



BUREAU OF GAMBLING CONTROL

EDMUND G. BROWN JR.
Attorney General

JACOB A. APPELSMITH,
Bureau Chief

NUMBER 10

LAW ENFORCEMENT ADVISORY

NOVEMBER 1, 2010

Illegal Gambling Devices

The Bureau of Gambling Control (Bureau) provides this advisory regarding illegal gambling devices in response to inquiries from local law enforcement agencies, inquiries from state agencies including the California State Lottery and the California Department of Alcoholic Beverage Control, and from the Bureau's observations in the field. This advisory also addresses misrepresentations contained in documents circulating in the industry that are fraudulently prepared to appear as though they were issued by this office. As a general matter, most, if not all, gambling devices—other than those operating in California Tribal Casinos—that a person pays to play, and that offer anything of value for playing, are illegal devices. Common types of illegal devices include coin pushers, electronic trivia games that include any element of chance, claw machines, traditional slot machines, and slot machines that purport to have a skill element.

The attached flow chart outlines the steps for determining what is an illegal gambling device. (See attachment #1.)

Illegal Gambling Devices

California's gambling device statutes are broad in their coverage and prohibit any person from owning, renting, or possessing illegal gambling devices. (Penal Code, §§ 330a, 330b, 330.1.) An illegal gambling device has three features:

1. It is a machine, apparatus, or device (coin operation is not required);
2. Something of value is given to play the device; and
3. The player has the opportunity to receive something of value by *any* element of hazard or chance ("something of value" is not limited to coins, bills, or tokens—it also includes free replays, additional playing time, redemption tickets, gift cards, game credits, or anything else with a value, monetary or otherwise.) (Penal Code, §§ 330a, 330b & 330.1.)

In addition, if a device can readily be converted to have the features of an illegal gambling device, (as listed in 1, 2, and 3 above), it is an illegal device. (Penal Code, § 330b(d).)

Narrowly Defined Amusement Device Exception

Devices that fall within the definition of an illegal gambling device above may nevertheless qualify for the “pinball” or “amusement device” exception if they meet the narrow requirements set forth in the provisions of Penal Code section 330b, subdivision (f), and section 330.5. A gaming device qualifies for the amusement device exception, and therefore is lawful, if it:

1. Provides an opportunity to win nothing other than additional or free play; and
2. Is predominantly a game of skill.

A lawful device is one that is predominately a game of skill (as are most arcade pinball machines), on which what can be won is limited to additional chances or free plays. If, however, the player has paid to play and can win something other than additional plays, such as food, toys, or other prizes, the machine does not qualify for the amusement device exception and is an illegal gambling device. As an additional example, a coin pusher is an illegal gambling device, whether or not it purports to have an element of skill, because the player can win coins by playing.

California Tribal Casinos

California Tribal Casinos are permitted to operate slot machines pursuant to the terms of approved Tribal-State Compacts and California law.

