

Video Poker in South Carolina



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Agenda

- ***The History of Video Poker in South Carolina***
- The “Sweepstakes Era”
 - Civil Forfeiture Process
 - Stand Alone Terminals
 - Networked Systems
- Games of “Skill”
- The Unknown Future

History

“In no field of reprehensible endeavor has the ingenuity of man been more exerted than in the invention of devices to comply with the letter but to do violence to the spirit and thwart the beneficent objects and purposes of the laws designed to suppress the vice of gambling. Be it said to the credit of the expounders of the law that such fruits of inventive genius have been allowed by the courts to accomplish no greater result than that of demonstrating the inaccuracy and insufficiency of some of the old definitions of gambling that were made before the advent of the era of greatly expanded, diversified and cunning mechanical inventions.” Harvie v. Heise, 150 S.C. 277, 148 S.E. 66, 69 (1929) *quoting* Moberly v. Deskin, 169 Mo. App. 672, 155 S. W. 842 (1913).

Reprehensible Endeavor



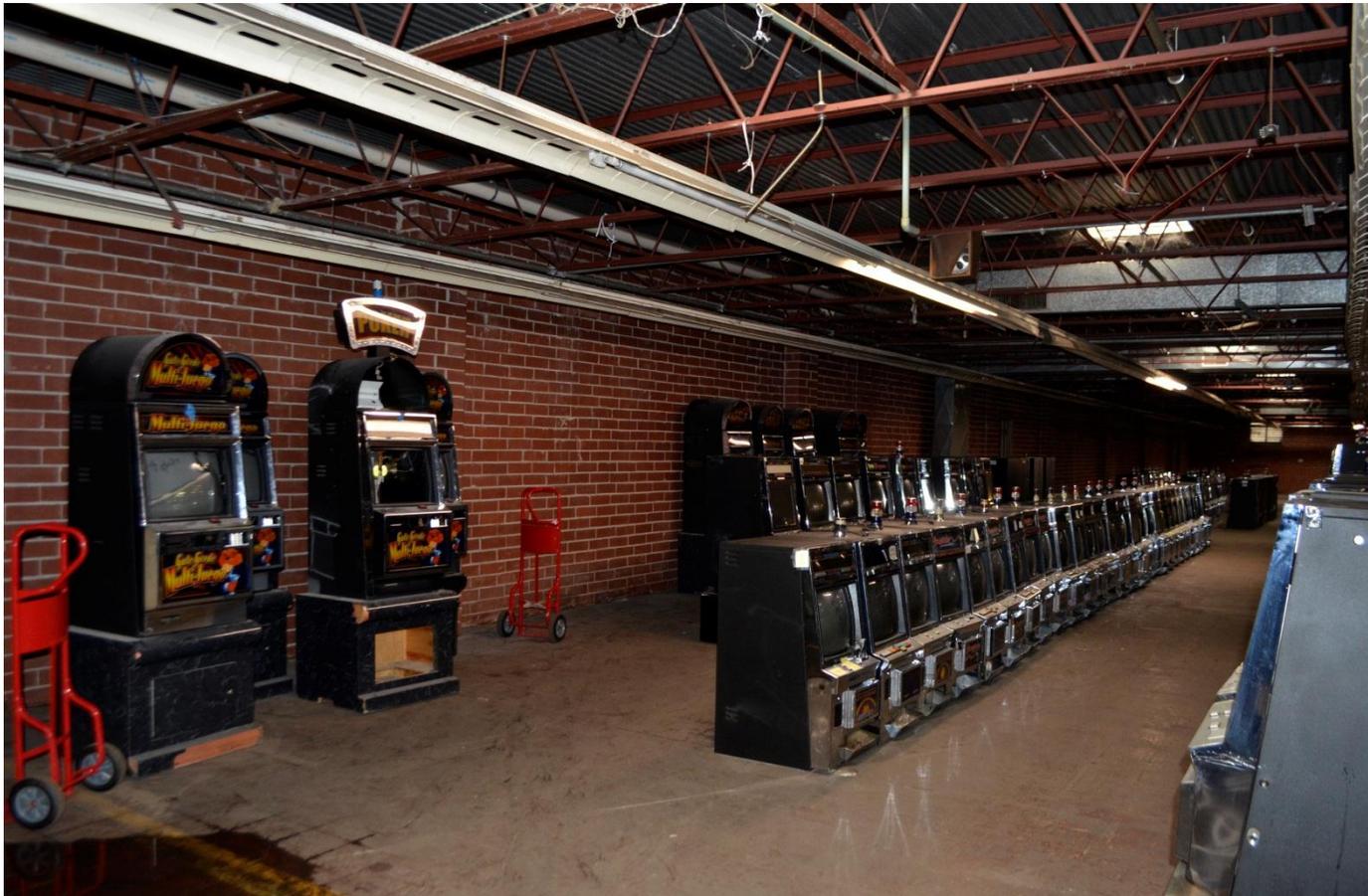
Reprehensible Endeavor



Reprehensible Endeavor



Reprehensible Endeavor



Reprehensible Endeavor



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Reprehensible Endeavor



Gambling Prohibitions - Title 16

- § 16–19–10. Setting up Lotteries.
- § 16–19–20. Adventuring in Lotteries.
- § 16–19–30. Selling Lottery Tickets.
- § 16–19–40. Unlawful Games and Betting.
- § 16–19–50. Keeping Unlawful Gaming Tables.
- § 16–19–70. Keeping Gaming Tables Open or Playing Games on the Sabbath.
- § 16–19–80. Forfeiture of Wagers.
- § 16–19–90. Betting on Elections.
- § 16–19–100. Imprisonment in Case of Conviction.
- § 16–19–110. Exoneration for Becoming State's Evidence.
- § 16–19–120. Officers Shall Destroy Gambling Devices After Confiscation.
- § 16–19–130. Betting, Pool Selling, Bookmaking and the like Are Prohibited.
- § 16–19–140. Violation of § 16–19–130 Constitutes a Nuisance.
- § 16–19–150. Punishment of Offense Covered by § 16–19–40.
- § 16–19–160. Punchboards for Gaming.

Gambling Prohibitions

S.C. Code Ann. § 16-19-40 – Unlawful Games and Betting

- HISTORY: 1962 Code § 16-504; 1952 Code § 16-504; 1942 Code § 1738; 1932 Code § 1738; Cr. C. '22 § 720; Cr. C. '12 § 704; Cr. C. '02 § 506; G. S. 1715; R. S. 391; 1802 (5) 432; 1816 (6) 27; 1909 (26) 66; 1999 Act No. 125, § 5.

Gambling Prohibitions

S.C. Code Ann. § 16-19-50 – Keeping Unlawful Gaming Tables

- HISTORY: 1962 Code § 16-505; 1952 Code § 16-505; 1942 Code § 1739; 1932 Code § 1739; Cr. C. '22 § 721; Cr. C. '12 § 705; Cr. C. '02 § 507; G. S. 1716; R. S. 392; 1816 (6) 27; 1999 Act No. 125, § 5.

S.C. Const. art. XVII, § 7 - Lotteries

“Only the State may conduct lotteries, and these lotteries must be conducted in the manner that the General Assembly provides by law. The revenue derived from the lotteries must first be used to pay all operating expenses and prizes for the lotteries. The remaining lottery revenues must be credited to a separate fund in the state treasury styled the ‘Education Lottery Account’, and the earnings on this account must be credited to it. Education Lottery Account proceeds may be used only for education purposes as the General Assembly provides by law.

The game of **bingo**, when conducted by charitable, religious, or fraternal organizations exempt from federal income taxation or when conducted at recognized annual state and county fairs, is not considered a lottery prohibited by this section.” (2001).

Section 196, Vol. 2, Code of 1922

“It shall be unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State, **any slot machine of whatever name or kind**, except automatic weighing, measuring, musical and vending machines which are so constructed as to give a certain uniform and fair return in value for each coin deposited therein, and in which there is no element of chance.

Any person whomsoever who shall violate this section shall be subject to a fine of not more than one hundred dollars, or imprisonment upon the public works of the County wherein the offense is committed for a period of not more than thirty days.”

Harvie v. Heise, 150 S.C. 277, 148 S.E. 66, 67 (1929).

Traditional Slot Machine



Section 1301-A, Code of 1932

Prohibited “**any vending or slot machine, punch boards, pull boards, or other devices pertaining to games of chance of whatever name or kind**, except automatic weighing, measuring, musical and vending machines which are so constructed as to give a certain uniform and fair return in value for each coin deposited therein, and in which there is no element of chance”.

“That this section is also intended to prohibit all vending, slot machines, punch boards, pull boards, or other devices pertaining to games of chance, that display different pictures, words, or symbols, at different plays, or different numbers, whether in words or figures, or which deposit tokens or coins at irregular intervals, or in varying numbers to the player or in the machine.”

Alexander v. Martin, 192 S.C. 176, 6 S.E.2d 20, 22-3 (1939).

Section 5-621, Code of 1962

“It shall be unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State any vending or slot machine, punch board, pull board or other device pertaining to games of chance of whatever name or kind, including such machines, boards or other devices that display different pictures, words or symbols, at different plays or different numbers, whether in words or figures or, which deposit tokens or coins at irregular intervals or in varying numbers to the player or in the machine.”

State v. DeAngelis, 257 S.C. 44, 47 183 S.E.2d 906 (1971).

Section 5-621, Code of 1962

“But the provisions of this section shall not extend to coin-operated nonpayout pin tables with free play feature or to automatic weighing, measuring, musical and vending machines which are so constructed as to give a certain uniform and fair return in value for each coin deposited therein and in which there is no element of chance.”

State v. DeAngelis, 257 S.C. 44, 47 183 S.E.2d 906 (1971).

Section 52-15-10, 1976 Code

“It shall be unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State, any vending or slot machine, punch board, pull board, or other device pertaining to games of chance of whatever name or kind including such machines, boards, or other devices that display different pictures, words, or symbols, at different plays or different numbers, whether in words or figures or, which deposit tokens or coins at irregular intervals or in varying numbers to the player or in the machines, but the provisions of this section shall not extend to coin-operated nonpayout pin tables, in-line pin games and **video games with free play feature** or to automatic weighing, measuring, musical, and vending machines which are so constructed as to give a certain uniform and fair return in value for each coin deposited therein and in which there is no element of chance.”

Section 16-19-60, 1976 Code

“Nothing in §§ 16–19–40 or 16–19–50 shall extend to coin operated nonpayout machines with a free play feature; *provided*, that nothing herein shall authorize the licensing, possession or operation of any machine which disburses **money or property** to the player.”

Senator Jack Lindsay 1986

Act No. 540 (R624, H3550)--**Appropriations
for the fiscal year beginning July 1, 1986**

Part II, § 26B

- B. Section 16-19-60 of the 1976 Code is amended to read: “Section 16-19-60. Nothing in Section 16-19-40 or 16-19-50 shall extend to coin-operated nonpayout machines with a free play feature; provided, that nothing herein shall authorize the licensing, possession, or operation of any machine **which disburses money to the player.”**

Section 16-19-60 (1986)

“Nothing in §§ 16–19–40 or 16–19–50 shall extend to coin operated nonpayout machines with a free play feature; *provided*, that nothing herein shall authorize the licensing, possession or operation of any machine which disburses **money** to the player.”

State v. Blackmon

“Blackmon was indicted under S.C. Code Ann. § 16–19–40 (1976) for operating a gambling house at his grocery store. The indictment alleged that Blackmon engaged in unlawful gambling by disbursing money to players who accumulated free plays on electronic poker machines. Blackmon moved to quash the indictment on the ground that the allegations in the indictment did not constitute an offense.”

State v. Blackmon, 304 S.C. 270, 271, 403 S.E.2d 660 (1991).

State v. Blackmon

“The officer testified that another undercover officer had witnessed players receiving money for the free plays which they had accumulated on the machines. As a result, the police obtained a search warrant and conducted a search of the grocery store. During the search, the police seized **11,566 playback vouchers, a membership book containing **248 names**, and several videotapes which showed the procedure utilized in the alleged gambling transactions. The vouchers covered a time period from **August, 1987, through December, 1988**. The total amount of money represented by these vouchers was **\$358,336.75**.”**

State v. Blackmon, 304 S.C. 270, 271, 403 S.E.2d 660, 661 (1991).

State v. Blackmon

“In his statement, the individual acknowledged that the grocery store **“paid off” for the accumulated free plays...**”. “When the player had accumulated free games and was ready to exchange the games for money, he called an employee over to fill out a voucher slip. The employee recorded the number of games won, the date, and the machine number, and the player signed the slip. The employee then gave the slip to the cashier, who confirmed the number of games won from a television monitor, cleared the poker machine, and gave the money to the employee to give to the player.”

State v. Blackmon, 304 S.C. 270, 271, 403 S.E.2d 660, 661 (1991).

State v. Blackmon

“Here, Section 16–19–60 plainly states that coin-operated nonpayout machines with free play features are exempt from the reach of Section 16–19–40 **as long as the machines themselves do not disburse money to the player.** Since the poker machines involved in this case fall within this specific statutory exemption, Blackmon cannot be indicted under Section 16–19–40.”
State v. Blackmon, 304 S.C. 270, 274, 403 S.E.2d 660, 662 (1991)(emphasis added).

State v. Blackmon

“Although this result appears anomalous, as it allows activity which seems to be unlawful gambling to go unpunished, it is nonetheless clear that this outcome reflects the intent of the legislature....

Further, it is not within our province to amend the law to resolve this inconsistency, rather, we leave to the legislature the resolution of this matter.”

State v. Blackmon, 304 S.C. 270, 274, 403 S.E.2d 660, 662 (1991).

Section 12-21-2710 (in 1986)

“It is unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State any vending or slot machine, punch board, pull board, or other device pertaining to games of chance of whatever name or kind, including those machines, boards, or other devices that display different pictures, words, or symbols, at different plays or different numbers, whether in words or figures or, which deposit tokens or coins at regular intervals or in varying numbers to the player or in the machine, but the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games, and **video games with free play feature** or to automatic weighing, measuring, musical, and vending machines which are constructed as to give a certain uniform and fair return in value for each coin deposited and in which there is no element of chance.

Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for a period of not more than one year, or both.”

