

GUIDELINES FOR REDEMPTION RELATING TO BONA FIDE COIN-OPERATED AMUSEMENT MACHINES OPERATED IN THE STATE OF GEORGIA

I. *Introduction and Background*

In light of the previous statutory and case law governing redemption as it relates to the operation of coin-operated amusement machines in Georgia, it was unclear what was permitted. Historically, there was one view that since many of these games are predominately games of skill, there should be no limitations on the awards that could be achieved by the player. On the other hand, there was the view that anything of value other than a free game was illegal under the law. This issue was particularly vexing to the small operator of these games. On the one hand, he was directed by government agencies that the games must be removed and the result was a piece of equipment that cost between \$3,000 and \$5,000 which could not produce any return on investment. On the other hand, this same business person saw large business entities such as Six Flags, Show Biz Pizza and White Water operate, with impunity, the same equipment for over a decade in this state. This double standard of enforcement was impossible to understand and worked an economic hardship on the small businesses that could not afford to litigate or did not wish the location owner to risk losing an important business privilege like its beer, wine or alcohol permit. In addition, this honest business operator was also faced with a taint of impropriety over his business. Thus, in order to level the playing field for all owners of bona fide coin-operated amusement machines, it was concluded the best course of action was passage of a new law (O.C.G.A. § 16-12-35(a)-(k)) which clarified, refined and toughened the existing law, and issuing guidelines for redemption to local communities as it relates to these coin-operated amusement machines. The law has been amended since its passage. Representatives of the GAMOA met with members of the Georgia Bureau of Investigation, the Attorney General's office and the Georgia Department of Revenue, as well as numerous district attorneys, county solicitors and other local government officials, to ensure that this type of commerce did not become a problem in any community. In this way the rules could be known by the affected parties, economic hardship could be avoided, law enforcement and the industry could avoid unnecessary legal battles and the taint of impropriety could be lifted from this law-abiding industry.

II. *Use of Crane Games*

A crane game machine or device acceptable for the purposes of these guidelines must meet the following requirements:

1. The machine or device must be designed and manufactured only for bona fide amusement purposes and must involve at least *some* skill in its operation;
2. The machine or device must reward a winning player exclusively with free replays or merchandise contained within the machine itself, and such merchandise must be limited to noncash merchandise, prizes, toys, gift

certificates or novelties, each of which has a wholesale value not exceeding \$5.00 for a single play of the game;

3. A player may be rewarded with both free replays and noncash merchandise as provided for a single play as provided in this Code section;
4. The player of the machine or device must be able to control the timing of the use of the claw or grasping device to attempt to pick up or grasp a prize, toy or novelty;
5. The player of the machine or device must be made aware of the total time which the machine or device allows during a game for the player to maneuver the claw or grasping device into a position to attempt to pick up or grasp a prize, toy or novelty;
6. The claw or grasping device must not be of a size, design or shape that prohibits picking up or grasping a prize, toy or novelty contained within the machine or device; and
7. The machine or device must not be classified by the United States government as requiring a federal gaming stamp under applicable provisions of the Internal Revenue Code.

III. *Use of Other Bona Fide Coin-Operated Amusement Machines and Redemption*

A coin-operated game or device designed and manufactured only for bona fide amusement purposes which involves **some** skill in its operation will be acceptable if it rewards the player exclusively with free replays and/or merchandise. Such merchandise must be limited to noncash merchandise, prizes, toys, gift certificates or novelties, each of which has a wholesale value of not more than \$5.00 for a single play of the game or device. This subsection shall not apply, however, to any game or device classified by the United States government as requiring a federal gaming stamp under applicable provisions of the Internal Revenue Code.

IV. *Miscellaneous Redemption Guidelines*

1. No cash or monies (including giving change for tokens, vouchers or tickets) may be given as redemption for the machines described in sections II and III above. Only noncash merchandise can be awarded.
2. It is impermissible for any person owning or possessing an amusement game or device described in sections II and III above, and for any person employed by or acting on behalf of any person, to give to any other person money for noncash

merchandise, prizes, toys, gift certificates or novelties received as a reward in playing any such amusement game or device.