False Representations Regarding the Legality of Devices

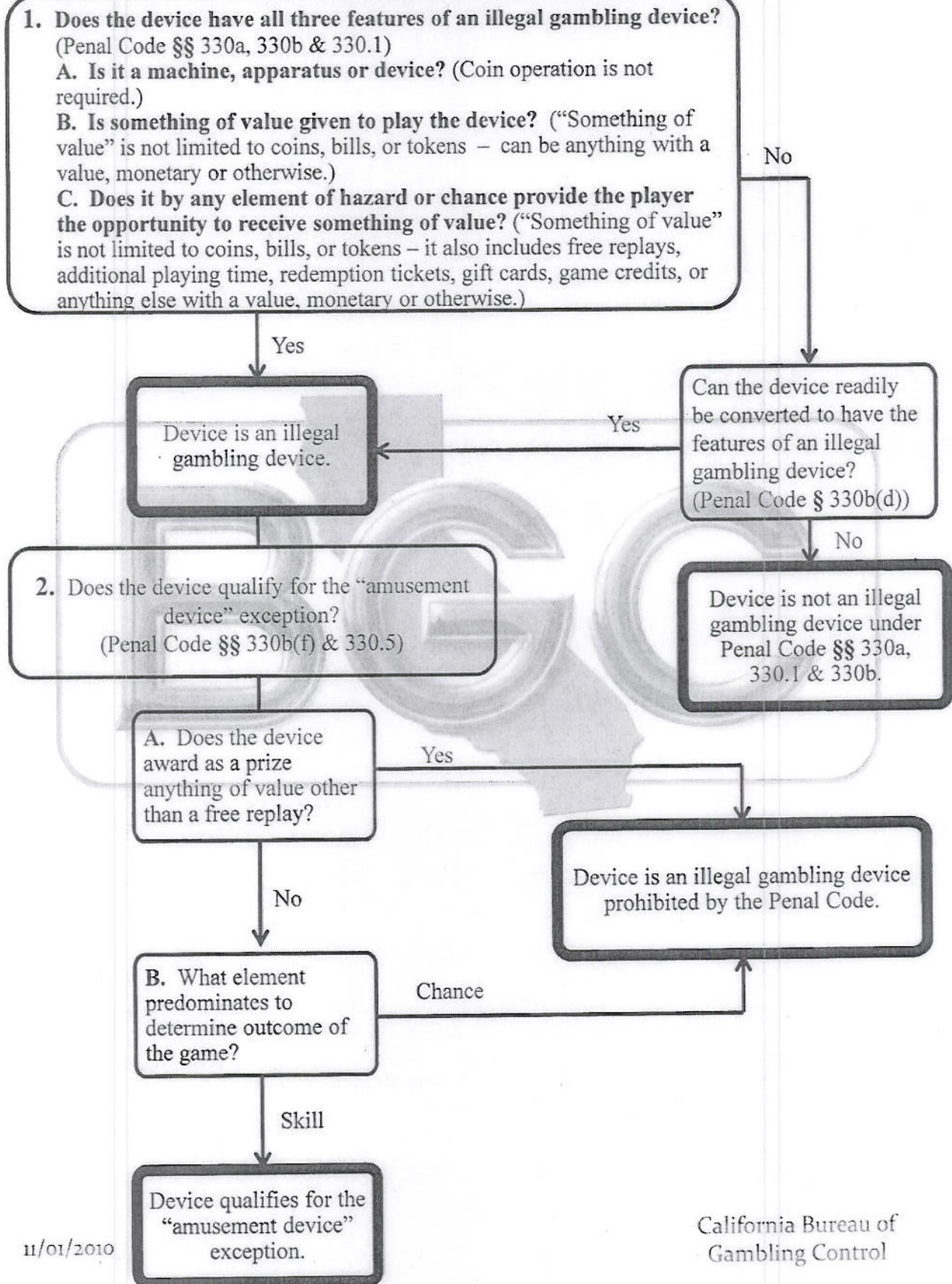
The Bureau has obtained memorandums that falsely purport to be issued by the Office of the Attorney General claiming that coin pusher games are legal as games of skill. (See attachment #2.) In addition, the Bureau has received information that some manufacturers and vendors are misrepresenting the Penal Code’s narrow “amusement device” exception in an attempt to portray their gambling devices as compliant with California law.

The Attorney General’s Office has not approved any such device for play in California, nor issued any opinion or statement regarding the legality of any such device on the basis of the predominance of skill. The Bureau notes, however, that its field operations have detected a growing number of gaming devices throughout California that are illegal because they offer prizes and are not otherwise exempted from the prohibitions of the Penal Code.

The purpose of an advisory is informational. An advisory does not constitute legal advice.

For more information regarding this advisory, contact the California Department of Justice, Bureau of Gambling Control at (916) 263-3408

Attachment 1
Qualification for the Amusement Device Exception
under the Penal Code as a Flow Chart





STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL

EDMUND G. BROWN JR.

MEMORANDUM

TO: ALL LAW ENFORCEMENT OFFICERS

Coin Pusher machines that have vending capabilities or games of skill may be operated in the State of California.