The “Wild West” of Gambling

- 7,000 locations
- 339 cities and towns
- 36,000 machines (1 device per every 100 people)
- 400 companies

- \$3 billion dollar a year industry
 - Massive Political Influence
 - Massive Campaign Spending

The “Wild West” of Gambling

- Virtually untaxed
- Virtually unregulated
- No restriction on ownership of machines
- No oversight on machine payout percentages
- No prohibition to children playing machines

The Sociology of Risk and Gambling Reader

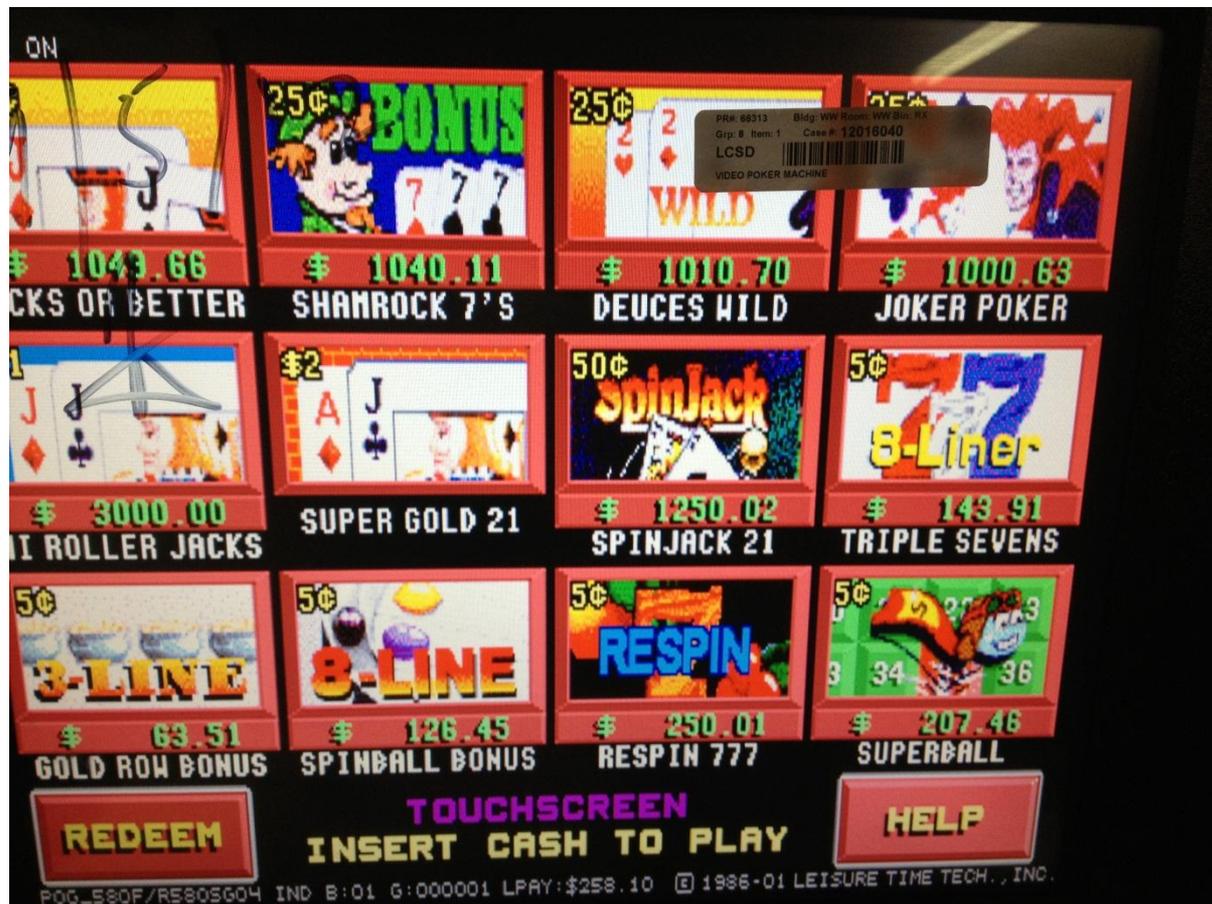
Author James F. Cosgrove gives a fascinating account of the atmosphere video poker casinos in South Carolina and the political impact of video poker in South Carolina in a book called The Sociology of Risk and Gambling Reader.

- “The manufactured good cheer of Las Vegas is absent here. The gamblers gaze transfixed at their terminals and tap the touchscreens with a kind of Stepford intensity. An eerie silence envelops the place: the only noises are the bells ringing on the Pot-O-Golds, signaling gamblers that someone else just won a few bucks, so you will too.”

Pot-O-Gold Machines



Pot-O-Gold Machines



The Sociology of Risk and Gambling Reader

“Video poker is dangerous for the same reason it is popular. It combines the speed of slots and the skill of table games but avoids their bad features.”

“But video poker is devastatingly addictive to the susceptible.”

“Unlike other forms of gambling, video poker does not excite players. It numbs them.”

The Sociology of Risk and Gambling Reader

“There is an ability to block out external stimuli while you are playing the games. Almost without exception, my video poker patients report not excitement but anesthetized nothingness. It is a twilight-zone experience for them.”

- Compulsive-gambling expert Robert Hunter

The Sociology of Risk and Gambling Reader

“As poker metastasized during [Governor] Beasley’s administration, South Carolinians began to realize that it was not simply an irritant but a menace. Video poker is not Ben and Jerry’s. It is the **crack cocaine of gambling**, gambling at its most addictive and virulent, producing few economic benefits and high social costs.”

The Tipping Point

- A 28-year old former Army Sergeant named Gail Baker left her **10-day-old baby** in a hot car in while she played video poker for more than **seven hours** in a casino in Jasper County.
- She only left the casino after her husband came to get her.
- The 10-day old girl died of dehydration.
- After spending 15 months in jail awaiting trial, Gail Baker plead guilty to involuntary manslaughter and got 5 years of probation.

1999 South Carolina Laws Act 125

“Because the General Assembly was unable to agree on comprehensive video gaming legislation, the Governor [Hodges], by Executive Order, called an extra session of the General Assembly to meet on Tuesday, June 29, 1999. Executive Dep’t, State of South Carolina, Exec.Order No. 99–192 (signed by Governor James Hovis Hodges). During that extra session, the General Assembly enacted Act 125, which was ratified on July 1, 1999, and signed by the Governor on July 2, 1999.”

Joytime Distributors & Amusement Co., Inc. v. State,
338 S.C. 634, 638-39, 528 S.E.2d 647, 649 (1999).

1999 South Carolina Laws Act 125

- Part 1 – Prohibition on Payouts
 - Modern Day 12-21-2710
- Part 2 – Referendum
 - “to ascertain whether or not video game machine payouts will continue to be allowed in this State.”
 - . The specific question voters are asked to consider is: “Shall cash payouts for credits earned on video game machines continue to be allowed after June 30, 2000?”
- Part 3 – Coin-Operated Machines, Regulation, Taxation and Enforcement

1999 South Carolina Laws Act 125

- Part 4 – Gambling Losses and Civil Actions
- Part 5 – Severability Clause, Savings Clause and Intent Section
- Part 6 – Effective Dates of the Various Parts and Certain Specific Sections of the Act.

Joytime

“Plaintiff (Joytime) is a South Carolina corporation engaged in the video gaming industry with gaming machines located in several South Carolina counties. Joytime seeks a declaration as to the constitutionality of Act No. 125, 1999 S.C.Acts. **Joytime asserts that Part II of Act 125 is an unconstitutional delegation of power by the legislature to the voters of this State and asks the Court to enjoin the enforcement of Act 125.** The State has filed a brief contending that Act 125 is constitutional and, if not, the Act is severable.”

Joytime Distributors & Amusement Co., Inc. v. State, 338 S.C. 634, 638, 528 S.E.2d 647, 649 (1999).

Joytime

“We agree with Joytime that Part II of Act 125 is unconstitutional but hold the portion of Act 125 which constitutes an unconstitutional delegation of power is severable from the remainder of the Act.”

Joytime Distributors & Amusement Co., Inc. v. State, 338 S.C. 634, 638, 528 S.E.2d 647, 649 (1999).

Joytime

“Part I is a free standing enactment of the General Assembly, is severable from the unconstitutional portions of the Act, and is upheld. Should the General Assembly wish to revisit the ban on video gaming enacted in Part I when it meets next year, it may, of course, do so.”

Joytime Distributors & Amusement Co., Inc. v. State, 338 S.C. 634, 653, 528 S.E.2d 647, 657 (1999).

Section 12-21-2710

“It is unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State any vending or slot machine, or **any video game machine with a free play feature operated by a slot in which is deposited a coin or thing of value, or other device operated by a slot in which is deposited a coin or thing of value for the play of poker, blackjack, keno, lotto, bingo, or craps, or any machine or device licensed pursuant to Section 12-21-2720 and used for gambling** or any punch board, pull board, or other device pertaining to games of chance of whatever name or kind, including those machines, boards, or other devices that display different pictures, words, or symbols, at different plays or different numbers, whether in words or figures or, which deposit tokens or coins at regular intervals or in varying numbers to the player or in the machine, but the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games, or to automatic weighing, measuring, musical, and vending machines which are constructed as to give a certain uniform and fair return in value for each coin deposited and in which there is no element of chance.”

Section 12-21-2710

It is unlawful for any person to:

- Keep on the premises,
- Operate,
- Permit to be kept in his premises within this state, or
- Permit to be operated within this State...

Section 12-21-2710

Types of machines prohibited by § 12-21-2710:

- VENDING MACHINES

EXCEPT – vending machines which are:

- i. constructed as to give a uniform and fair return in value for each coin deposited, and
- ii. in which there is **no element of chance**

- SLOT MACHINES

- VIDEO GAME MACHINES WITH A FREE PLAY FEATURE
operated by a slot in which is deposited a coin or thing of value.

- OTHER DEVICES OPERATED BY A SLOT
in which is deposited a coin or thing of value for the play of:

Poker, Blackjack, Keno, Lotto, Bingo, or Craps.

Section 12-21-2710

Types of machines prohibited by § 12-21-2710, continued:

- ANY MACHINE OR DEVICE LICENSED PURSUANT TO § 12-21-2720 AND USED FOR GAMBLING
- ANY PUNCH BOARD
- ANY PULL BOARD
- ANY OTHER DEVICE PERTAINING TO GAMES OF CHANCE OF WHATEVER NAME OR KIND, INCLUDING:
those machines, boards, or other devices that display different pictures, words, or symbols, at different plays or different numbers, whether in words or figures, or which deposit tokens or coins at regular intervals or in varying numbers to the player or in the machine.

Section 12-21-2712

“Any machine, board, or other device prohibited by Section 12-21-2710 **must** be seized by any law enforcement officer and at once taken before any magistrate of the county in which the machine, board, or device is seized who shall immediately examine it, and if satisfied that it is in violation of Section 12-21-2710 or any other law of this State, direct that it be immediately destroyed.”

State v. 192

“Owner of “Cherry Master” and “8–Liner” video slot machines appealed magistrates’ orders to destroy them.

The Supreme Court, Burnett, J., held that: (1) the Gambling Devices Transportation Act did not preempt state statute prohibiting possession and operation of gambling devices; (2) **possessing the machines in storage was illegal even if they were not operational and even though the solicitor gave advice on storage**; (3) **the machines were “contraband per se” subject to forfeiture regardless of use or operability**; (4) searches based on confidential informant's tip and undercover corroboration were valid; (5) overruling Kizer, 164 S.C. 383, 162 S.E. 444, owner had due process right to an opportunity to be heard prior to destruction, but this right was satisfied; and (6) testing the machines was not required in order to find them unlawful.”

State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 525 S.E.2d 872 (2000).

Cherry Master



State v. 192

“Appellant asserts that due to the sophisticated nature of modern video machines, a machine cannot be illegal unless it is fully operational. In Squires v. South Carolina Law Enforcement Division, 249 S.C. 609, 155 S.E.2d 859 (1967), we held based on the predecessor statute to § 12-21-2710 that gambling devices need not be operational or in complete repair before they are subject to seizure and destruction. Moreover, component parts, subassemblies, and dies and molds used to make such parts are also subject to seizure and destruction. *Id.* at 613, 155 S.E.2d 859. Appellant argues Squires is outdated and should be overruled. **We disagree.**”

State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 187-88, 525 S.E.2d 872, 878 (2000).

State v. 192

“The substance of appellant's argument is that in the 1960s, when the predecessor statute to § 12–21–2710 was enacted, slot machines were readily identifiable. Today, with the advent of the computer, a video game machine is simply a box containing a computer which can be configured to play a variety of games, from poker to pac-man; therefore, the machine itself should not be considered illegal.”

“Although slot machines have changed since the 1960s, the substance of the statute has not.”

State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 188, 525 S.E.2d 872, 878 (2000).

State v. 192

“The plain language of the statute [12-21-2710] makes clear the legislature’s intent to outlaw mere possession of such machines. The statute makes it unlawful “for any person to keep on his premises *or* operate” certain gambling machines. S.C.Code Ann. § 12–21–2710 (Supp.1998) (emphasis added); *see also* State v. Appley, 207 S.C. 284, 288, 35 S.E.2d 835, 836 (1945) (possession of a machine is a violation in itself, separate from the crime of operation). **The circuit court correctly ruled possession of these machines is illegal, regardless of their intended use or operation.”**

State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 188-89, 525 S.E.2d 872, 879 (2000).

State v. 192

“Appellant argues its due process rights were violated because it did not receive a *pre-seizure* hearing. We disagree. The statute does not direct a *pre-seizure* hearing, nor is one required in a civil forfeiture case. **The most due process requires is a post-seizure opportunity for an innocent owner “to come forward and show, if he can, why the *res* should not be forfeited and disposed of as provided for by law.”**”

State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 197, 525 S.E.2d 872, 883 (2000).

Westside Quik Shop

“Owners and lessees of video gaming machines filed action challenging constitutionality of act that made possession of such machines illegal and sought injunction against enforcement of act.”

Westside Quik Shop, Inc. v. Stewart, 341 S.C. 297, 534 S.E.2d 270 (2000) (overruled on other grounds by Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005)).

