a toy, novelty, or other non-monetary prize with a value of less than \$100 as a
210 reward for playing; or

211 (D) tickets or credits that are redeemable for a toy, novelty, or non-monetary prize at an
212 amusement facility, or at any franchise or chain of the amusement facility, where the
213 amusement device is located.

(b) "Appropriate reward" does not include money, a gift certificate, a gift card, credit to be used in a retail store, or other form of monetary compensation or reward.

(4) "Consumer" means the same as that term is defined in Section 76-10-1230.

(5) "Enter or entry" means an act or process by which an individual becomes eligible to receive a prize offered for participation in any form of sweepstakes, game, or contest.

(6) (a) "Fringe gambling" means any de facto form of gambling, lottery, fringe gaming device, or video gaming device that is given, conducted, or offered for use or sale by a business in exchange for anything of value or incident to the purchase of another good or service.

(b) "Fringe gambling" does not include:

(i) a promotional activity that is clearly ancillary to the primary activity of a business;

[or]

(ii) use of an amusement device or vending machine[-]; or

(iii) a skill-based game registered in accordance with Title 13, Chapter 58, Skill-based Games Regulation Act.

(7) (a) "Fringe gaming device" means a mechanically, electrically, or electronically operated machine or device that:

(i) is not an amusement device or a vending machine;

(ii) is capable of displaying or otherwise presenting information on a screen or through any other mechanism; and

(iii) provides the user with a card, token, credit, gift certificate, product, or opportunity to participate in a contest, game, gaming scheme, or sweepstakes with a potential return of money or other prize.

(b) "Fringe gaming device" includes a machine or device similar to a machine or device described in Subsection (7)(a) that seeks to avoid application or circumvent this part or Article VI, Section 27, of the Utah Constitution.

(8) (a) "Gambling" means risking anything of value for a return or risking anything of value upon the outcome of a contest, game, gaming scheme, or gaming device when the return or outcome:

(i) is based on an element of chance, regardless of:

(A) the existence of a preview or pre-reveal feature in the device, contest, or game; or

(B) whether the preview or pre-reveal feature described in Subsection (8)(a)(i)(A)

allows users to see individual or successive outcomes; and

(ii) is in accord with an agreement or understanding that someone will receive anything of value in the event of a certain outcome.

(b) "Gambling" includes a lottery.

(c) "Gambling" does not include:

(i) a lawful business transaction; ~~or~~

(ii) use of an amusement device~~[-]; or~~

(iii) a skill-based game registered in accordance with Title 13, Chapter 58, Skill-based Games Regulation Act.

(9) "Gambling bet" means money, checks, credit, or any other representation of value.

(10) "Gambling device or record" means anything specifically designed for use in gambling or fringe gambling or used primarily for gambling or fringe gambling.

(11) "Gambling proceeds" means anything of value used in gambling or fringe gambling.

(12) "Internet gambling" or "online gambling" means gambling, fringe gambling, or gaming by use of:

(a) the Internet; or

(b) any mobile electronic device that allows access to data and information.

(13) "Internet service provider" means a person engaged in the business of providing Internet access service, with the intent of making a profit, to consumers in Utah.

(14) "Lottery" means any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining property, or portion of it, or for any share or any interest in property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name it is known.

(15) "Prize" means a gift, award, gratuity, good, service, credit, or anything else of value that may be or is transferred to an individual or placed on an account or other record with the intent to be transferred to an individual.

(16) "Promotional activity that is clearly ancillary to the primary activity of a business" means a promotional activity that:

(a) continues for a limited period of time;

(b) is related to a good or service ordinarily provided by a business or the marketing or advertisement of a good or service ordinarily provided by the business;

(c) does not require a person to purchase a good or service from the business in consideration for participation or an advantage in the promotional activity or any other contest, game, gaming scheme, sweepstakes, or promotional activity;

(d) promotes a good or service described in Subsection (16)(b) on terms that are commercially reasonable; and

(e) does not, through use of a machine or device:

(i) simulate a gambling environment;

(ii) require the purchase of something of value to participate in the promotional activity that is not regularly used, purchased, or redeemed by users of the machine or device;

(iii) provide a good or service described in Subsection (16)(b):

(A) in a manner in which the person acquiring the good or service is unable to immediately acquire, redeem, or otherwise use the good or service after the time of purchase; or

(B) at a value less than the full value of the good or service;