3. No form of alcoholic beverages, cigarettes, other tobacco products, guns or other firearms will be permitted to be used as forms of redemption as it relates to any bona fide coin-operated amusement machine. All other legal forms of merchandise, prizes, toys, gift certificates or novelties will be permitted. As with all other noncash redemption, gift certificates cannot be redeemed for cash or monies. It is strongly recommended that all gift certificates have wording on their face that clearly states that the gift certificate "cannot be redeemed for cash or other forms of legal tender." Gift certificates, tokens, vouchers, tickets, or other evidence of winnings are redeemable only at the premises where the game or other device is located. **Notably, HB 487 made a significant change. Previously, neither lottery tickets nor any other item enabling participation in any lottery was prohibited as an award. It amended O.C.G.A. 16-12-35(h) to provide that "any ticket or product of the Georgia Lottery Corporation" could be used as forms of redemption as it relates to bona fide coin operated amusement machines.**
4. As to coin-operated amusement pusher machines, only tickets, vouchers or tokens will be permitted for discharge from the machines. No coins or other form of legal tender will be permitted to be discharged from the machines.
5. A player may be permitted to accumulate credits, tickets, vouchers or tokens from a coin-operated amusement machine for redemption purposes so long as the wholesale value of the tickets, credits or tokens for a single play does not exceed \$5.00 **per play**. This accumulation may be received on a single ticket by the total number of tokens or tickets obtained by the player of the machine or by the issuance of multiple tokens, vouchers or tickets based upon the \$5.00 per play guideline. It is impermissible to redeem a ticket for merchandise and change. No change can be given for the ticket, token, voucher or certificate that is earned from the successful playing of the machine.
6. A player may accumulate his or her tokens, vouchers or tickets and secure noncash redemption including various merchandise, prizes, toys, gift certificates or novelties of various values and amounts so long as the player does not earn more than \$5.00 worth of tokens, vouchers or tickets on a single play of the machine.
7. All tickets, tokens and credits must only be redeemed for the permissible noncash merchandise, prizes, toys, gift certificates or novelties as described in these guidelines, **now including lottery tickets and lottery products.**
8. It is a criminal act to award noncash merchandise, prizes, toys, gift certificates or novelties to a successful player and then buy back the prizes for cash. Further, it is a criminal act to award cash to a successful player of a machine. Significantly,

any location owner, location operator, or person employed by a location owner or operator who fails to provide legal redemption will be guilty of a misdemeanor of a high and aggravated nature. However, for a second separate offense such person shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one nor more than five years, a fine not to exceed \$25,000, or both, as well as loss of location license and all other state licenses.

9. As with all other machines, eight liner games with no skill features are illegal and those who award money to the successful player are committing an illegal act. For an eight liner machine (or any other machine) to be legally operated in Georgia, the player of the machine must be able to affect the outcome of the game by application of some skill (e.g., the use of flippers, joystick, etc.). The reels cannot stop via a timer
10. Poker machines and other machines using cards (including games that use numbers, pictures or symbols as a substitute for cards) are illegal. Also illegal are slot machines and matchup or lineup games in which two or more numbers, symbols or icons align in a winning combination without assistance by the player.
11. SB 454 added a statutory definition of "slot machine or simulation or variation thereof" as a no skill game for consideration.
12. As it relates to bona fide coin-operated amusement machines, the definition of "some skill" can include the following:
 - (a) A learned power of doing a thing competently;
 - (b) A particular craft, art, ability, strategy or tactic;
 - (c) A developed or acquired aptitude or ability;
 - (d) A coordinated set of actions included but not limited to, eye-hand coordination;
 - (e) Dexterity, fluency or coordination in the execution of learned physical or mental tasks or both;
 - (f) Technical proficiency or expertise;
 - (g) Development or implementation of strategy or tactics in order to achieve a goal; or
 - (h) Knowledge of the means or methods of accomplishing a task.

The term "some skill" can mean a particular craft, coordinated effort, art, ability, strategy or task employed by the player to affect in some way the outcome of the game played

on the bona fide coin-operated amusement machine. If players can take no action to affect the outcome of the game the bona fide coin-operated amusement machine does not meet the "some skill" requirement of the law. This determination is based upon the totality of the circumstances and the decision rests with the appropriate government official.

V. Conclusion

It is expected that the changes established by HB 487, as set forth in these guidelines for redemption, will help to establish standards and procedures governing this industry which are clearly understood and which can be applied easily by both law enforcement and location owners, location operators and their employees.

Attorney General Opinion Withdrawn and Rewritten Thanks to GAMOA Efforts

Recently a district attorney in Georgia requested an Opinion from Georgia's attorney general concerning certain amusement machines and aspects of the noncash redemption law. The Opinion was released and GAMOA Legal Counsel Les Schneider received a copy. Upon review, it was determined by Schneider that the Opinion had not considered the noncash redemption law passed in 1991, nor was the modification to that law that was effective as of July 1, 1996¹ considered. Based upon calls to the district attorney requesting the Opinion and an attorney in the attorney general's office, the letter was withdrawn and was rewritten in order to take into consideration all of the existing law on the books pertaining to this issue. It was indeed fortunate that this matter was caught early before it raised panic and confusion across the state. For those who make excuses about not supporting the GAMOA by paying membership dues, **let this be an object lesson**. If you think for one minute that an individual operator, no matter how big, could affect an attorney general Opinion, then you're probably primed to buy the Brooklyn Bridge. The GAMOA is your liaison with state officials – and if you're waiting for action before taking that leap for membership, well then this is pretty good action for you. The GAMOA is always at work making sure that accuracy and a level economic playing field exists for all operators in the state. In the interim, it is important to note that the Opinion did address the ability to merchandise with the playing of games as well as the legality of certain machines. You can be assured that the "some skill" issue will play an important part in the legal analysis. The significance of the Opinion will definitely impact our industry with local government enforcement officials. Stay tuned for further details. The copy of the revised opinion appears on the following two pages.

¹ If the Opinion had not been questioned, it would have ended all merchandising associated with the amusement industry.



