§ 156.40 Operating an unlawful electronic sweepstakes.

1. As used in this section the following words and terms shall have the following meanings:

(a) "Electronic machine or device" means a mechanically, electrically or electronically operated machine or device that is owned, leased or otherwise possessed by a sweepstakes sponsor or promoter, or any sponsors, promoters, partners, affiliates, subsidiaries or contractors thereof; that is intended to be used by a sweepstakes entrant; that uses energy; and that displays the results of a game entry or game outcome to a participant on a screen or other mechanism at a business location, including a private club; provided, that an electronic machine or device may, without limitation:

(1) be server-based;

(2) use a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;

(3) utilize software such that the simulated game influences or determines the winning or value of the prize;

(4) select prizes from a predetermined finite pool of entries;

(5) utilize a mechanism that reveals the content of a predetermined sweepstakes entry;

(6) predetermine the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed;

(7) utilize software to create a game result;

(8) require deposit of any money, coin or token, or the use of any credit card, debit card, prepaid card or any other method of payment to activate the electronic machine or device;

(9) require direct payment into the electronic machine or device, or remote activation of the electronic machine or device;

(10) require purchase of a related product having legitimate value;

(11) reveal the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded;

(12) determine and associate the prize with an entry or entries at the time the sweepstakes is entered; or

(13) be a slot machine or other form of electrical, mechanical, or computer game.

(b) "Enter" or "entry" means the act or process by which a person

becomes eligible to receive any prize offered in a sweepstakes.

(c) "Entertaining display" means any visual information, capable of being seen by a sweepstakes entrant, that takes the form of actual game play or simulated game play.

(d) "Prize" means any gift, award, gratuity, good, service, credit or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

(e) "Sweepstakes" means any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, the determination of which is based upon chance.

2. A person is guilty of operating an unlawful electronic sweepstakes when he or she knowingly possesses with the intent to operate, or place into operation, an electronic machine or device to:

(a) conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize; or

(b) promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize.

3. Nothing in this section shall be construed to make illegal any activity which is lawfully conducted as the New York state lottery for education as authorized by article thirty-four of the tax law; pari-mutuel wagering on horse races as authorized by articles two, three, four, five-A, and ten of the racing, pari-mutuel wagering and breeding law; the game of bingo as authorized pursuant to article fourteen-H of the general municipal law; games of chance as authorized pursuant to article nine-A of the general municipal law; gaming as authorized by article thirteen of the racing, pari-mutuel wagering and breeding law; or pursuant to the federal Indian Gaming Regulatory Act.

Operating an unlawful electronic sweepstakes is a class E felony.