Building Better Business

A review of factors impacting variable-payback and skill-based EGM technologies among commercial gaming states

AGEM
Association of Gaming Equipment Manufacturers
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One of the missions of the Association of Gaming Equipment Manufacturers (AGEM) is to work with state legislators and regulatory agencies to ensure that the regulatory systems governing the manufacture and distribution of gaming devices protect the valuable reputation of the gaming industry while fostering an environment for technological innovation.

In furtherance of this mission, in 2014 AGEM began a dialog with legislators, regulatory agencies and other public officials about significant changes that were impacting the 24 commercial gaming jurisdictions identified by the American Gaming Association (AGA).

•Declines in revenue from the operation of electronic gaming machines (“EGMs”).
•Considerable shifts in demographics of the gambling public.

In Nevada, this dialog resulted in legislative policy changes in 2015 that included recognizing the advent of new game technology and broadening the appeal of the games. These developments involved —

•Authorizing skill-based games for play on EGMs.
•Establishing payback percentage rules exceeding 80 percent and providing for a device percentage rule that would apply to a specific game testing and authorization protocol that would be required or suggested. The regulation that would permit game outcomes result only from the use of a player skill, that is one in which outcomes that incorporate skill and chance results which predominate. "Hybrid EGM)."

Limit permissible games to games of chance or affirmatively disallow skill games.

Observing the Nevada developments, a few other jurisdictions, notably New Jersey, Pennsylvania and Massachusetts, are in various stages of considering changes in policy and law needed to foster regulatory environments supporting the advent of new game technology. The challenges facing the commercial gaming States are unrelated to the type of EGMs allowed and deployed: Thus, the issue is not whether the jurisdiction permits slot machines, video lottery terminals or Class III gaming devices under a Tribal State Compact. Instead, there are four conditions that may be obstacles in the commercial jurisdictions, namely does the applicable law —

- Allow skill-based games on EGMs?
- Facilitate concurrent interactive networked game play among players in common games.
- Authorize and facilitate skill-based games on EGMs?
- Allowing flexible payback percentages based on nonconditional factors.

- Integrating with EGMs social media networking.
- Allowing concurrent interactive networked game play among players in common games.
- Supporting improvements in electronic commerce transactions.

Cooperation Benefits Everyone in Gaming

AGEM Represents Top Suppliers

The Association of Gaming Equipment Manufacturers (AGEM) is a nonprofit international trade association representing manufacturers and suppliers of electronic gaming devices, systems, software, video gaming, arcade technology, key components and support products and services for the gaming industry.

AGEM strives to do two important things: ignite big ideas and push the envelope on behalf of AGEM members and the gaming industry. Through public action, regulatory influence, stakeholder partnerships, educational opportunities, information dissemination and good corporate citizenship, the members of AGEM work together to create benefits for every gaming industry stakeholder.

Together, AGEM has assisted regulatory agencies and participated in the legislative process to solve troubling issues that impact the gaming industry. AGEM is committed to education and positive gaming initiatives. For more information, visit AGEM.org.

The current AGEM membership roster, 157 companies strong based in 23 countries, is a who’s who of the supplier segment representing manufacturers and suppliers of electronic gaming devices, lotteries, systems, table games, online gaming, video gaming, arcade technology, key components and support products and services for the gaming industry.

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The accompanying three tables summarize information from each of the 24 commercial gaming States on these topics.

The language of state regulations and technical standards applied in many of these jurisdictions may also impose other potential limitations on game development, i.e., whether technical standards governing the jurisdictions' statutes. These summaries do not identify whether technical standards governing the jurisdictions' views on what constitutes a game of skill or games of chance, and whether either or both are gambling subject to regulatory and criminal law. This classification might impact the scope of changes in law needed in a particular State to allow for skill-based games or permit variable payback, it will be important to craft either a specific legal safe harbor for deployment of either or both Skill EGMs or Hybrid EGMs. To examine holistically the States gambling laws and jurisdictional restrictions that could permit hybrids to skill-based gaming development.

