

SCORING CASH WITH ANGRY BIRDS?

In February, New Jersey's DGE issued temporary regulations to allow casinos to offer new skill-based games aimed squarely at the younger generation raised on the interactive experiences of Xbox, PlayStation and Wii. **Michelle Cohen** of Ifrac Law runs through the main provisions and issues to be addressed for *iGaming Business North America*.

In February, New Jersey's Division of Gaming Enforcement ("DGE") announced new temporary regulations for "skill-based gaming" in an effort to attract Millennials and inject new life into land-based casinos. Younger generations raised on the interactive and skillful experiences of Xbox, PlayStation, and Wii games lack interest in slots and other traditional casino offerings. In an effort to broaden the player base and fill empty seats, the DGE is encouraging skill-based game manufacturers to submit games to the agency for approval.

While the DGE has authority to permit skill-based games, the agency issued temporary regulations to provide additional guidance to the industry. The DGE hopes that the new regulations¹, combined with a fast-track "New Jersey First" program, will result in companies with skill-based games bringing their products to Atlantic City before other gaming cities.

The term "skill-based gaming" is defined as "any Division-approved casino game where game outcome is dependent in whole or in part upon the player's physical dexterity and/or mental ability." This definition covers a wide variety of games, and includes games of pure skill as well as hybrid games. Some examples that could be covered by the regulation are mini-golf tournaments, bonus rounds to traditional slots with memory games, and video game contests.

Skill-based games will continue to require DGE approval. A special "New Jersey First" process allows companies that bring their skill-based products to New Jersey before or

simultaneously with submission to any other jurisdiction or testing lab, a 14-day approval process from testing to placement on the casino floor. It would be prudent for gaming companies to engage with DGE staff prior to submission of a particular skill-based game. Staff can provide guidance as to whether the

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New Jersey First program would be a good approach or whether it makes sense to have a more fulsome review and avoid an initial rejection under the New Jersey First program.

The temporary regulations generally mirror Nevada regulations on skill-based gaming adopted in September 2015. Therefore, in most instances skill games approved in New Jersey would be permissible in Las Vegas and vice versa.

Focus on consumer disclosures

The DGE mandates certain key consumer protections. Specifically, skill-based games must display clearly:

- Rules of play – in other words, how the game works, how many attempts one gets, how a player wins, if there are bonus rounds or tie-breakers;
- Amount required to wager on the game;

- Amount to be paid on winning wagers;
- Any rake or fee charged to play the game;
- Total amount wagered by the player;
- Statement that the outcome of the game is affected by player skill (applies to skill and "hybrid" – mixed skill and chance – games); and
- Other information sufficient for the player to reasonably understand the game.

In addition, "unless otherwise disclosed to the player," once a player begins a skill-based game, the gaming device cannot be altered during play based on a player's skill.

Special advantages and enhancements

In keeping with the popularity of "in app purchases," the DGE's regulations allow player-purchased enhancements, randomly awarded enhancements, or other advantages, provided all players are advised of these features. The DGE has put certain protections in place for these features. Specifically, players must be advised both that the feature is available and the benefit it offers. A skill-based game offering these advantages is required to explain how to obtain the feature and to provide players "with sufficient information to make an informed decision, prior to game play, as to whether or not to compete against a patron" who has this advantage. Players who do not wish to buy enhancements likely do not want to compete against players who have these advantages.

Skill-based games may use an "identifier"

¹ <http://www.nj.gov/oag/ge/docs/TempRegs/skilledbasedgaming.pdf>

(such as the skill of the player) to determine which games are available to a player. It is possible that a player's loyalty card information could be configured to track a player's skill in a particular game over time.

Competing against computers or sponsored opponents

The regulations allow players to compete against a computerized or skilled house sponsored opponent, provided the game discloses when the opponent is participating and allows a player to opt-in or opt-out of a computerized or house-sponsored opponent. To establish fairness, the computerized or house-sponsored opponent must be prevented from having access to information that is otherwise unavailable to a player (for instance, knowledge of upcoming events). The regulations do not restrict who can act as a skilled house-sponsored opponent. Could pro-basketball player Stephen Curry participate in a free throw competition? As the rules are written, there appears to be no bar and presumably, a celebrity contestant would increase interest and participation.

Peer-to-peer skill gaming

All peer-to-peer skill-based games are to be monitored for collusion and money laundering activity using an automated feature or following the internal controls of the casino licensee.

Payout

The temporary regulations require that slot machines with a skill-based component have a payout of at least 83% for each wager available for play on the device. However, games, which rely "entirely" on skill or do not use a random number generator ("RNG") are not required to achieve a minimum hold percentage. A skill-based game or slot machine with a skill-based component may provide an adaptive feature to increase the payback percentage in order to improve the actual return to player ("RTP").

Trends

Other states are exploring permitting skill-based games at casinos. The January 2016 National Council of Legislators from Gaming States ("NCLGS") winter conference included a well-attended and lively panel about skill-based gaming. Several state legislators expressed a strong interest in bringing skill-based games of various types to their states' casinos. I spoke on this panel and we discussed the concept of what constitutes a "skill-based" game. My view is that, just as the population has differing skills (athletic skills, knowledge skills), game developers should offer a variety of games for those varied skills. Thus, a Millennial gamer who regularly plays *Black Ops* may wager on a skill-based shooting game. A gamer who engages with *Trivia Crack* and *Words With Friends* may opt to bet on a knowledge-based bonus round on a slot machine. Choices and variety will be keys to success.

New Jersey has also seen an interest in more traditional tournaments. Last year, the Borgata obtained approval for, and ran a \$10,000 free throw basketball tournament. Over 1,000 contestants turned out, resulting in bumping the \$10,000 guaranteed prize pool to \$20,000, and creating marketing buzz for the Borgata and skill-based gaming. The Borgata has issued fairly extensive rules of play that governed the tournament.² Similar skill-based tournaments are likely to follow.

Massachusetts has also issued draft regulations and accepted comments. Further proceedings will be scheduled, including a hearing. Pennsylvania is also reviewing allowing skill games at casinos.

Issues ahead

Regulators and casino operators will need to work together to develop rules and procedures for the roll-out and ongoing operation of skill-based games. Several issues will likely need to be addressed, depending on the type of game. For instance, in a head-to-head game, what happens if there's a stop

in play due to a player issue, a technological issue or some other interruption? How are ties resolved – by tie breaker rounds?

Another important issue that may need to be addressed is whether professionals and other high level players are eligible to play. For instance, could e-Sport-sponsored players compete in skill-based video games? Could college athletes compete in skill-games, involving their sports, under New Jersey's regulations? Presumably they could, provided a disclosure is made and a player can opt-out.

The key to many of the operational questions will be for manufacturers and casino operators to work with regulators in development and when launching the new games. Detailed rules and disclosures will help the games run smoothly, encourage participation, and prevent later disputes. New Jersey's DGE is most definitely forwarding-thinking and receptive to new offerings. Now it is up to game manufacturers to bring new patrons in the casino doors with innovative, skill-based gaming that is responsive to players' interests and offers interactive and entertaining experiences.



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² http://www.theborgata.com/assets/webpage/PLAY/free_throw_tournament/rules/index.html

³ <http://massgaming.com/blog-post/a-request-for-public-comment-regulations-pertaining-to-skill-based-gaming/>