MICHAEL J. BOWERS
ATTORNEY GENERAL

Department of Law
State of Georgia

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

U N O F F I C I A L O P I N I O N

Mr. Peter J. Skandalakis
District Attorney
Coweta Judicial Circuit
Troup County Courthouse Annex
118 Ridley Avenue
LaGrange, Georgia 30240

RE: A video slot machine which involves no skill in its operation and offers a ticket value of up to \$5.00 in merchandise is a "gambling device."

Dear Mr. Skandalakis:

You have asked whether a certain video game which apparently offers up to \$5.00 in merchandise when a player pays from \$.25 to \$2.00 for the opportunity to "spin" or "play" to gain the value of the result is a prohibited "gambling device." For the reasons outlined below, such a video game may be a "gambling device" as contemplated in Georgia's gambling statutes.¹

The analysis of whether the video machine is a "gambling device" depends on the analysis of several statutes. Under O.C.G.A. § 16-12-20(2), "'[G]ambling device' means any contrivance which for a consideration affords the player an opportunity to obtain money or other thing of value, the award of which is determined by chance even though accompanied by some skill, whether or not the prize is automatically paid by contrivance." (Emphasis supplied). Applying this definition,

¹ It is nowhere noted in your request that these devices are the type utilized in a promotional giveaway or contest allowed under O.C.G.A. § 10-1-393.

Mr. Peter J. Skandalakis
Page 2

a video slot machine which offers a value of up to \$5.00 in merchandise for the change to play for the lesser amount of \$.25 to \$2.00 may be a "gambling device". See 1971 Op. Att'y Gen. 71-167. However, because of recently enacted statutory provisions found at O.C.G.A. § 16-12-35(d)(1), further analysis is required. That Code Section provides:

Nothing in this part shall apply to a coin operated game or device designated and manufactured only for bonafide amusement purposes which involves some skill in its operation if it rewards the player exclusively with free replays or merchandise limited to non-cash merchandise, prizes, toys, gift certificates, or novelties, but each of which has a wholesale value of not more than \$5.00 for a single play of the game or device. A player may be rewarded with both free replays and non-cash merchandise, prizes, toys, gift certificates, or novelties for a single play of the game or device as provided in this code section. This subsection shall not apply, however, to any game or device classified by the United States Government as requiring a federal gaming stamp under applicable provisions of the Internal Revenue Code. (Emphasis supplied).

The later enacted O.C.G.A. § 16-12-35(d)(1) does appear to remove any coin operated game or device from the definition of "gambling device" if there is some skill involved in the operation of the device. Therefore, the analysis of whether the video slot machine is a "gambling device" obviously depends on a specific, case-by-case determination of whether there is "some skill [involved] in its operation".

In summary, a video slot machine which involves no skill in its operation and offers a ticket for a value of up to \$5.00 in merchandise is a "gambling device."

U N O F F I C I A L O P I N I O N

Mr. Peter J. Skandalakis
Page 3

Issued this 1st day of November, 1996.

Sincerely,

Michael J. Bowers
MICHAEL J. BOWERS
Attorney General

PREPARED BY:

Carol A. Callaway
CAROL A. CALLAWAY
Senior Assistant Attorney
General

MJB/CAC/jr

NOTE: This Opinion (U96-18) replaces the Opinion of the same
number issued October 9, 1996.

U N O F F I C I A L O P I N I O N

TALKING POINTS

- (1) Per se gambling versus appearance or illusion of gambling
- (2) Game approval process – GBI and local enforcement
- (3) What is "some skill" – what is not?
- (4) Having gift of varying amounts
- (5) Points to exchange for games or merchandise but staying within the prescribed limits. Points versus credits versus games.
- (6) Use of vouchers, tickets or tokens. Proving you are within the prescribed limits.
- (7) Programming your machines properly.
- (8) Proper machine in the proper location. Not causing problems in the local community. Obligation to address the problem location.
- (9) Trip or knock off switch –1990 Op. Atty. Gen. No. 90-15
- (10) Bingo and raffles by nonprofit organizations
- (11) \$5.00 per play limitation and adherence to same
- (12) Percentage of difficulty
- (13) No-skill games
- (14) Proving compliance to "some skill" criteria
- (15) Proving compliance to \$5.00 limitation
- (16) Meters In v. Meters Out
- (17) Money order scam not permitted
- (18) Use of tickets, tokens, etc.
- (19) Game counters on machines
- (20) What constitutes a play – new definition in SB 454 (2010)
- (21) Border state activities (Alabama, Florida, North Carolina and South Carolina)

- (22) Penalties for noncompliance
- (23) Gambling *per se* vs. improper use of equipment
- (24) Knowledge of activities of location owners
- (25) Subterfuge (pawn shop next door to game room)
- (26) RICO actions
- (27) Lawful noncash redemption
 - a. Lottery tickets
 - b. Lottery products
 - c. Merchandise
 - d. Prizes
 - e. Toys
 - f. Gift certificates – in house
- (28) Illegal noncash redemption
 - a. Cash
 - b. Gift certificates – offsite
 - c. Firearms
 - d. Tobacco
 - e. Alcohol
 - f. Receiving Change
 - g. Bogus refunds
- (29) AG Opinion regarding lottery tickets