Westside Quik Shop

“Plaintiffs contend Act. No. 125 should be enjoined because it effects a taking of their video gaming machines without compensation. **We find plaintiffs are entitled to no compensation because their machines are lawfully subject to forfeiture as contraband.**”

Westside Quik Shop, Inc. v. Stewart, 341 S.C. 297, 534 S.E.2d 270 (2000) (overruled on other grounds by Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005)).

Allendale

“The magistrate court ruled, and the circuit court affirmed, that the two Chess Challenge II machines examined, **and all machines operating in a similar manner**, are games of skill that are lawful to possess.”

Allendale Cnty. Sheriff's Office v. Two Chess Challenge II, 361 S.C. 581, 583, 606 S.E.2d 471, 472 (2004).

Allendale

“The Sheriff’s Office and SLED contend that the magistrate lacked jurisdiction to determine the legality of machines that were not before the court. We agree.”

Allendale Cnty. Sheriff’s Office v. Two Chess Challenge II, 361 S.C. 581, 585, 606 S.E.2d 471, 473 (2004).

Allendale

“In the present case, the magistrate ruled on the legality of the two machines before the court and “all those [machines] operating in an identical manner.” This broad ruling exceeded the scope of the magistrate's authority and is contrary to the machine-by-machine forfeiture process outlined in the statute and carried out in other cases. Therefore, we find that the magistrate court lacked jurisdiction to determine the legality of machines not before court.”

Allendale Cnty. Sheriff's Office v. Two Chess Challenge II, 361 S.C. 581, 586-87, 606 S.E.2d 471, 474 (2004).

Allendale

“As to the two machines seized, examined, and deemed legal, there is nothing preventing the Sheriff’s Office or other law enforcement officials from seizing the machines once again for the magistrate’s examination. Because video machines may be manipulated so as to change their nature from lawful to unlawful, **law enforcement may, based on probable cause, seize the machines in question once again.** In other words, the effect of the magistrate’s order is that it deems the machines lawful *at the time* they were seized and examined.”

Allendale Cnty. Sheriff’s Office v. Two Chess Challenge II,
361 S.C. 581, 587, 606 S.E.2d 471, 474 (2004).

Allendale

“Because the magistrate did not have the authority to deem “all those [machines] operating in an identical manner” lawful, we reverse that portion of the ruling.”

Allendale Cnty. Sheriff's Office v. Two Chess Challenge II, 361 S.C. 581, 588, 606 S.E.2d 471, 475 (2004).

Sun Light

“Appellants commenced this action following respondents’ (the State’s) seizure of appellants’ pre-paid, long distance telephone cards (phone cards) and electronic phone card dispensers. Appellants sought the return of the phone cards and dispensers and damages resulting from the seizure. Before hearing the claim for damages, a trial was first held on the declaratory judgment claim to determine the legality of the phone cards and dispensers. The trial court held the phone cards and dispensers were illegal gambling devices.”

Sun Light Prepaid Phonocard Co., Inc. v. State, 360 S.C. 49, 51, 600 S.E.2d 61, 62 (2004).

Sun Light

“Appellants argue the phone card dispensers are legal under § 12-21-2710 **because they are the same as traditional vending machines and provide a uniform return for every dollar inserted, i.e. a phone card.** They argue that only when a machine and its components determine who will be a winner does the machine violate § 12-21-2710.

While it is true the dispenser always gives the customer the same return, i.e. a phone card with a game piece attached, and that the dispenser does not itself determine whether a customer has won, the dispenser still contains an element of chance.”

Sun Light Prepaid Phonocard Co., Inc. v. State, 360 S.C. 49, 54, 600 S.E.2d 61, 64 (2004).

Sun Light

“Although the phone cards are an integral component of the dispensers, the phone cards would be illegal if they were issued over the counter as opposed to being placed in the dispensers.”

Sun Light Prepaid Phonocard Co., Inc. v. State,
360 S.C. 49, 54, 600 S.E.2d 61, 64 (2004).

Sun Light

“Furthermore, the trial court correctly determined the phone card dispensers are like slot machines and not traditional vending machines. **The dispensers have a gambling-themed video screen, play celebration music when a customer is a winner, have a lock-out feature which freezes the operation of the machine when a pre-determined level of prize money is reached, contain a meter that records the value of the prizes paid out, and do not give change.** None of these features is present in a traditional vending machine that is exempted from § 12-21-2710.

Accordingly, the trial court properly found the phone cards and dispensers to be illegal gambling devices pursuant to § 12-21-2710.”

Sun Light Prepaid Phonocard Co., Inc. v. State, 360 S.C. 49, 55, 600 S.E.2d 61, 64 (2004)

Sun Light

“Appellants argue that if the dispensers are found illegal under § 12-21-2710, then all vending machines in South Carolina that dispense candy or snacks with promotional sweepstakes game pieces likewise violate the statute, otherwise their equal protection rights would be violated. However, this argument is without merit given the phone card dispensers are illegal gambling devices and vending machines are not. The two machines are *not* similarly situated such that an equal protection claim may arise.”

Sun Light Prepaid Phonecard Co., Inc. v. State, 360 S.C. 49, 55, 600 S.E.2d 61, 64 n. 6 (2004)

Mims

“Owner of video gaming machine appealed magistrate’s denial of request for jury trial in civil forfeiture proceeding.”

Mims Amusement Co. v. S. Carolina Law Enforcement Div., 366 S.C. 141, 621 S.E.2d 344 (2005).

Mims

“The controlling question we must answer, then, is whether a video gaming machine—at the moment of seizure—is an item of contraband *per se* or derivative contraband. **Is the unexamined machine more like a roulette wheel or an automobile?** If it is the former, a claimant has no right to a jury trial; if it is the latter, a claimant has a right to a jury trial. The parties have not cited and we have not found a case involving a video gaming machine in which a court has decided this precise issue.”

Mims Amusement Co. v. S. Carolina Law Enforcement Div., 366 S.C. 141, 153, 621 S.E.2d 344, 350 (2005).

Mims

“We decide this case in light of the recent history of video gambling in South Carolina, which mushroomed from a rather clandestine and inauspicious beginning in 1986 into a multi-billion dollar business by its demise in July 2000.”

Mims Amusement Co. v. S. Carolina Law Enforcement Div., 366 S.C. 141, 146, 621 S.E.2d 344, 346 (2005)

Mims

“Accordingly, we conclude that a seized video gaming machine constitutes contraband *per se* in the nature of a roulette wheel, and is not in the nature of derivative contraband such as a vehicle or parcel of real property normally used for lawful purposes. **The owner of an item deemed contraband *per se* does not enjoy a constitutional right to a jury trial.**”

Mims Amusement Co. v. S. Carolina Law Enforcement Div., 366 S.C. 141, 154, 621 S.E.2d 344, 350-51 (2005).

Union County

“Section 12–21–2710 makes it unlawful to possess illegal gambling machines, even if they are not fully operational. The mere possession of the gambling devices, or even their component parts, is unlawful.”

Union Cnty. Sheriff's Office v. Henderson, 395 S.C. 516, 519-20, 719 S.E.2d 665, 666 (2011).

Union County

“Appellant contends that the State failed in its burden of proof because the CI was unable to identify on which of the seven machines seized she had actually played the illegal game. Appellant misunderstands the burden of proof at this post-seizure hearing, which rests solely on the owner of the seized machines to show why the machines should not be forfeited and destroyed.”

Union Cnty. Sheriff's Office v. Henderson, 395 S.C. 516, 520, 719 S.E.2d 665, 667 (2011).

State v. DeAngelis

The South Carolina Supreme Court has previously indicated that “[a]n analysis of [the] wording [of the predecessor statute to § 12-21-2710] convinces us that a man of reasonable intelligence is given fair notice of the machines proscribed; that the statute cannot be used in a capricious or discriminatory manner; and that the personal liberties guaranteed by the Bill of Rights are satisfied thereunder.” State v. DeAngelis, 257 S.C. 44, 48, 183 S.E.2d 906, 908 (1971).

Martin v. Lloyd

“Appellants repeatedly assert that § [12-21-] 2710 can be read to outlaw standard board games like Monopoly. The Supreme Court of the United States has made clear that, ‘[a] plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.’” Martin v. Lloyd, 700 F.3d 132, 136 (4th Cir. 2012) *quoting* Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 495 (1982); *see also* United States v. Lee, 815 F.2d 971, 974 (4th Cir. 1987) (explaining that a statute “is not invalid merely because some of its hypothetical applications might raise constitutional problems”).

Agenda

- The History of Video Poker in South Carolina
- ***The “Sweepstakes Era”***
 - Civil Forfeiture Process
 - Stand Alone Terminals
 - Networked Systems
- Games of “Skill”
- The Unknown Future

Post-Seizure Hearing

- Seized machines are brought before one of the county magistrates for a determination as to their illegality pursuant to § 12-21-2712.
- After the magistrate signs an order of destruction, the owner of the machines has 15 days to request a hearing to challenge that determination.

Burden of Proof

- Burden of proof is on the ***owner of the machines*** to convince the magistrate to overturn the Order of Destruction.

“At a post-seizure hearing, the burden is on the owner of the *res* to show why the seized property should not be forfeited and destroyed.” Union County, 395 S.C. at 519, 719 S.E.2d at 666.

Post-Seizure Hearing

- The only issue before the magistrate is the legality of the particular machine(s) and the only penalty that can be imposed is the destruction of the machines and forfeiture of the associated money.
- As to criminal charges, permit revocations, or issues with the search or seizure; those issues are dealt with different courts on different days.
 - Criminal charges and beer and wine permit revocations have different elements and different burdens of proof.

Operational vs. Non-Operational

- It does not matter if the machines are operational.

“Section 12-21-2710 makes it unlawful to possess illegal gambling machines, **even if they are not fully operational.**” Union County, 395 S.C. at 519-20, 719 S.e.2d at 666 (emphasis added).

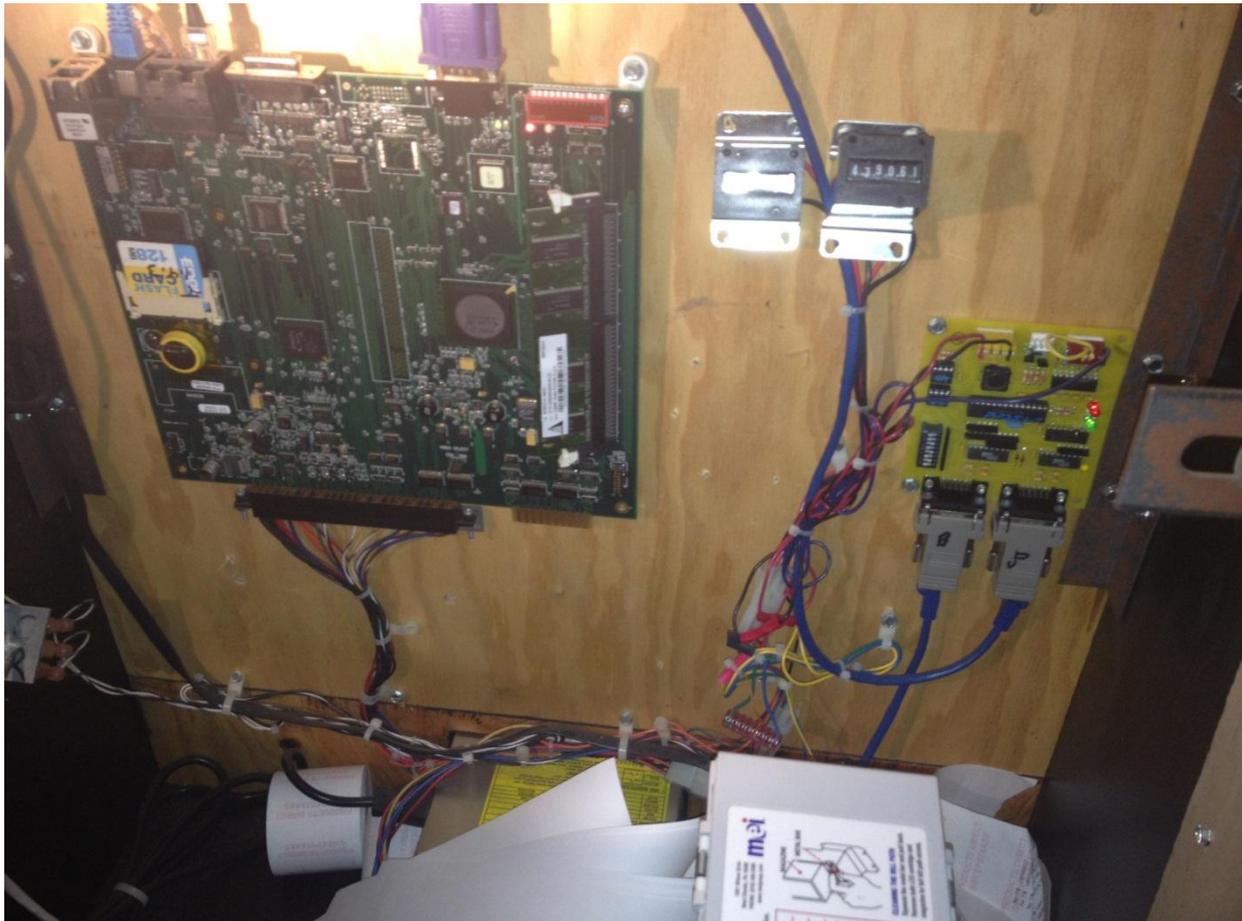
Component Parts

- The component parts of illegal machines are also illegal.

“The mere possession of the gambling devices, or even their component parts, is unlawful.” Union County, 395 S.C. at 519-20, 719 S.E.2d at 666.

“We think it would abort the legislative purpose to hold that an assembled gambling device is the only one that is condemned and subject to seizure and destruction and to permit the subassemblies and component parts, and the dies and molds for the making of such to escape the condemnation of the statutes.” Squires v. South Carolina Law Enforcement Division, 249 S.C. 609, 612-13, 155 S.E.2d 859, 861 (1967).

Component Parts



Component Parts



Component Parts



Component Parts



Probable Cause

- Probable cause is not an issue at the post-seizure hearing.