(iv) appear or operate in a manner similar to a machine or device that is normally found in a casino for the purpose of gambling;

(v) provide an entertaining display, designed to appeal to an individual's senses, that promotes actual or simulated game play that is similar in appearance or function to gambling, including:

(A) a video playing card game, including a video poker game;

(B) a video bingo game;

(C) a video craps game;

(D) a video keno game;

(E) a video lotto game;

(F) an 8-liner machine;

(G) a Pot O' Gold game;

(H) a video game involving a random or chance matching of pictures, words, numbers, or symbols; or

(I) a video game that reveals a prize as the game is played; or

(vi) otherwise create a pretextual transaction to facilitate a contest, game, gaming scheme, or sweepstakes in an attempt to circumvent the requirements of this part or Article VI, Section 27, of the Utah Constitution.

~~[(17) "Skill-based game" means a game, played on a machine or device, the outcome of which is based, in whole or in part, on the skill of the player, regardless of whether a degree of chance is involved.]~~

~~[(18)]~~ (17) "Sweepstakes" means a game, advertising scheme, marketing scheme, or other promotion:

- (a) that an individual may enter with or without payment of any consideration;
- (b) that qualifies the person to win a prize; and
- (c) the result of which is based on chance.

~~[(19)]~~ (18) "Vending machine" means a device:

- (a) that dispenses merchandise in exchange for money or any other item of value;
- (b) that provides full and adequate return of the value deposited;
- (c) through which the return of value is not conditioned on an element of chance or skill; and

- (d) (i) does not include a promotional activity; or
- (ii) includes a promotional activity that is clearly ancillary to the primary activity of a business.

~~[(20)]~~ (19) "Video gaming device" means a device that includes all of the following:

- (a) a video display and computer mechanism for playing a game;
- (b) the length of play of any single game is not substantially affected by the skill, knowledge, or dexterity of the player;
- (c) a meter, tracking, or recording mechanism that records or tracks any money, tokens, games, or credits accumulated or remaining;
- (d) a play option that permits a player to spend or risk varying amounts of money, tokens, or credits during a single game, in which the spending or risking of a greater amount of money, tokens, or credits:
 - (i) does not significantly extend the length of play time of any single game; and
 - (ii) provides for a chance of greater return of credits, games, or money; and
- (e) an operating mechanism that, in order to function, requires inserting money, tokens,

or other valuable consideration other than entering the user's name, birthdate, or contact information.

Section 9. Section **76-10-1110** is amended to read:

76-10-1110. Fringe gaming devices.

(1) Notwithstanding any other provision in Title 76, Chapter 10, Offenses Against Public Health, Safety, Welfare, and Morals, it is unlawful for any person to derive or intend to derive an economic benefit from a fringe gaming device by:

(a) permitting a fringe gaming device to be located on or in any real or personal property owned, rented, or under the control of the person;

(b) allowing individual or public access or use of a fringe gaming device as part of any business owned or operated by the person;

(c) inducing or aiding a person to use a fringe gaming device;

(d) investing in, financing, owning, controlling, or otherwise managing a fringe gaming device; or

(e) possessing a fringe gaming device with the intent to use or allow another to use the fringe gaming device.

(2) Subsection (1) applies regardless of whether the fringe gaming device:

(a) is server-based;

(b) uses a simulated game terminal as a representation of a prize associated with the results of a sweepstakes entry;

(c) uses a simulated game to influence or determine the result of the simulated game or the value of a prize;

(d) selects the winner of a prize from a predetermined or finite pool of entries;

(e) includes a pre-reveal feature;

(f) predetermines a prize and reveals the prize at the time a sweepstakes entry result is revealed;

(g) requires deposit of any money, coin, token, or gift certificate, or the use of a credit card, debit card, prepaid card, or any other method of payment to activate the device;

(h) requires direct payment into the machine or device or remote activation of the device;

(i) requires a purchase of a related product regardless of whether the product has

- 369 legitimate value; or
- 370 (j) reveals the prize incrementally, regardless of whether a prize is awarded~~[; or]~~.
- 371 ~~[(k) includes a skill-based game.]~~
- 372 (3) Each violation of this section is a separate offense.
- 373 (4) A person who violates this section is guilty of:
- 374 (a) a class A misdemeanor for the first offense; or
- 375 (b) a third degree felony for a subsequent offense.