AGEM also does not address here whether a matter of public policy, elected or appointed officials may conclude that a legislative or regulatory body should debate the offering to the gaming public of new gaming technologies. These summaries do not identify whether technical standards governing the approval of EGMs may require revision. Given, this topic is subject to considerable substantive variation among the jurisdictions, and will depend on whether and how State statute and regulation is changed to facilitate deployment of either or both Skill EGMs and Hybrid EGMs.

The omission of any discussion of Bingo Games, whether allowed by State law or as Class II Gaming under the Indian Gaming Regulatory Act, is intentional. Bingo Games under either State or Federal law is generally classified as a game of chance and thus not relevant to developing and deploying skill-based games. Likewise, AGEM’s examination is not influenced by whether a State allows EGMs to operate as self-contained devices or requires that all authorized EGMs be operated from a centrally located game server system, because this distinction should not govern the determination of whether skill-based games can be offered to the public regardless of the technological platform adopted by the jurisdiction.

To support efforts by commercial gaming jurisdictions to encourage regulatory systems that facilitate new game technology, AGEM has examined the laws of the 24 commercial gaming jurisdictions and identified the principal influences to operation as self-contained devices or requires that all authorized EGMs be operated from a centrally located game server system, because this distinction should not govern the determination of whether skill-based games can be offered to the public regardless of the technological platform adopted by the jurisdiction.

In the following three tables the findings of the AGEM study are summarized. In these jurisdictions, the principal impediments, however, can be addressed when statutes are amended or regulations adopted to eliminate these four principal regulatory challenges. These industry advocates acknowledge that regulators may conclude that technical standards used by agencies underpinning the games do not conflict with the State’s public policy mandates and fits within the gaming control agency’s statutorily delegated discretion under existing definitions, rules and technical standards.

Another Industry Point of View

Independent test labs and other gaming industry observers may advocate that no changes in law may be needed to allow skill-based games for play on EGMs. This view, that skill-based games may be permitted under existing statutory language in some States where regulatory agencies have in the past authorized or permitted skill-based gaming technologies. These AGEM profiles are not intended to suggest that skill-based games may be developed and deployed for use and play. This view, they urge, is particularly true in the many States where independent test labs and other gaming industry observers may advocate that no changes in law may be needed to allow skill-based games for play on EGMs. This view, they urge, is particularly true in the many States where regulators have in the past authorized or permitted skill-based gaming technologies. These AGEM profiles are not intended to suggest that skill-based games may be developed and deployed for use and play.
**Jurisdictions Allowing Either or Both Skill-Based EGMs and Hybrid EGMs**

<table>
<thead>
<tr>
<th>STATE</th>
<th>CURRENT LAW SUMMARY</th>
<th>PAYBACK RULE</th>
<th>NOTATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>The Tribal-State Compact defines EGMs in terms that permit “games of chance or skill” provided game outcome is determined “as a result of the application of chance.” 1999 Tribal-State Compact § 2.6. Thus, a compacted tribe should be allowed to offer Hybrid EGMs as compacted Class III Devices without amending the existing Compact, while Skill EGMs will require a Compact amendment.</td>
<td>75-80 Percent</td>
<td></td>
</tr>
<tr>
<td>Nevada</td>
<td>Statutes, regulations and technical standards allow for development and deployment of Skill EGMs and Hybrid EGMs.</td>
<td>75 Percent</td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>Statutes and temporary administrative regulations support the development and deployment of Skill EGMs and Hybrid EGMs.</td>
<td>83 Percent</td>
<td></td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Statute authorizes EGMs pursuant to Tribal-State Compact and at licensed racetracks and non-profit organization venues, and provides game outcome can be influenced by “player performance and opportunity for success can be improved by skill.” Statute requires such games to satisfy the standards of approved independent testing laboratories without specifying a particular standard.</td>
<td>75 Percent</td>
<td></td>
</tr>
</tbody>
</table>