- This is because, regardless of probable cause or the seizure procedures, property that is illegal to possess as contraband may never be returned.

“Furthermore, because the machines are contraband *per se*, the State certainly cannot return them to appellant, which is presumably the remedy sought.” State v. 192, 338 S.C. at 196, 525 S.E.2d at 882.

Licenses and Permits

- Any license or permit, whether issued by the Department of Revenue, a county, a city, or any other entity, **does not** impact the legality of the machines and **does not** prevent law enforcement from seizing the machines.

“The issuance of a license under the provisions of this article by the department does not make lawful the operation of any gambling machine or device, the operation of which is made unlawful under the laws of this State.” S.C. Code Ann. § 12-21-2736.

Agenda

- The History of Video Poker in South Carolina
- ***The “Sweepstakes Era”***
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Stand Alone “Sweepstakes” Terminals

- Machines which purport to offer some sort of “product” in connection with the opportunity to play video poker, slots, keno, or blackjack.
- Typically found anywhere with a beer and wine permit (and usually *only* found in these places).
- The machines are housed within standard slot machine or video poker cabinets, both full-size and tabletop.

Stand Alone “Sweepstakes” Terminals

- Typical “products” offered:
 - Phone time or long distance minutes.
 - Discount coupons.
 - E-credits or gift cards.
- Most common industry players:
 - Magic Minutes
 - Products Direct/Pace-O-Matic
 - Gift Surplus

Stand Alone “Sweepstakes” Terminals

- The “sweepstakes” takes the form of poker, keno, blackjack, and slots games.
- Many use “Pot-O-Gold” circuit boards identical to those used in old video poker machines.



Magic Minutes



Magic Minutes



Magic Minutes



Magic Minutes



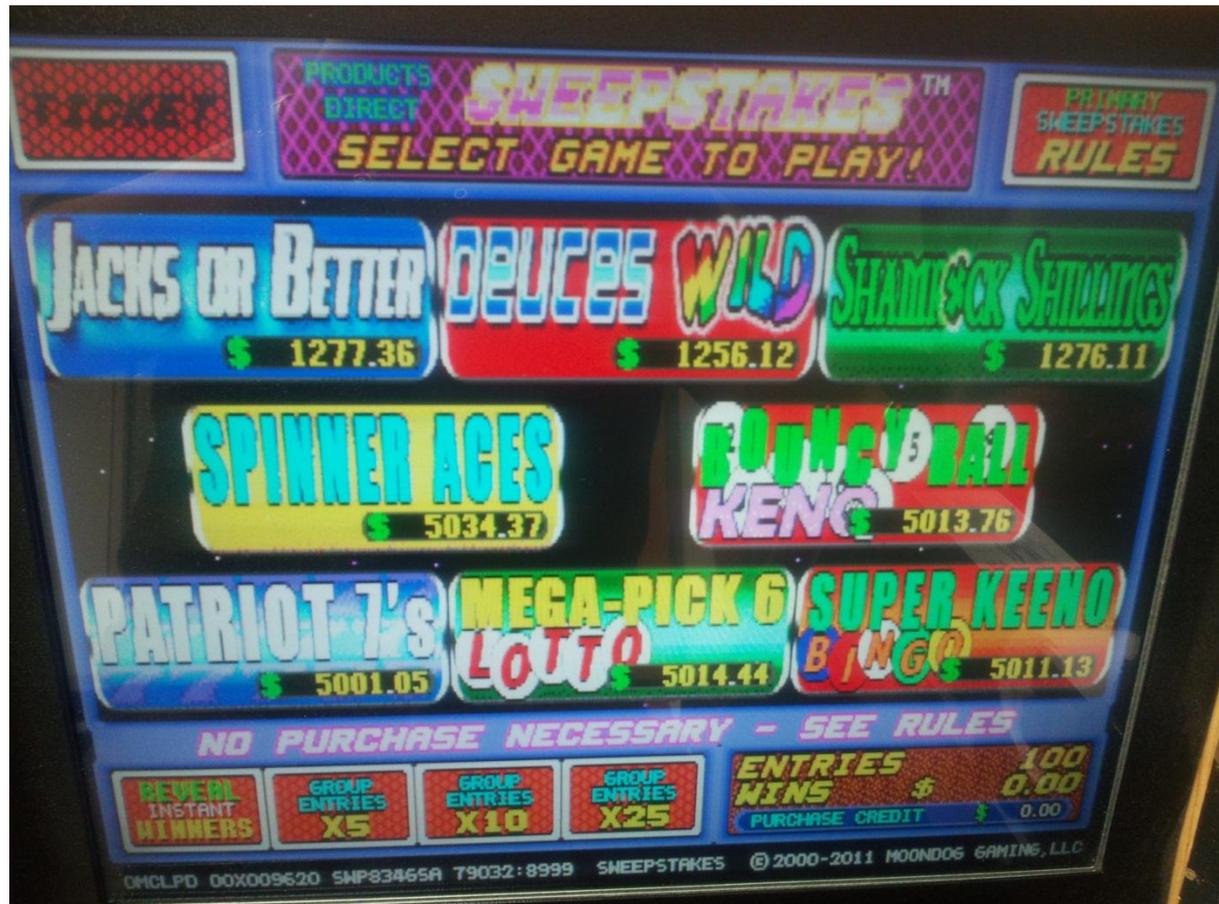
Magic Minutes

VER: POG_3710/R3710PLS		TERMINAL AUDIT				ERR: NO ERRORS PENDING	
BRD: 0243:03:0301:0000		1986-99 LEISURE TIME TECH				TKT: NO TICKET PENDING	
MSTR/SLV MODE: SINGLE						DRS: MAIN CASH LOGIC	
GAME NAME	GAMES PLAYED	HI BET PLAYS	GAMES WON	HIT PCT	CASH PLAYED	CASH WON	PAYOUT PCT
SUPERGOLD BINGO	3979	3979	2194	55.1%	\$ 3779.50	\$ 3452.00	91.3%
TOUCH & LOTTO	456	456	411	90.1%	\$ 392.75	\$ 342.25	87.1%
BIG SHAMROCKS	4281	2367	1306	30.5%	\$ 6816.00	\$ 6006.75	88.1%
TOUCHEASY KENO	3456	224	2924	30.9%	\$ 3811.75	\$ 3308.00	86.8%
SUPERBALL KENO	190837	97754	48884	25.6%	\$ 251111.75	\$ 240498.03	95.8%
TENS OR BETTER	1	0	1	100.0%	\$ 1.00	\$ 1.00	100.0%
JACKS OR BETTER	182	131	74	40.7%	\$ 295.00	\$ 220.00	74.6%
HI-ROLLER JACKS	0	0	0	---	\$ 0.00	\$ 0.00	---
ACES HIGH	4	0	2	50.0%	\$ 1.75	\$ 2.00	114.3%
JOKER POKER	196	79	56	28.6%	\$ 193.00	\$ 145.50	75.4%
WILD JOKERS	0	0	0	---	\$ 0.00	\$ 0.00	---
DEUCES WILD	2937	2350	1305	44.4%	\$ 3901.75	\$ 3545.00	90.9%
BIG TIME DEUCES	0	0	0	---	\$ 0.00	\$ 0.00	---
SHAMROCK 7'S	8147	6734	2346	28.8%	\$ 8324.75	\$ 6969.00	83.7%
BLACK GOLD 21	0	0	0	---	\$ 0.00	\$ 0.00	---
SUPER GOLD '21	17	0	4	23.5%	\$ 42.00	\$ 15.00	35.7%
DBL-UPS		NON	PUSH	CASH BET	CASH WON		
DOUBLE-UPS		0	0	\$ 0.00	\$ 0.00		
LAST TIME GAMESTATS CLEARED.....23:18:00 03/17/80							

Products Direct



Products Direct



Products Direct



Products Direct



Products Direct - The “Jared”



Products Direct

**PRODUCTS
DIRECT™**

**GAME
*STATS***

SWP834GSA

06/08/12 13:58:43
ACCLEV:1:(NORMAL)
CO/LIC:0101:16246
NB/TID:MPAA:79940

=====

ERROR WARNG FAULT
MAIN CASH LOGIC
PRNTR:ICT GP-58CR
=====

**SECOND
SCREEN**

**RETURN TO
STATS MENU**

© 2000-2011
MOOND06 GAMING,LLC

TYPE: KENO GAME: BOUNCYBALL KENO

STAT-TYPE----- ---ARCHIVE--- ---WEEKLY--- ---DAILY---

	11/11/11	11/11/11	11/11/11
LASTCLEARDATE:	11/11/11	11/11/11	11/11/11
LASTCLEARTIME:	17:59:36	17:59:36	17:59:36
TIME PLAYING.:	181:35:56	181:35:56	181:35:56
SECONDS/GAME.:	9.275	9.275	9.275
GAMES PLAYED.:	70489	70489	70489
GAMES MON....:	16399	16399	16399
HIT RATIO....:	23.265%	23.265%	23.265%
AVE PLAY/GAME:	\$ 1.31	\$ 1.31	\$ 1.31
CREDIT PLAYED:	\$ 92393.10	\$ 92393.10	\$ 92393.10
CREDIT MON....:	\$ 79608.30	\$ 79608.30	\$ 79608.30
P-W EARNINGS.:	\$ 12784.80	\$ 12784.80	\$ 12784.80
W/P EARN%....:	86.163%	86.163%	86.163%
WITH PROGACCS:	87.470%	87.470%	87.470%
NORMAL TIER 7:	181: 1%	181: 1%	181: 1%
NORMAL TIER 6:	1457: 9%	1457: 9%	1457: 9%
NORMAL TIER 5:	1127: 7%	1127: 7%	1127: 7%
NORMAL TIER 4:	5475: 33%	5475: 33%	5475: 33%
NORMAL TIER 3:	2062: 13%	2062: 13%	2062: 13%
NORMAL TIER 2:	1903: 12%	1903: 12%	1903: 12%
NORMAL TIER 1:	865: 5%	865: 5%	865: 5%
TIMES4 TIER 7:	26: 0%	26: 0%	26: 0%
TIMES4 TIER 6:	295: 2%	295: 2%	295: 2%
TIMES4 TIER 5:	396: 2%	396: 2%	396: 2%
TIMES4 TIER 4:	738: 5%	738: 5%	738: 5%
TIMES4 TIER 3:	296: 2%	296: 2%	296: 2%
TIMES4 TIER 2:	743: 5%	743: 5%	743: 5%
TIMES4 TIER 1:	835: 5%	835: 5%	835: 5%

Products Direct

BANK:000 TERMINAL:000001 CASH FLOW STATISTICS

ACCOUNTING ----ARCHIVE ----WEEKLY -----DAILY

SUM TO ALL ::::::::::: ::::::::::: ::::::::::: :::::::::::

LSTCLEARDATE 11/03/11 01/11/12 01/11/12

LSTCLEARTIME 04:27:05 01:09:15 01:09:01

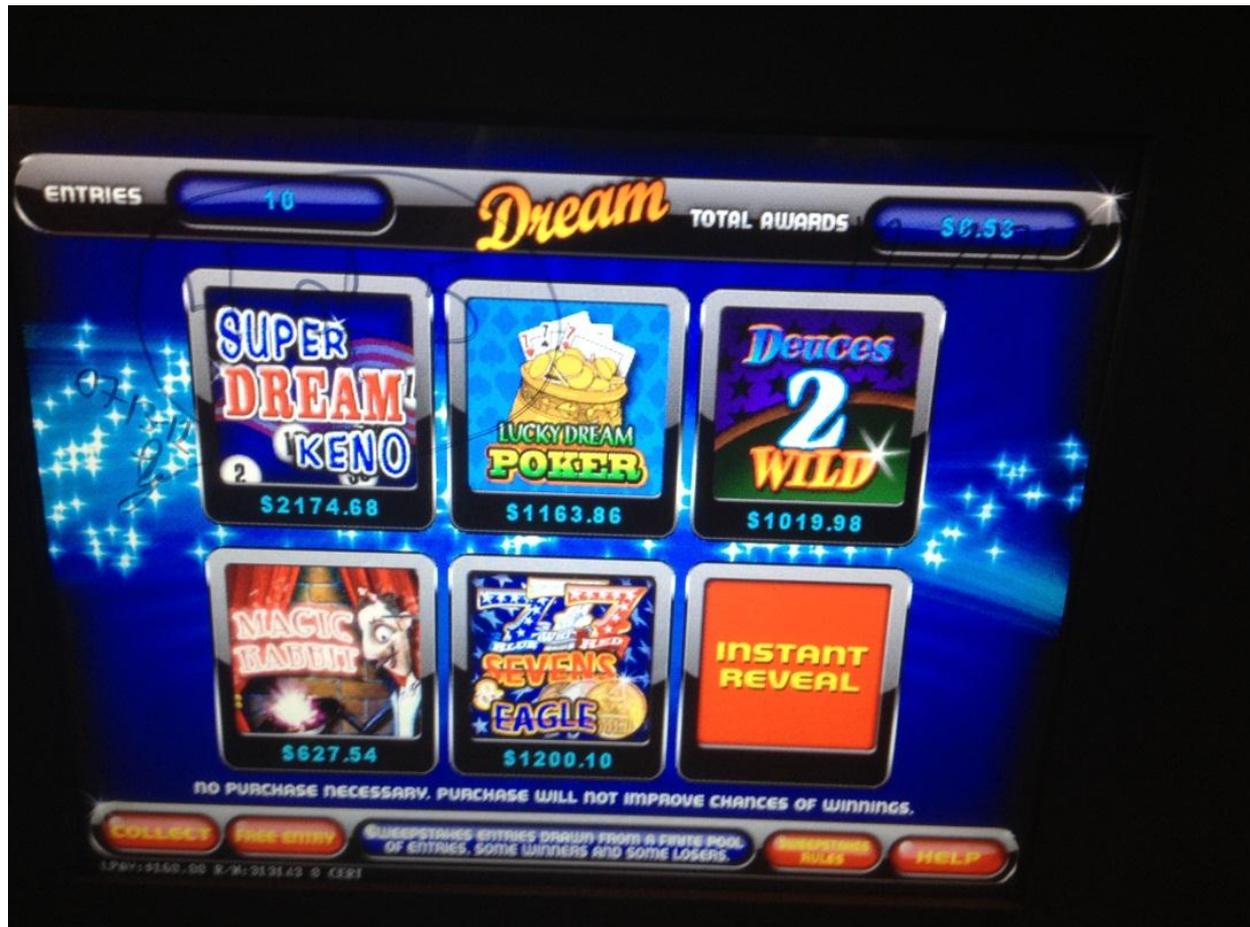
	11/03/11	01/11/12	01/11/12
CREDIT IN...	\$ 12886.00	\$ 1460.00	\$ 1460.00
REDEEM OUT...	\$ 6162.56	\$ 964.66	\$ 964.66
I-O HOLD....	\$ 6723.44	\$ 495.34	\$ 495.34
HOLD	52.18%	33.93%	33.93%
POINT PLAYED	\$ 53667.00	\$ 3741.00	\$ 3741.00
SCORE WON...	\$ 48964.56	\$ 3244.86	\$ 3244.86
P-W EARNED...	\$ 6702.44	\$ 496.14	\$ 496.14
RETURN ...	87.51%	86.74%	86.74%
PRIZES OUT...	0.00	0.00	0.00
COUPON SALES	\$ 53667.00	\$ 3741.00	\$ 3741.00
INSTREV PLAY	\$ 1929.40	\$ 1902.10	\$ 1902.10
INSTREV WON...	\$ 1789.49	\$ 1764.96	\$ 1764.96
FREE ENTRIES	0.00	0.00	0.00
POWER UPS...	23	4	4
ERRORS.....	0	0	0
WARNINGS....	1	0	0