California Penal Code

330.1. Every person who manufactures, owns, stores, keeps, possesses, sells, rents, leases, lets on shares, lends or gives away, transports or exposes for sale or lease or offers to sell, rent, lease, let on shares, lend or give away or who permits the operation of or permits to be placed, maintained, used or kept in any room, space or building owned, leased or occupied by him or under his management or control, any slot machine or device as hereinafter defined, and every person who makes or permits to be made with any person any agreement with reference to any slot machine or device as hereinafter defined, pursuant to which agreement the user thereof, as a result of any element of hazard or chance, may become entitled to receive anything of value or additional chance or right to use such slot machine or device, or to receive any check, slug, token or memorandum, whether of value or otherwise, entitling the holder to receive anything of value, is guilty of a misdemeanor and shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail not exceeding six months or by both such fine and imprisonment. A slot machine or device within the meaning of Sections 330.1 to 330.5, inclusive, of this code is one that is, or may be, used or operated in such a way that, as a result of the insertion of any piece of money or coin or other object such machine or device is caused to operate or may be operated or played, mechanically, electrically, automatically or manually, and by reason of any element of hazard or chance, the user may receive or become entitled to receive anything of value or any check, slug, token or memorandum, whether of value or otherwise, which may be given in trade, or the user may secure additional chances or rights to use such machine or device, irrespective of whether it may, apart from any element of hazard or chance also sell, deliver or present some merchandise, indication of weight, entertainment or other thing of value.

330.4. It is specifically declared that the mere possession or control, either as owner, lessee, agent, employee, mortgagor, or otherwise of any slot machine or device, as defined in Section 330.1 of this code, is prohibited and penalized by the provisions of Sections 330.1 to 330.5, inclusive, of this code.

It is specifically declared that every person who permits to be placed, maintained or kept in any room, space, enclosure, or building owned, leased or occupied by him, or under his management or control, whether for use or operation or for storage, bailment, safekeeping or deposit only, any slot machine or device, as defined in Section 330.1 of this code, is guilty of a misdemeanor and punishable as provided in Section 330.1 of this code.

It is further declared that the provisions of this section specifically render any slot machine or device as defined in Section 330.1 of this code subject to confiscation as provided in Section 335a of this code.

330.5. It is further expressly provided that Sections 330.1 to 330.4, inclusive, of this code shall not apply to music machines, weighing machines and machines which vend cigarettes, candy, ice cream, food, confections or other merchandise, in which there is deposited an exact consideration and from which in every case the customer obtains that which he purchases; and it is further expressly provided that with respect to the provisions of Sections 330.1 to 330.4, inclusive, only, of this code, pin ball, and other amusement machines or devices which are predominantly games of skill, whether affording the opportunity of additional chances or free plays or not, are not intended to be and are not included within the term slot machine or device as defined within Sections 330.1 to 330.4, inclusive, of this code.



Coin Pusher machines that have vending capabilities or games of skill may be operated in the State of California.

Slot Machines are illegal under the California Penal Code 330a. However, Coin Pushers are not related and are considered a game of skill. Please review the following California Penal Code.

California Penal Code Section 330.5

It is further expressly provided that Sections 330.1 to 330.4, inclusive, of this code shall not apply to music machines, weighing machines and machines that vend cigarettes, candy, ice cream, food, confections or other merchandise, in which there is deposited an exact consideration and from which in every case the customer obtains that which he purchases; and it is further expressly provided that with respect to the provisions of sections 330.1 to 330.4, inclusive, only, of this code, pin ball, and other amusement machines or devices which are predominantly games of skill, whether affording the opportunity of additional chances or free plays or not, are not intended to be and not included within the term slot machine or device as defined within Sections 330.1 to 330.4, inclusive, of this code.

ATTACHMENT 2



STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM

TO: INSPECTING AUTHORITIES,

Devices categorized as "coin pusher", "penny slider", "coin slider" or any machine bearing such nomenclature; that have vending capabilities and are games predominately of skill, may be operated in the State of California.

California Penal Code

330.5. It is further expressly provided that Sections 330.1 to 330.4, inclusive, of this code shall not apply to music machines, weighing machines and machines which vend cigarettes, candy, ice cream, food, confections or other merchandise, in which there is deposited an exact consideration and from which in every case the customer obtains that which he purchases; and it is further expressly provided that with respect to the provisions of Sections 330.1 to 330.4, inclusive, only, of this code, pin ball, and other amusement machines or devices which are predominantly games of skill, whether affording the opportunity of additional chances or free plays or not, are not intended to be and are not included within the term slot machine or device as defined within Sections 330.1 to 330.4, inclusive, of this code.