**Jurisdictions Where Both Statutory and Rule Change is Necessary to Allow Skill-Based EGM Games**

<table>
<thead>
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<th>PAYBACK RULE</th>
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<tbody>
<tr>
<td>Delaware</td>
<td>Constitution authorizes state-controlled lotteries which may include EGMs. Statute and regulation limit EGMs to offering games of chance in which the results must be randomly determined.</td>
<td>87 Percent</td>
<td>Statute includes prohibition of bets or wagers on skill contests. Payout percentage may not exceed 95 percent.</td>
</tr>
<tr>
<td>Florida</td>
<td>Statute and regulation mandate that EGMs “must use a random selection process to determine the outcome of each play of a game.”</td>
<td>80 Percent</td>
<td>Statute includes prohibition of bets or wagers on skill contests. Payout percentage may not exceed 100 percent.</td>
</tr>
<tr>
<td>Illinois</td>
<td>Statute and regulation mandate that EGMs “must use a random selection process to determine the outcome of each play of a game.”</td>
<td>80 Percent</td>
<td>Statute includes prohibition of bets or wagers on skill contests. Payout percentage may not exceed 94-100 percent.</td>
</tr>
<tr>
<td>Iowa</td>
<td>Statute authorizes for various venues certain “gaming games” that are “games of chance” including EGMs. Regulations mandate use of a random number generator to determine the results of the game.</td>
<td>80 Percent</td>
<td>Statute includes prohibition of bets or wagers on skill contests. Payout percentage may not exceed 94-100 percent.</td>
</tr>
<tr>
<td>Kansas</td>
<td>Statute authorizes two categories of EGMs, one of which is a “lottery machine” in which game outcome must result from an element of chance, but allows for both games of chance and Hybrid EGMs, and another which is an “electronic gaming machine” for play at limited venues (e.g., pari-mutuel horse race wagering facilities), and includes “bingo, poker, blackjack, keno and slot machines.” Regulations adopt by reference Gaming Laboratories International, LLC (“GLI”) Standards 11 (Apr. 20, 2007), which requires use of a random number generator.</td>
<td>87 Percent</td>
<td></td>
</tr>
</tbody>
</table>

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**New Jersey**

Statutes and temporary administrative regulations support the development and deployment of Skill EGMs and Hybrid EGMs. Statute requires such games to satisfy the standards of approved independent testing laboratories without specifying a particular standard.
MARYLAND
Constitution authorizes the operation of EGMs at lottery facilities in five specific locations. Statute provides EGMs may only offer games of chance randomly determined. Regulations require demonstration of random process and use of random number generator for EGM game outcomes but also contain language suggesting that skill influence may impact outcomes on EGMs. Statute allows for the limited use and play of “game of chance” slot machines by certain charitable and fraternal organizations in specific counties.

87 Percent
Statute includes prohibition of bets or wagers on skill contests. Payout percentage may not exceed 95 percent.

NEW MEXICO
The Tribal-State Compact defines an EGM in terms that require game outcome be determined “materially by chance.” 2015 Tribal-State Compact § 2(K). Thus, a compacted tribe should be allowed to offer Hybrid EGMs as compacted Class III Devices without amending the existing Compact, while Skill EGMs will require a Compact amendment. Otherwise, the State’s Gaming Control Act provides that an EGM game outcome must be “determined by chance even though accompanied by some skill” and EGMs must use a random number generator.

80 Percent
Payout percentage may not exceed 100 percent.

WEST VIRGINIA
Statutes authorize for various venues the operation of EGMs where game outcome is made through “computer-generated random selection of winning combinations based totally or predominantly on chance.” Regulations provide that EGMs must have a random number generator to determine game outcome.

80 Percent
Payout percentage may not exceed 99.99 percent.

COLORADO
Both Statute and Regulation provide game outcomes in play of an EGM may be influenced by skill. By regulation, an EGM must use a random selection process.

80 Percent
Payout percentage may not exceed 100 percent.

FLORIDA
Statute provides that game outcomes on EGMs may be determined “by reason of skill or application of the element of chance or both.” By regulation, EGMs must use a random number generator to determine game outcomes.

85 Percent
Statute includes prohibition of bets or wagers on skill contests.

INDIANA
Statute allows the operation of any game approved by the Commission as a “wagering device.” Regulation provides that an EGM game outcome may be determined “by reason of the skill of the operator or application of the element of chance, or both” and restricts the “slot machine” subclass of EGMs to those where game outcome is determined by a random number generator.