#	-COIN-	COUNT	SUMOF	-BILL-	COUNT	-SUMOF
			COIN			BILL
0	\$ 0.01	0	0.00	1.00	10	10.00
1	\$ 0.05	0	0.00	2.00	0	0.00
2	\$ 0.10	0	0.00	5.00	6	30.00
3	\$ 0.25	0	0.00	10.00	2	20.00
4	\$ 0.50	0	0.00	20.00	15	300.00

PRINT TERM STATS

PRINT WEEKLY +CLEAR

Gift Surplus



Gift Surplus

LUCKY DREAM POOL
Get 3 7's to go to the BONUS

FIVE OF A KIND	JACKPOT
ROYAL FLUSH	\$500.00
STRAIGHT FLUSH	\$250.00
FOUR OF A KIND	\$75.00
FULL HOUSE	\$40.00
FLUSH	\$25.00
STRAIGHT	\$15.00
THREE OF A KIND	\$5.00
TWO PAIRS	\$5.00

ENTRIES
100

TOTAL AWARDS \$77.00
CURRENT AWARD \$75.00

6♦ 9♦ Q♥ 10♥ 7♣ 10♠ Q♦ 10♦

HELP MENU

SUPER DREAM KENO

HELP MENU

ENTRIES 1
TOTAL AWARDS \$0.00

WIFE CARD
QUICK PICK
PICKS 10

PAYS

10 \$200.00
9 \$150.00
8 \$100.00
7 \$50.00
6 \$25.00
5 \$10.00
4 \$5.00
3 \$2.50
2 \$1.00
1 \$0.50

ENTRIES 3X BONUS ANYWHERE ON ACTIVE LINE! = BONUS SCREEN WIN UP TO 100X

JACKPOT \$1000000.00

4 Q K 10 WILD A
2 7 8 BONUS BONUS Mr. Magic 10
1 9 6 10 Mr. Magic J A Q
3 5

TOTAL AWARDS 3859
CURRENT AWARD 10200

PAY TABLE MENU PREVIEW 44444 STOP ALL

SEVENS & EAGLE CREDIT 25

\$57253.00

2400
1199 \$100.00
200
150
80
50
40 \$444.44
25
20
10
5
2 \$444.44
2
2
2
1

SILVER GOLD BRONZE

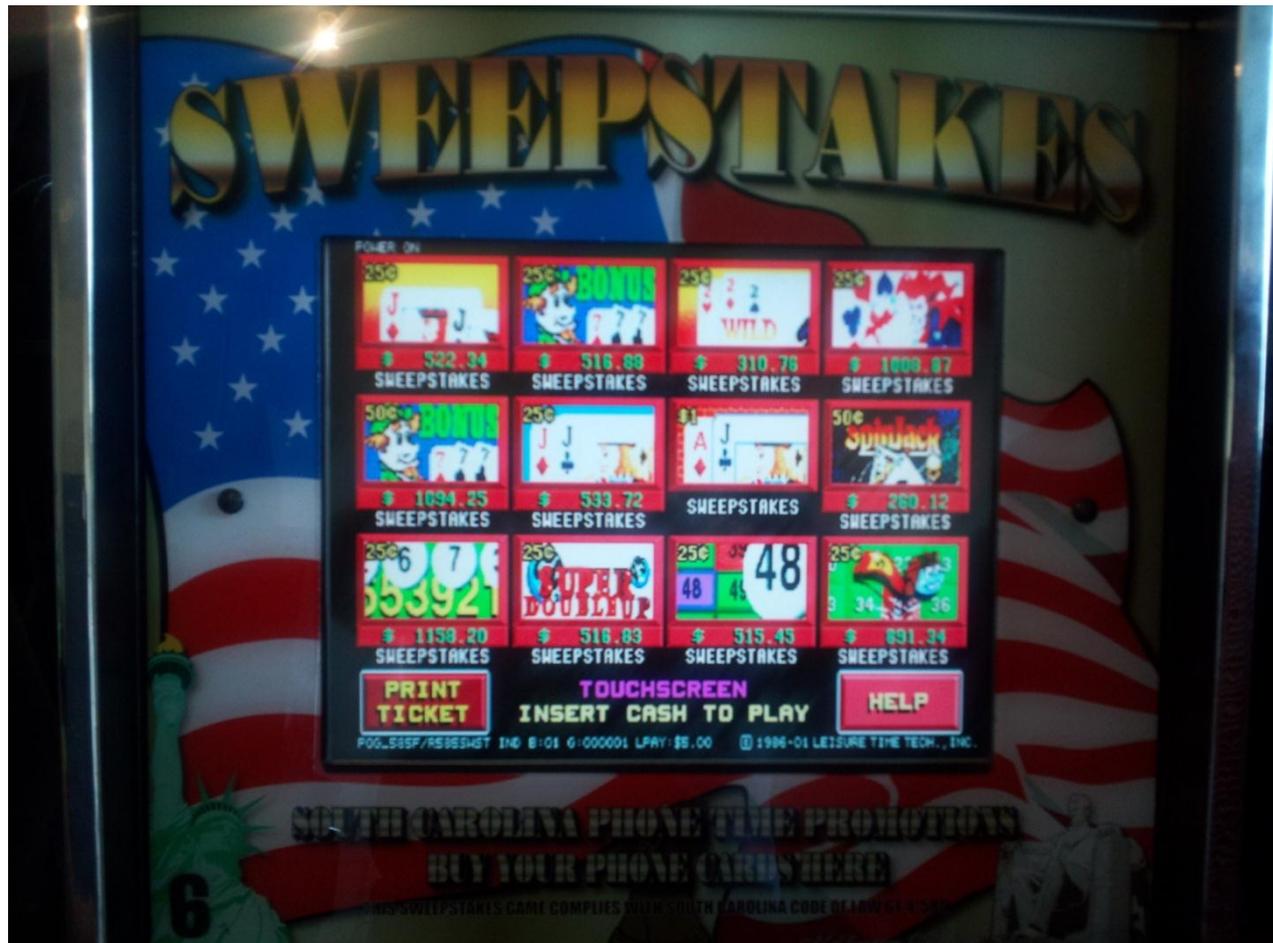
7 BLUE 7 WHITE 7 RED

ENTRIES \$250.25
TOTAL AWARDS \$250.25
CURRENT AWARD \$5.00

HELP MENU PREVIEW \$1.00 REVEAL

PRESS PLAY

Other Examples



Other Examples



Other Examples



Other Examples



Other Examples



Other Examples



Legal Issues

- Typically, owners of these machines make two arguments as to why the machines are legal:
 - 1) There is an exception to § 12-21-2710 found in the beer and wine licensing code.
 - 2) These are vending machines promoting legitimate products.

S.C. Code § 61-4-580

SECTION 61-4-580. Prohibited acts.

No holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:

- (1) sell beer or wine to a person under twenty-one years of age;
- (2) sell beer or wine to an intoxicated person;
- (3) permit gambling or games of chance except game promotions including contests, games of chance, or sweepstakes in which the elements of chance and prize are present and which comply with the following:
 - (a) the game promotion is conducted or offered in connection with the sale, promotion, or advertisement of a consumer product or service, or to enhance the brand or image of a supplier of consumer products or services;
 - (b) no purchase payment, entry fee, or proof of purchase is required as a condition of entering the game promotion or receiving a prize; and
 - (c) all materials advertising the game promotion clearly disclose that no purchase or payment is necessary to enter and provide details on the free method of participation.

S.C. Code § 61-4-580

- (4) permit lewd, immoral, or improper entertainment, conduct, or practices. This includes, but is not limited to, entertainment, conduct, or practices where a person is in a state of undress so as to expose the human male or female genitals, pubic area, or buttocks cavity with less than a full opaque covering;
- (5) permit any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State; or
- (6) sell, offer for sale, or possess any beverage or alcoholic liquors the sale or possession of which is prohibited on the licensed premises under the law of this State; or
- (7) conduct, operate, organize, promote, advertise, run, or participate in a "drinking contest" or "drinking game". For purposes of this item, "drinking contest" or "drinking game" includes, but is not limited to, a contest, game, event, or other endeavor which encourages or promotes the consumption of beer or wine by participants at extraordinary speed or in increased quantities or in more potent form. "Drinking contest" or "drinking game" does not include a contest, game, event, or endeavor in which beer or wine is not used or consumed by participants as part of the contest, game, event, or endeavor, but instead is used solely as a reward or prize. Selling beer or wine in the regular course of business is not considered a violation of this section.

A violation of any provision of this section is a ground for the revocation or suspension of the holder's permit.

Response to § 61-4-580 Argument

- § 12-21-2710 is a clear and unambiguous statute, so the court cannot employ any rules of statutory construction or look for another meaning.
- Machines prohibited by § 12-21-2710 are contraband *per se* and thus illegal regardless of their use or operation.
- Licensing schemes such as § 61-4-580 cannot legalize illegal devices.

Response to § 61-4-580 Argument

The South Carolina Supreme Court has ruled that “[u]nder longstanding precedent in this state, licensing schemes do not render legal products or devices that are illegal under other provisions of state law.” State v. One Coin-Operated Video Game, 321 S.C. 176, 467 S.E.2d 443, 445 (1995); *see also* Alexander v. Martin, 192 S.C. 176, 6 S.E.2d 20, 24 (1939).

Response to § 61-4-580 Argument

- Possessing machines banned by § 12-21-2710 is a crime, and § 61-4-580(5) prohibits a beer and wine permit holder from committing a crime.
- Since the only penalty for violating § 61-4-580 is permit revocation or suspension, the ALC is the appropriate and exclusive forum to consider that statute.
- § 12-21-2710 is the more recent statute and controls in case of any conflict.

Response to § 61-4-580 Argument

- § 12-21-2710 is more specific than § 61-4-580, which sets forth a laundry list of prohibited acts, most of which have nothing to do with gambling, and specific statutes control over general.
- The machines purport to sell retail products, yet these machines are not legal in a retail store – this is an equal protection concern.
- The only statement that § 61-4-580 is an exception comes from a dissenting opinion.

Response to § 61-4-580 Argument

- Even if § 61-4-580(3) is an exception to § 12-21-2710, the owner of the machines must still prove the following:
- The location from where the machine was seized was a licensed premises covered by a valid permit for the sale of beer or wine.
- The game promotion includes the elements of chance and prize.
- The game promotion is conducted or offered in connection with the sale, promotion, or advertisement of a consumer product or service, or to enhance the brand or image of a supplier of consumer products or services.
- No purchase payment, entry fee, or proof of purchase is required as a condition of entering the game promotion or receiving a prize.
- All materials advertising the game promotion clearly disclose that no purchase or payment is necessary and provide details on the free method of participation.

Response to § 61-4-580 Argument

- *All* materials advertising the promotion must *provide details* on the free method of entry.



Magic Minutes

“The Fun Way To Buy Long Distance”

Magic Minutes sells some of the most affordable long distance phone time in South Carolina. **For only \$1, you can purchase 15 minutes of talk time!** And Magic Minutes offers customers the opportunity to play promotional video games of chance after they purchase their minutes. No purchase necessary to play, and you just might win! Look for us in convenience stores, other retail locations and Facebook!

www.magicminutes.us

Find us on  **facebook.**



Response to § 61-4-580 Argument

- ***All*** materials advertising the promotion must ***provide details*** on the free method of entry.



“Free” Entry

PRODUCTS DIRECT SWEEPSTAKES™ RULES
NO PURCHASE NECESSARY
PURCHASE WILL NOT IMPROVE CHANCES OF WINNING

5 **NO PURCHASE METHOD OF ENTRY:** TO RECEIVE FREE PROMOTIONAL ENTRIES (EQUIVALENT TO A \$1.00 PURCHASE OF DISCOUNT COUPONS) BY MAIL, YOU MUST OBTAIN A REQUEST CODE FROM THIS RULES SCREEN BY PRESSING THE **DISPLAY FREE ENTRY REQUEST CODE** BUTTON. AFTER VIEWING THE CODE, YOU MUST HAND WRITE ON A THREE INCH BY FIVE INCH (3x5) INDEX CARD THE FOLLOWING INFORMATION: (1) THE REQUEST CODE; (2) THE LOCATION OF THE SWEEPSTAKES TERMINAL (NAME OF THE RETAIL SPONSOR'S ESTABLISHMENT, CITY AND STATE); AND (3) YOUR NAME, AGE, STREET ADDRESS, CITY, STATE, ZIP CODE AND TELEPHONE NUMBER. YOU MUST MAIL THE INDEX CARD TO PRODUCTS DIRECT, LLC, P.O. BOX 496, NORCROSS, GA. 30071.

NEXT PAGE **DISPLAY NO PURCHASE REQUEST CODE** **ENTER NO PURCHASE REDEEM CODE** **EXIT**

PRODUCTS DIRECT SWEEPSTAKES™ RULES
NO PURCHASE NECESSARY
PURCHASE WILL NOT IMPROVE CHANCES OF WINNING

6 **NO PURCHASE METHOD OF ENTRY:** (CONTINUED FROM PAGE 5) EACH 3x5 CARD MUST BE MAILED IN ITS OWN SEPARATE OUTER ENVELOPE (I.E., LIMIT ONE REQUEST CODE PER ENVELOPE). THE ADDRESS ON THE ENVELOPE TO PRODUCTS DIRECT, LLC MUST BE HAND WRITTEN AND YOU MAY NOT USE A POSTAGE METER OR OTHER MECHANICAL DEVICE TO AFFIX THE POSTAGE ON THE ENVELOPE. INCOMPLETE, INCORRECT, ILLEGIBLE, LOST, MISDIRECTED OR DAMAGED REQUESTS FOR A FREE ENTRY REQUEST CODE ARE INVALID. PLEASE ALLOW UP TO FOUR WEEKS TO RECEIVE YOUR REDEEM CODE. TO USE THE REDEEM CODE, YOU MUST RETURN TO THE SAME SWEEPSTAKES TERMINAL #79940 FROM WHICH THE REQUEST CODE WAS OBTAINED. YOU MUST PRESS THE **ENTER FREE ENTRY REDEEM CODE** BUTTON ON THIS RULES SCREEN AND ENTER YOUR REDEEM CODE ON THE POP-UP KEY PAD.

NEXT PAGE **DISPLAY NO PURCHASE REQUEST CODE** **ENTER NO PURCHASE REDEEM CODE** **EXIT**

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“Free” Entry

- Many machines offer dozens or even hundreds of separate, independent sweepstakes. Every bet level of every game is its own sweepstakes.
- Your free entry is worth \$1.00, so you cannot enter any of the higher cost sweepstakes for free.
- While you could request multiple free entries, you are not told that this is necessary.

2013 SC S.B. 3

- On March 22, 2013, Governor Haley signed a law specifically clarifying that § 61-4-580 is not and was not ever intended to be an exception to § 12-21-2710 or any other gambling law in this state.
- The stated purpose of the Act was “to amend section 61-4-580, relating to game promotions allowed by holders of permits authorizing the sale of beer or wine, so as to **clarify** that this section does not authorize the use of an activity, device, or machine that is prohibited by section 21-21-2710 or by other provisions that prohibit gambling.” 2013 SC S.B. 3 (emphasis added).

2013 SC S.B. 3

- The intent of the South Carolina Legislature was not to change the law, but to clarify the law so as to definitively close what was mistakenly perceived to be a loophole allowing beer and wine permit holders to own and operate gaming devices that are clearly prohibited under § 12-21-2710.
- § 61-4-580 does not now, nor did it ever, operate as an exception to § 12-21-2710 to legalize otherwise prohibited gaming and gambling devices.

Vending Machine - Legitimate Product

- The argument goes something like this:
- Because an illegitimate promotion or an illegitimate product supports finding the machines illegal, a legitimate product must require finding the machines legal.
- Phone cards, coupons, and internet time are all perfectly legitimate products sold at fair market rates – the purchaser gets real value.
- Companies like McDonald's, Coca-Cola, Frito-Lay all routinely use sweepstakes to promote their products – this is no different.

Response to Legitimacy Argument

- This is not Coke, or McDonald's, or Frito-Lay.

“The main difference between the dispensers and vending machines is that the vending machines dispense promotional game products that are legitimate because their companies are attempting to promote the sale of those products.” *Sun Light Prepaid Phonecard Co., Inc. v. State*, 360 S.C. 49, 55 n.6, 600 S.E.2d 61, 64 n.6 (2004).

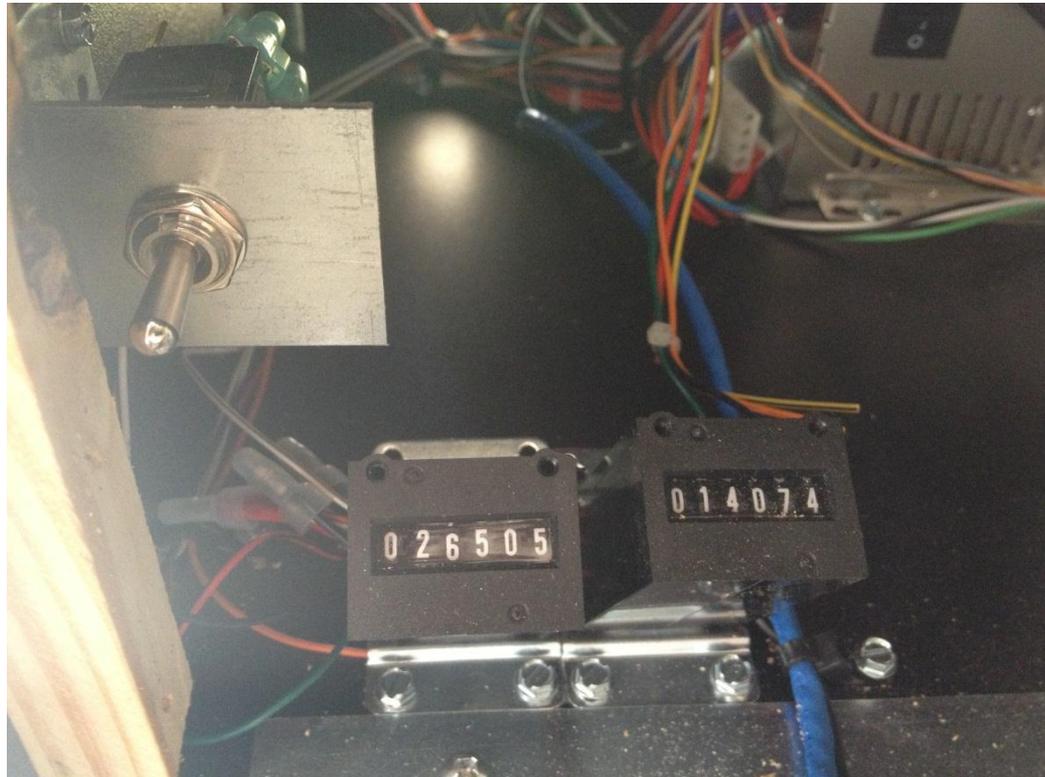
Response to Legitimacy Argument

“The test by which to determine the answer to this question is not to inquire into the theoretical possibilities of the scheme, but to examine it in ***actual practical operation.***” *Darlington Theatres v. Coker*, 190 S.C. 282, 2 S.E.2d 782, 787 (1939).

Response to Legitimacy Argument

- The machines are like slot machines, not traditional vending machines.
- The machines typically:
 - Have a gambling-themed video screen.
 - Play celebration music when a customer is a winner.
 - Have a lock-out feature which freezes the machine at a certain level of prize money.
 - Contain hard meters that record money in and prizes paid out.
 - Accept denominations from \$1 to \$100.
 - Have no mechanism to return change.
 - Have no mechanism to issue refunds.
 - Have the ability to be linked or networked.
- *None of these features are in a traditional vending machine.*

Hard Meters



Response to Legitimacy Argument

- The machines contain the element of chance even where everyone receives the same “product.” The machines do not dispense a uniform and fair return in value.

“While it is true the dispenser always gives the customer the same return, *i.e.* a phone card with a game piece attached, and that the dispenser does not itself determine whether a customer has won, the dispenser still contains an element of chance.” *Sun Light*, 360 S.C. at 54, 600 S.E.2d at 64.

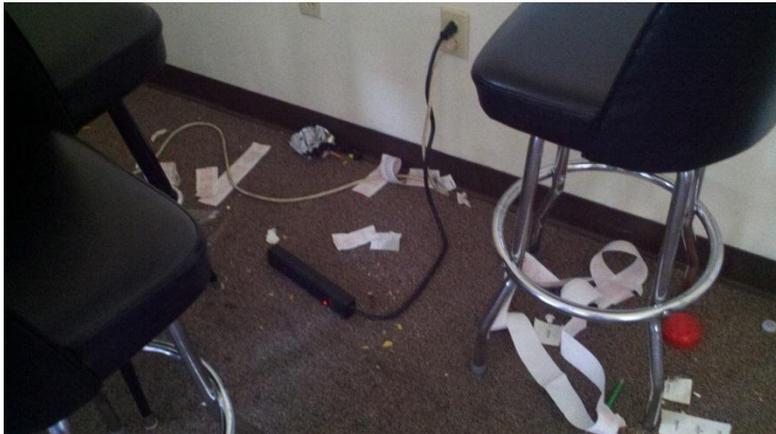
Magic Minutes

- Pot-O-Gold machines with secondary circuit board to dispense phone minute PINs.
- The “promotion” is allowing people to play poker, blackjack, or keno for a cash payout.
- You can get all the phone minutes you want for free.
- The phone minutes can only be used from land line.
- The phone minutes frequently do not work.

Magic Minutes

- The company keeps no records of phone minutes purchased or phone minutes used.
- One gas station with 3 machines would have 450,000 minutes or **300 days** of phone time for purchase.
- All of these minutes expire in 30 to 90 days and have to be replaced.

Magic Minutes



Products Direct

- The machines do not mention any of the products available for sale or their cost.
 - More recent machines had scrolling pictures of products that were not available for sale.
- No mention of the 30% limitation on the discount coupons.
 - Someone who spends \$10 on a \$20 coupon would need to spend \$66.67 to actually utilize the full coupon value...not counting shipping/handling.
- No evidence of any sales of any products whatsoever.

Products Direct

- \$1,000 “limit” on coupon purchasing.



Gift Surplus

- The machines do not mention any of the products available for sale or their cost.
- You can “destroy” your winnings by discarding a winning poker hand.
- No evidence of any sales of any products whatsoever.

Gift Surplus

- Initial testimony by head of marketing:
 - “We target individuals making less than \$52,000 a year.”
- Later testimony:
 - “We target based on a variety of demographics including age.
 - Me – you testified before that it was based on low income levels.
 - “Yes, but that didn’t sound good when I said it before.”

Agenda

- The History of Video Poker in South Carolina
- ***The “Sweepstakes Era”***
 - Civil Forfeiture Process
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- Games of “Skill”
- The Unknown Future

Networked “Sweepstakes” Systems

- A business will typically have anywhere from 10 to 100 computer terminals in one location.
- The “product” most commonly offered in connection with the games of chance is internet time.
 - Other services like fax, print, copy may be offered.
 - Some of these businesses purport to sell coffee or phone time.
- Unlike stand alone terminals, these may look like typical computers with keyboards, mice, etc.
- However, they have been modified with proprietary software which prevents their use as normal computers.
 - Additional hardware features such as card readers may be added on.

Networked “Sweepstakes” Systems

- The machines are linked together through a common server.
- The server may be located either within the establishment or off-site, even out of state.
- Once the computers are unplugged from the server, the machines typically no longer operate.
 - Software prevents use like normal computer.

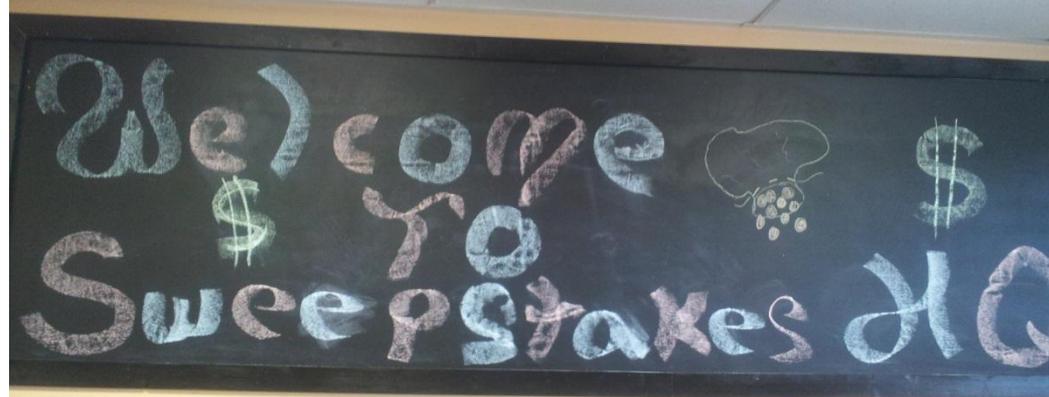
The “Server”