80 Percent
Payout percentage may not exceed 100 percent.

LOUISIANA
Statute provides that game outcomes for EGMs, excluding video draw poker devices (“VDP Games”), operated in certain venues, may be determined “by reason of the skill, or application of the element of chance, or both.” EGP Games must use a random number generator for card selection. By regulation, EGMs are required to determine game outcomes through a random selection process.

80-83 Percent
Payout percentage may not exceed 94-99.9 percent.

MASSACHUSETTS
Statute provides EGM game outcomes may be determined “by reason of skill or application of the element of chance or both.” Regulations adopt with some exception GLI Standard GLI-11 Version 2.1 (Aug. 25, 2015), requiring use of a random process.

80 Percent
Payout percentage may not exceed 99.99 percent.
Jurisdictions Where Rulemaking Alone Should Allow Skill-Based EGM Games (continued)

**Michigan**
- By statute, EGMs are authorized games. Regulations provide that game outcome for EGMs may be "by reason of the skill of the operator or application of the element of chance, or both." Regulation provides that EGMs must be equipped with a random number generator to select game outcomes.
- **Payback Rule**: 75-80 Percent
- **Notations**: Payout percentage may not exceed 100 percent.

**Mississippi**
- Statute provides that game outcomes on EGMs may be determined "by reason of skill or application of the element of chance or both." Regulation states EGM "must use a random selection process to determine the game outcome of each play of a game."
- **Payback Rule**: 80-83 Percent
- **Notations**: Statute includes prohibition of bets or wagers on skill contests. Payout percentage may not exceed 99-100 percent.

**Missouri**
- Statute authorizes both games of skill and chance, with a procedure for skill-based games to be approved by petition to the Commission. Regulations require EGMs to "have a random selection process," but the rules also state an EGM "that may be affected by player skill must meet the minimum payout percentage requirement even when the skill of the player provides the lowest possible return to the player from the skill portion of the game."
- **Payback Rule**: 80 Percent

**New York**
- EGMs approved under Commission standards are authorized. Regulations state EGMs presenting lottery games must determine game outcome among "multiple players competing for a chance to win a randomly drawn prize." Rules otherwise provide EGM game outcomes must be based on random selection process, but indicate that EGM "that may be affected by player skill shall use a method of play that will provide the greatest return to the player over a period of continuous play."
- **Payback Rule**: 85-90 Percent

**Ohio**
- Statute allows EGMs for both chance games conducted by the state lottery and in casinos where game outcomes are "by reason of the skill of the operator or application of the element of chance, or both." Regulations adopt with some exception GLI Standard GLI-11 Version 2.1 (Aug. 23, 2011), requiring game outcomes to be determined using a random process.
- **Payback Rule**: 85 Percent

**Pennsylvania**
- Statute provides EGM game outcomes may be determined "by reason of skill or application of the element of chance or both." Regulation states each possible slot machine combination producing winning or losing outcomes must be available for random selection at the initiation of each play, and provides an EGM payout percentage affected by reason of skill must use a method of play with greatest player return.
- **Payback Rule**: 85 Percent
- **Notations**: Payout percentage may not exceed 100 percent.

**Rhode Island**
- Constitution authorizes state-controlled lotteries as specified by legislature. Statute provides lotteries, which may include EGMs. Regulations provide that game outcome on EGMs must be "by chance."
- **Payback Rule**: 90 Percent
- **Notations**: State Lottery Director is authorized to determine payback percentage and reports issued by State Lottery indicate payback percentages on EGMs are at least 90 percent.

**South Dakota**
- South Dakota allows in certain venues the operation of EGMs where game outcomes are determined "by reason of the skill of the operator or application of the element of chance, or both." State regulation, however, mandate that EGM must use a "random selection process."
- **Payback Rule**: 80-83 Percent
The Casino Floor of The Future

Strength in Numbers.
Join AGEM today and work together with the world’s leading gaming suppliers.

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