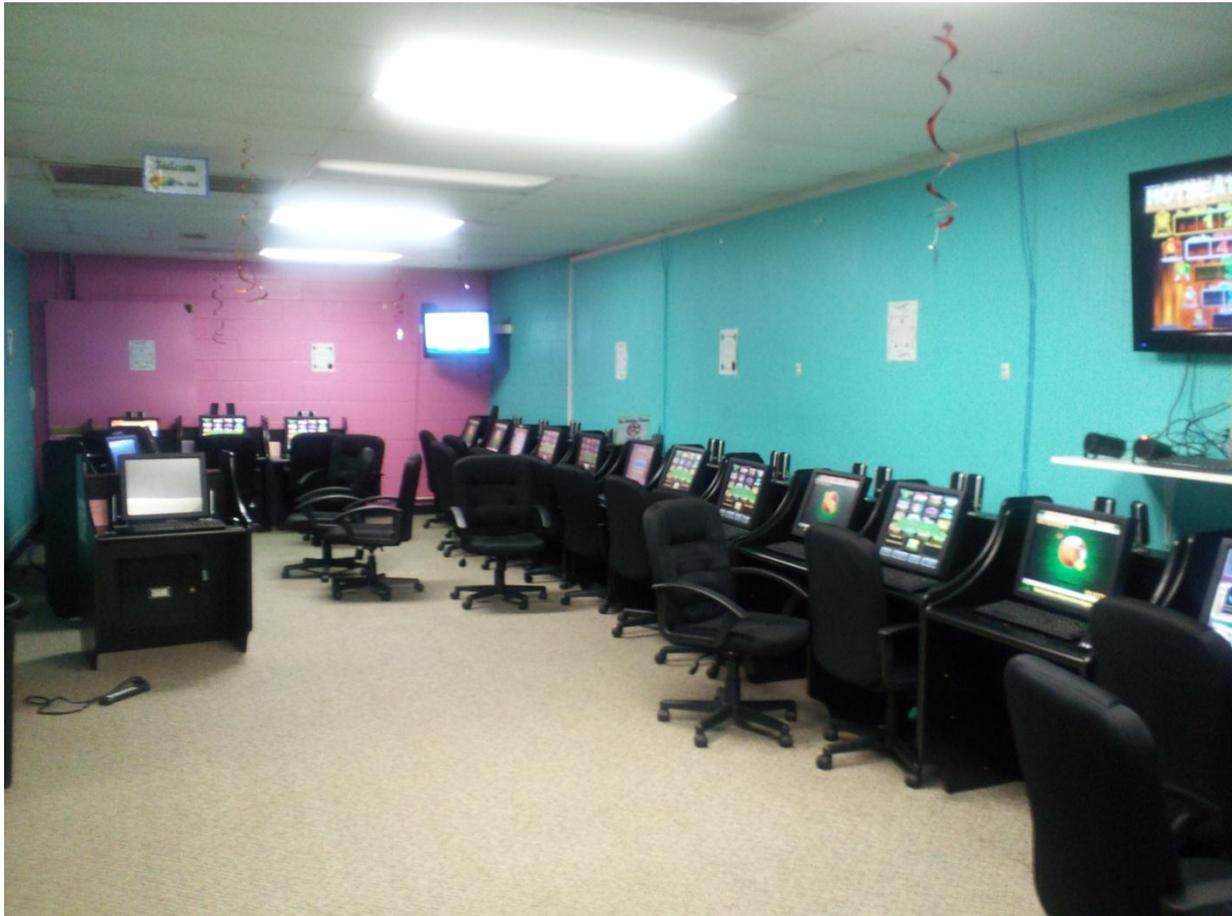
Networked “Sweepstakes” Systems



Networked “Sweepstakes” Systems



Networked “Sweepstakes” Systems



Networked “Sweepstakes” Systems



Networked “Sweepstakes” Systems



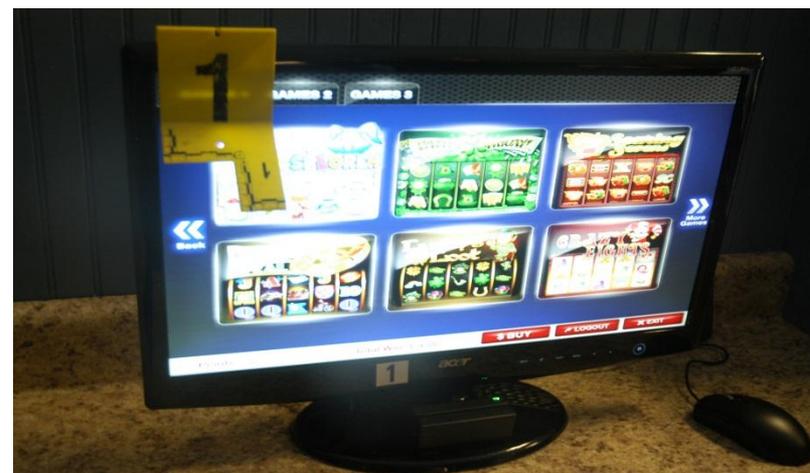
Networked “Sweepstakes” Systems



Networked “Sweepstakes” Systems



Networked "Sweepstakes" Systems



Legal Issues

- Typically, owners of these machines make four arguments as to why the machines are legal:
 - 1) The machines do not violate § 12-21-2710 as all the elements of gambling (consideration, chance, and prize) are not present.
 - 2) The machines are legal because they look like computers and a “slot” is not physically attached.
 - 3) There is a First Amendment right to use promotions and reveal prizes using “entertaining themes” that look like slots or poker.
 - 4) They are providing internet access to those who can't afford it.

“You Are Not Gambling”



Response to Gambling Argument

- The plain language of § 12-21-2710 does not list these elements.
- The case law in South Carolina contradicts this view:
 - “SLED is correct that section 12-21-2710 does not specifically require that an illegal gaming device be used for gambling.” *South Carolina Law Enforcement Div. v. 1-Speedmaster S/N 00218*, 397 S.C. 94, 723 S.E.2d 809, 812 (Ct. App. 2011).
 - In *Sun Light*, free entries were available, yet the Supreme Court ruled the machines and phone cards violated § 12-21-2710.
- The requirements of a criminal gambling offense under Chapter 19 of Title 16 are separate and distinct from the requirements of § 12-21-2710.

Response to Gambling Argument

- Even if the elements of gambling are required, the machines still violate § 12-21-2710.
- Courts across the country have found that consideration exists where customers are really paying for the games of chance, regardless if a free entry is available. For example:
 - *U.S. v. Davis*, 690 F.3d 330 (5th Cir. 2012).
 - *Moore v. Miss. Gaming Comm'n*, 64 So.3d 537 (Miss. App. 2011).
 - *Barber v. Jefferson County Racing Ass'n, Inc.*, 960 So.2d 599 (Ala. 2006).

Response to Gambling Argument

- As to whether chance exists, regardless if the sweepstakes is pre-determined, whether a player has a winning entry is still entirely up to chance.
- In *Sun Light*, the winning phone cards were pre-determined, yet the Supreme Court found the phone cards violated § 12-21-2710.
- The sweepstakes is not pre-determined – the machine determines the outcome once a game and bet level are selected.
- Each bet level of every game is typically a separate and independent sweepstakes.

Response to Gambling Argument

NEW
Renewal of Number

COMMON POLICY DECLARATIONS

SCOTSDALE INSURANCE COMPANY*
Home Office:
One Nationwide Plaza Columbus, Ohio 43215
Administrative Office:
8877 North Gainey Center Drive Scottsdale, Arizona 85258
1-800-423-7675
A STOCK COMPANY

Policy Number
CPS1629723

ITEM 1. NAMED INSURED AND MAILING ADDRESS
D'S CONSULTING GROUP INC
DBA HOT SPOT II
3071 LEGION RD
FAYETTEVILLE, NC 28306

DAVID MATTHEWS, INC.
PO BOX 666
HOPE MILLS, NC 28348

AGENT NAME AND ADDRESS
TAPCO UNDERWRITERS, INC.
PO BOX 286
BURLINGTON, NC 27216

ITEM 2. POLICY PERIOD From: 08/02/2012 To: 08/02/2013 Term: 365 DAYS

Agent No. 32001 Program No.: NONE

12:01 A.M. Standard Time at your mailing address.

If property coverage is afforded by this policy, the POLICY IS A CO-INSURANCE CONTRACT.

BUSINESS DESCRIPTION GAMBLING CASINO

In return for the payment of the premium, and subject to all the terms of this policy, we agree with you to provide the insurance as stated in this policy. This policy consists of the following coverage parts for which a premium is indicated. Where no premium is shown, there is no coverage. This premium may be subject to adjustment.

Coverage Part(s)	Premium Summary
Commercial General Liability Coverage Part	\$ 5,850.00
Commercial Property Coverage Part	\$ 1,473.00
Commercial Crime Coverage Part	\$ NOT COVERED
Commercial Inland Marine Coverage Part	\$ NOT COVERED
Commercial Auto (Business Auto or Truck)	\$ NOT COVERED

Response to No Slot Argument

- § 12-21-2710 does not require that a machine have a slot.
- The only statement is that, where a machine is for the play of poker, keno, etc., or has a free play feature, the machine be operated by a slot.
- Several other types of machines are banned under § 12-21-2710 with no mention of the word slot.
- Further, the slot could be across the room or at the cash register. Many machines are equipped with card readers.

Response to Free Speech Argument

- § 12-21-2710 regulates ***conduct***, not speech.
- That statute draws absolutely no distinction between machines which utilize a sweepstakes or promotion and those which do not.
- Further, prohibitions affecting commercial speech do not apply if the speech concerns an illegal activity.

Response to Free Speech Argument

- Property deemed contraband *per se* is illegal to possess **regardless of its intended use or operation**. See State v. 192, 338 S.C. at 189, 525 S.E.2d at 879.
- These machines are no more speech than someone yelling “Bingo!” or a slot machine showing 3 cherries.

Just Providing “Internet Access”



Just Providing “Internet Access”

- Customer A (Anderson):
 - Spent over \$1,400 on 10 days of internet time.
- Customer B (Sumter):
 - Spent almost \$3,000 for 20 days of internet time.
- Customer C (Sumter):
 - Spent more than \$22,000 at two locations over a three month period.
 - Had more than 145 days of internet time available.
- Remember these are 24 hour days!

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Devices Pertaining to Games of Chance

The South Carolina Supreme Court has acknowledged that, as far back as 1939, “[i]t is **clear that the law condemns any devices pertaining to games of chance, of whatever name or kind....**”

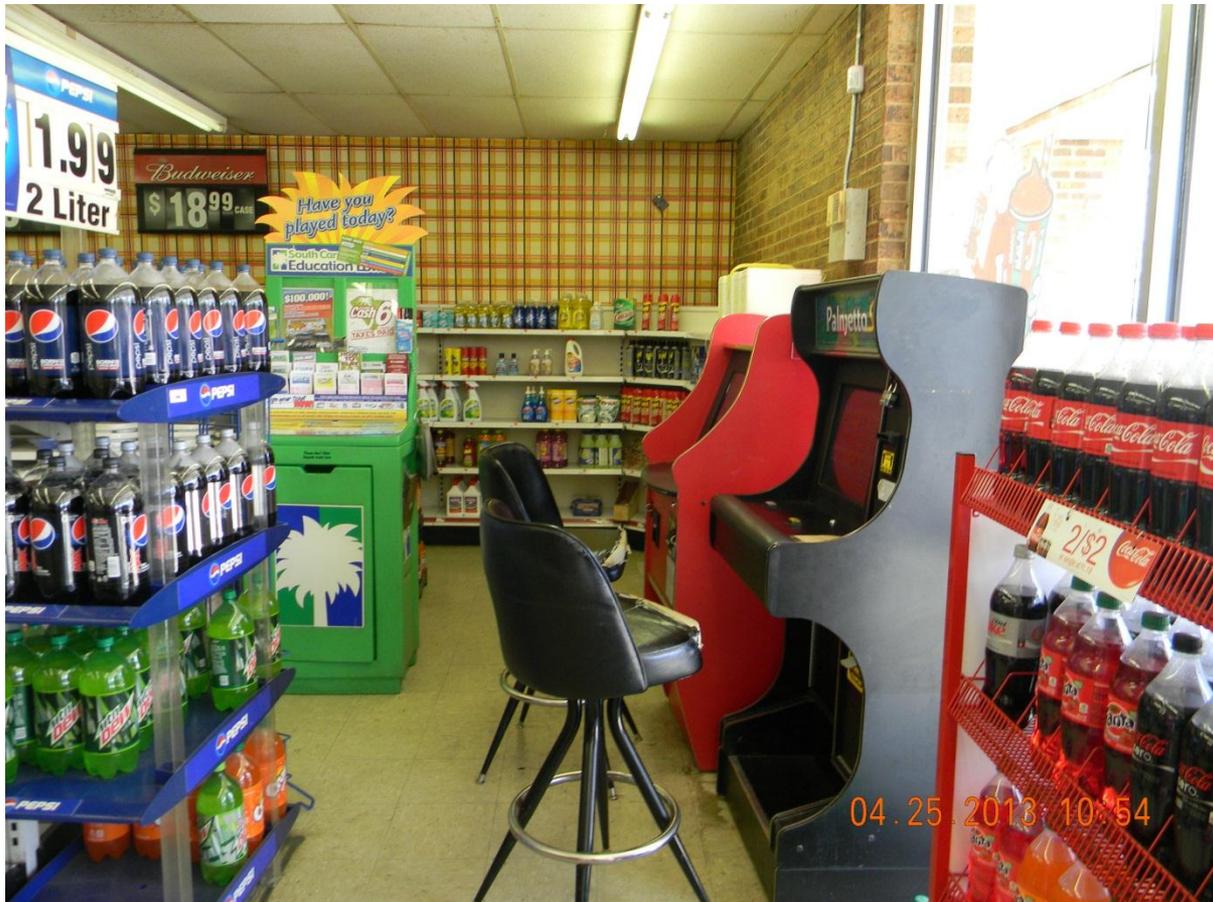
Alexander v. Martin, 192 S.C. 176, 6 S.E.2d 20, 23 (1939) (emphasis added).

Devices Pertaining to Games of Chance

In 1967, the South Carolina Supreme Court again recognized, “[i]t is clear that the Legislature, by the enactment of the statutes here involved [Sections 5–621 and 5–622 of the Code, the predecessor statutes to Sections 12-21-2710 and 12-21-2712], did condemn any devices pertaining to games of chance.”

Squires v. South Carolina Law Enforcement Division,
249 S.C. 609, 612-13, 155 S.E.2d 859, 861 (1967)
(emphasis added) (*quoted in State v. 192*).

“Skill” Redemption Machines



“Skill” Redemption Machines



“Skill” Redemption Machines



“Skill” Redemption Machines



“Skill” Redemption Machines



“Skill” Redemption Machines



“Skill” Redemption Machines



“Skill” Redemption Machines

- Device Pertaining to Games of Chance or is it Skill?
- Two tests have been used to help resolve this.
 - “Dominant Factor Test” – does chance or skill predominate in determining the result?
 - “Pure Chance Doctrine” – does skill play any role in determining the result?
- S.C. has not officially adopted one test, but most states have adopted the dominant factor test.

“Skill” Redemption Machines

- ***Ultimate Question:*** is chance meaningful in determining the ultimate outcome of the game, or does skill override the effect of chance?
 - Is the maximum possible outcome of each play determined by the machine?
 - Is the maximum possible outcome the same for all players, regardless of skill?
 - Is the maximum possible outcome generated at random?

“Skill” Redemption Machines



“Skill” Redemption Machines



“Skill” Redemption Machines



“Skill” Redemption Machines



“Skill” Redemption Machines



“Skill” Redemption Machines

Gambling on Games of “Skill”

- On November, 21, 2012, the South Carolina Supreme Court noted that the “statutory meaning of the word ‘gambling’ in South Carolina includes games in which skill outweighs chance.” Town of Mount Pleasant v. Chimento, 401 S.C. 522, 737 S.E.2d 830, 837 (2012), *reh’g denied* (Jan. 10, 2013).
- “Whether an activity is gaming/gambling is not dependent upon the relative roles of chance and skill, but whether there is money or something of value wagered on the game’s outcome.” *Id.* at 838.

Ted's Game Enterprises

Ted's argued:

- (1) that identifying that a game is a game is a “skill,”
- (2) that finding and understanding the directions of a game is “skill,”
- (3) that “finding where the coin goes [is] a skill,”
- (4) that “finding which button to press” is a “skill,” and
- (5) “that actually playing the game [is] a skill.”

“Ted's also relies upon testimony that “skill” would include a “strategy or tactic based on knowledge of a particular game's features,” on the rules of the game, the knowledge of probabilities, and “the ability to see what is relevant or significant in a particular game.”

State ex rel. Tyson v. Ted's Game Enterprises, 893 So. 2d 355, 375 (Ala. Civ. App. 2002).

Ted's Game Enterprises

“In essence, Ted’s argues that, if a machine requires some physical human act to initiate or continue its operation, or if some human decision can increase or decrease the amount wagered and therefore the amount won or lost in a given play or series of plays, the machine thereby becomes a game of skill, even if the ultimate determinant of whether a contestant actually wins or loses on any given play or on a series of plays is chance.”

State ex rel. Tyson v. Ted's Game Enterprises, 893 So. 2d 355, 375 (Ala. Civ. App. 2002).

Ted's Game Enterprises

“To define skill in the manner urged by Ted’s would require this court (1) to abandon common sense, (2) to ignore the plain meaning of the word “skill,” and (3) to define “chance” out of existence for purposes of § 65 of the Alabama Constitution. It would require us to define “skill” so liberally that, as a practical matter, any game would become a “game of skill.” We decline to do this.”

State ex rel. Tyson v. Ted's Game Enterprises, 893 So. 2d 355, 375 (Ala. Civ. App. 2002).

“Amusement” Gaming Machines

- Legal Amusement Device?
 - No payout capability.
 - No Gambling.
- Device Operated By a Slot in Which is Deposited a Coin or Thing of Value for the Play of Poker or Lotto?
- Video Game Machine with a Free Play Feature Operated by a Slot in Which is Deposited a Coin or Thing of Value?

“Amusement” Gaming Machines



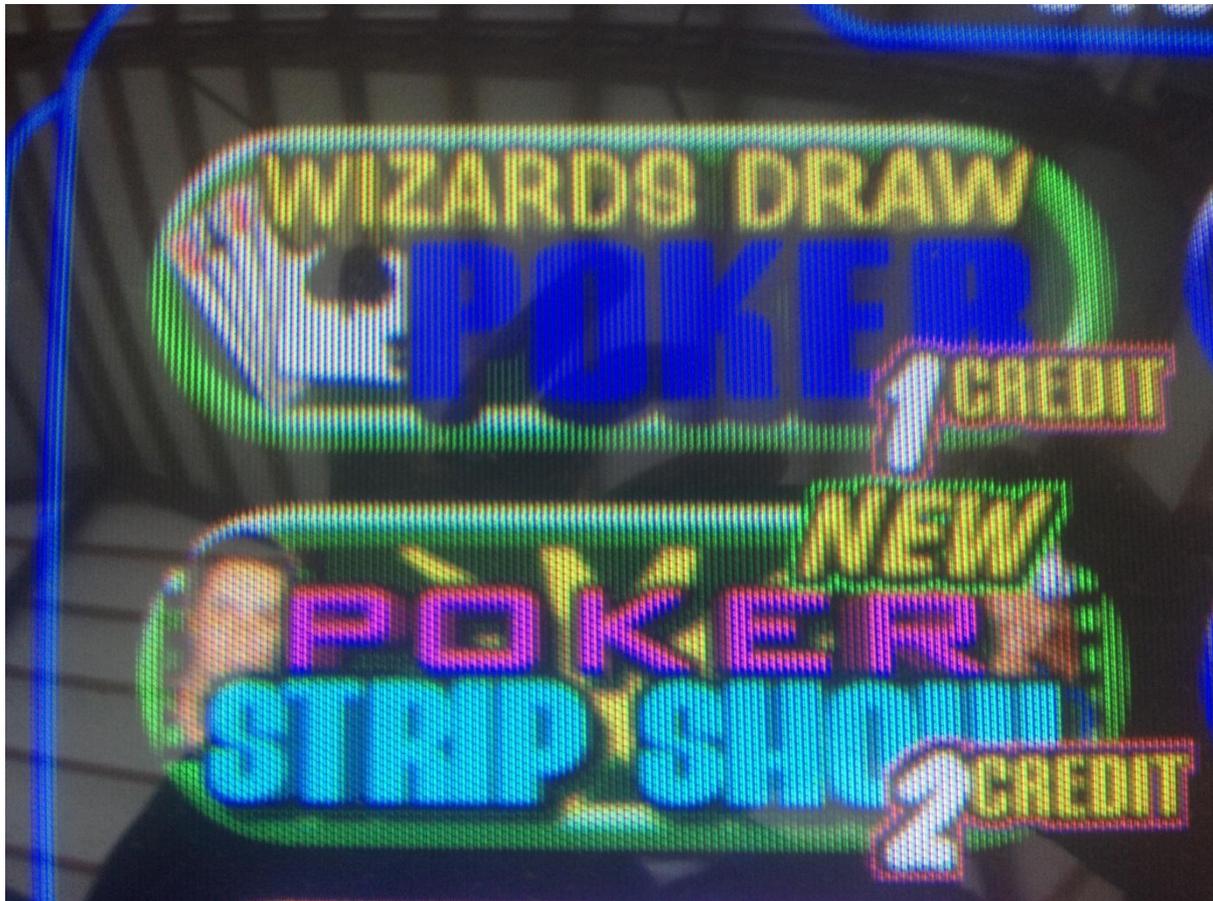
“Amusement” Gaming Machines



“Amusement” Gaming Machines



“Amusement” Gaming Machines



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Day Cruises to Nowhere- Federal Law

- Federal Law Prior to 1992- No gambling on US Flag Vessels
- 1992- Johnson Act Amended to allow gambling on US Flag Vessels
- Allows for possession or transport of a gambling device within state territorial waters if:
 - Device remains on board the vessel and is only used outside of state territorial waters
- Day cruises are still a federal criminal offense where the cruise starts and ends in a state where the activity is prohibited



Day Cruises to Nowhere- State Law



- South Carolina Law does not prohibit gambling day cruises- US flag vessels operating out of a SC port, making no intervening stops, and permitting gambling only when the ship is beyond the State's Territorial waters.
- *Stardancer Casino, Inc. v. Stewart*, 347 S.C. 377, 556 S.E.2d 357 (2001)
- So, grab your flippy floppies...UNLESS...

Senate Joint Resolution No. 318

- Sponsored by Sen. Ford (Charleston)
- Proposes a referendum to amend Section 7, Article XVII of the SC Constitution to allow casino boat gambling in State territorial waters
- S. 314- “Watercraft Gambling Act” provides for a 35% tax on watercraft gambling proceeds, payable monthly.
- 75% to the General Fund, 25% to the County





“It is unlawful for any person holding an office of honor, trust or profit to engage in gambling or betting on games of chance; and any such officer, upon conviction thereof, is thereby disqualified from the further exercise of the functions of his office, and the office of said convicted person becomes vacant, as in the case of resignation or death.”

S.C. Const. Section 8, Article XVII

Who is a person holding an office of honor, trust or profit?

- All public officials- state, county, and municipal
- Governor
- Judges
- Assistant Attorney Generals
- Assistant Solicitors
- County or City Officials
- Law Enforcement Officers
- Zoning Board Members
- Prohibition includes SC Lottery, regardless of its legality
 - *Op. Atty. Gen. January 7, 2002, 2002 WL 00998 (2002)*
- Prohibits playing the lottery or gambling outside of South Carolina.
 - *Op. Atty Gen. April 2, 2002, 2002 WL 735339*

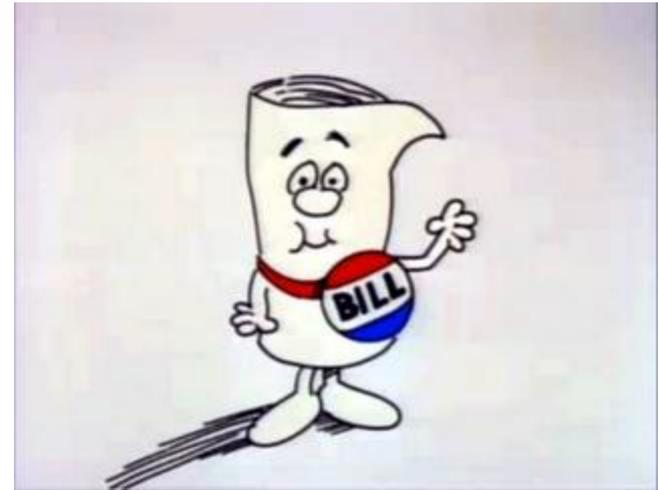
2013 Joint House Resolution No. 3516

- Reps. Whipper, Jefferson, King, Gilliard, Anderson, G.A. Brown, Clyburn, Dillard, Hosey, Powers Norell, Robinson-Simpson, Sabb, Williams
- Proposes amendment to Section 8 : “This prohibition does not apply to participation in lotteries conducted by the State of South Carolina...”
- EXCEPT for the Governor, Lt. Governor, “other constitutional officers,” members of the general assembly, justices of the State Supreme Court, or judges of the South Carolina Court of Appeals



Amending the Constitution

- A Joint Resolution is prepared and introduced
- It follows the same course as ordinary bills
- Must be passed in each body of the General Assembly by a two thirds vote of all elected members
- Does not require the approval of the governor
- Goes to the voters at the next general election



- If a majority of the voters approve the amendment, a bill to ratify the amendment is introduced at the next session
- Must pass by a simple majority vote and does not require the governor's Signature

2013 SC Senate Joint Resolution No. 239

- Proposes amendment to Section 7, Article XVII of the SC Constitution prohibiting lotteries
- Provides that the General Assembly may authorize raffles to be conducted by religious, charitable, or nonprofit organizations for religious, charitable or eleemosynary purposes
- Passed on April 18, 2013
- 104 yeas and 6 nays



2013 South Carolina Senate Bill 779

- Adds Section 16-19-60 (Gambling and Lottery Crimes and Offenses)
- “Notwithstanding any other provision of law to the contrary, it is not unlawful for persons who are members of a club or other social organization to gather for the purpose of engaging in games of cards or dice, including, but not limited to, canasta, mahjong, and bridge, where the games are played among members in a private residence, home, or community clubhouse or similar structure and no mechanical or electronic devices or machines, slot machines or video games of chance are used or incorporated into the games, no person receives any economic benefit other than personal winnings, the host of the game or owner or lessee of the location in which the games are played does not receive a percentage of the winnings, a bona fide social relationship among the participants exists, and, except for the advantage of skill or luck, the risks of losing or winning are the same for all parties.”

House Bill No. 3287

- Rep. Gilliard (Charleston)
- Proposed Amendment to 12-21-2710
- Creates an exception for:
 - Otherwise prohibited machines or games that solely allow for the conduct of a promotional sweepstakes promoting a specific product through the awarding of a prize through the use of a game display on the machine which includes a sweepstakes entry process or the reveal of a sweepstakes prize
 - Where no consideration is required from the game player by way of purchasing the product promoted
 - In areas zoned “light industrial” or equivalent
 - \$500 biennial license tax, used to provide shelters and programs for the homeless



2013 South Carolina House Bill No. 3058

- Rep. Rutherford
- Amends 12-21-2712 to provide for magistrate certification compliance with 21-21-2710
- The “magistrate...shall certify in writing that the machine, board, or other device in question may be lawfully operated or shall order the machine, board, or other device confiscated and destroyed...”
- Magistrate may charge \$20 for each machine
- No mechanism for challenging the magistrate’s decision

Joint Senate Resolution S. 398

- Senator Ford
- Proposes Constitutional amendment to allow one casino in each of the following locations:
 - Myrtle Beach/Horry Co.
 - Santee, Orangeburg Co.
 - Charleston
 - Columbia/Lexington
 - Greenville/Spartanburg
- Allows for the enactment of special legislation, including criminal laws, relating to or arising from casino operations

Any Questions?



List of Important S.C. Cases

- *Alexander v. Martin*, 192 S.C. 176, 6 S.E.2d 20 (1939).
- *Allendale County Sheriff's Office v. Two Chess Challenge II*, 361 S.C. 581, 606 S.E.2d 471 (2004).
- *Darlington Theatres v. Coker*, 190 S.C. 282, 2 S.E.2d 782 (1939).
- *Harvie v. Heise*, 150 S.C. 277, 148 S.E. 66 (1929).
- *Joytime Distributors and Amusement Co., Inc. v. State*, 338 S.C. 634, 528 S.E.2d 647 (1999).
- *Martin v. Lloyd*, 700 F.3d 132 (4th Cir. 2012).
- *Mims Amusement Co. v. South Carolina Law Enforcement Div.*, 366 S.C. 141, 621 S.E.2d 344 (2005).
- *South Carolina Law Enforcement Div. v. 1-Speedmaster S/N 00218*, 397 S.C. 94, 723 S.E.2d 809 (2011).
- *State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 525 S.E.2d 872 (2000).
- *State v. One Coin-Operated Video Game Machine*, 321 S.C. 176, 467 S.E.2d 443 (1996).
- *Sun Light Prepaid Phonecard Co., Inc. v. State*, 360 S.C. 49, 600 S.E.2d 61 (2004).
- *Town of Mount Pleasant v. Chimento*, 401 S.C. 522, 737 S.E.2d 830, 837 (2012), *reh'g denied* (Jan. 10, 2013).
- *Union County Sheriff's Office v. Henderson*, 395 S.C. 516, 719 S.E.2d 665 (2011).
- *Ward v. West Oil Co., Inc.*, 387 S.C. 268, 692 S.E.2d 516 (2010).