

TERRY E. BRANSTAD  
GOVERNOR

KIM REYNOLDS  
LT. GOVERNOR

RODNEY A. ROBERTS, DIRECTOR

April 13, 2017

TO: Any Interested Parties

**RE: Petition for Declaratory Order whether "Maverick" is lawful and not subject to registration**

Pursuant to Iowa Code Section 17A.9(3), this letter is to advise you that on April 11, 2017, the Iowa Department of Inspections and Appeals, Social and Charitable Gambling Unit, (Department) received an Amended Petition for Declaratory Order. Petitioner requests the Department to determine if "Maverick" is lawful and is not subject to the registration requirement.

The Department invites you to comment about the issues presented in this Amended Petition for a Declaratory Order, if you so choose. To do so, please send all comments in writing to the undersigned at the Iowa Department of Inspections and Appeals, Lucas Building, 321 E. 12<sup>th</sup> St., Des Moines, Iowa 50319, by the close of business on Monday, May 1, 2017. A copy of the petition is available at [https://dia.iowa.gov/sites/default/files/documents/2017/04/2017-04-11\\_-\\_cardinal\\_xpress\\_-\\_amend\\_petition\\_for\\_decl\\_order.pdf](https://dia.iowa.gov/sites/default/files/documents/2017/04/2017-04-11_-_cardinal_xpress_-_amend_petition_for_decl_order.pdf)

If you choose to intervene in this matter and are qualified to intervene, please refer to Iowa Code Section 17A.9(4) and Iowa Administrative Code 481-Chapter 3.

Sincerely,



Steven Mandernach  
Bureau Chief  
Food and Consumer Safety

**STATE OF IOWA  
DEPARTMENT OF INSPECTIONS AND APPEALS**

**IN RE:**

**CARDINAL XPRESS, LLC**

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**AMENDED PETITION FOR DECLARATORY ORDER<sup>1</sup>**

Pursuant to Iowa Code §17A.9 and 481 Iowa Administrative Code Chapter 3, Petitioner Cardinal Xpress, LLC (“Cardinal”), files this petition to the Department of Inspections and Appeals (the “Department”) requesting a declaratory order regarding the applicability of Iowa Code Sections 99B.10 *et seq.* and Iowa Code Section 725.9 to Cardinal in connection with the operation of Maverick v3012-3947 Skill Game (“Maverick”) described more fully below.

**REQUESTED DECLARATIONS**

Cardinal respectfully request that the Department declare as follows:

1. That Cardinal’s skill game known as Maverick is an electrical and mechanical amusement device that is lawful to own, possess, and offer to use by any person at any location because it complies with the provisions set forth in Iowa Code Section 99B.10(1).
  
2. That Cardinal’s skill game known as Maverick is an electrical and mechanical amusement device that awards a prize, but the outcome is primarily determined by the skill or knowledge of the operator; therefore, the electrical and mechanical device is not subject to the

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<sup>1</sup> Pursuant to instructions on March 29, 2017, from the Iowa Department of Inspections and Appeal’s Bureau Chief and Program Auditor, Petitioner Cardinal Xpress, LLC files this Amended Petition for Declaratory Order.

registration provisions set forth in Iowa Code Sections 99B.10(1)(f), 99B.10(1)(e), (g) – (j), (l) – (n).

3. That Cardinal's skill game known as Maverick is an electrical and mechanical amusement device that awards a prize, but the outcome is primarily determined by the skill or knowledge of the operator; therefore, the electrical and mechanical device is not subject to the penalty provisions set forth in Iowa Code Sections 99B.10A, 99B.10B, and 99B.10C.

4. That Cardinal's skill game known as Maverick is an electrical and mechanical amusement device that awards a prize, but is not an illegal gambling device under Iowa Code Section 725.9.

#### **IDENTITY OF THE PETITIONER**

5. Cardinal is a Delaware limited liability company that has its principal place of business at 3760 Peachtree Crest Drive, Suite A, Duluth, Georgia 30097. For the purposes of this petition and request, Cardinal's telephone and facsimile numbers are those of its undersigned attorneys. As established by the facts described below, Cardinal will be substantially and directly affected by the Department's determination in this proceeding.

#### **RELEVANT FACTS**

6. The device is both electronic and mechanical and uses a color monitor through which images are displayed to a player.

7. The device is operated via player control which includes a touch screen and may include buttons.

8. The player does not have the ability to increase his/her chance of winning games, portions of games, by paying more than the ordinary amount required to play.

9. The device permits the player to insert money into a bill acceptor located on the front of the game terminal. The bill acceptor accepts U.S. notes of varying denominations. Bills inserted are displayed on the video screen as “Credits” available for game play purchase, where one “Credit” equals one cent.

10. The device may award tickets or print vouchers, which are redeemable for merchandise.

11. The device does not and cannot award cash or coins.

12. No merchandise prize with a value greater than fifty dollars (\$50.00) shall be offered in connection with the play of Maverick’s skill games.

13. The device does not award or promote a potential award of cash for use of the device. Rather, only tickets are awarded with such tickets to be redeemed for merchandise only.

14. Tickets dispensed will display a numerical merchandise value. Each ticket shall contain a merchandise amount of fifty dollars (\$50.00) or less.

15. The device will not operate without a ticket printer having a supply of tickets.

16. In conjunction with the use of this device, any awards won for the use of this amusement device shall only be redeemed on the premises where the device is located and only for merchandise sold in the normal course of business for the premises.

17. All prizes won are displayed as “Win” and added to the “Balance” available for additional game play purchases. The player may redeem their “Balance” after each game play. Redemption of the player’s “Balance” is accomplished by simply pressing the “Collect” icon or button displayed on the main menu screen.

18. The device does not possess any capability or “knock-off” switch that would allow a player to cause the release of free games.

19. The device is not a gambling device as defined in Iowa Code Section 725.9 or a device that plays poker, blackjack, or keno.

20. The device displays to the player a skill type game.

21. Each game theme includes a “Rules” feature. Activating the “Rules” feature within a game theme produces a screen which furnishes explanations for the active game theme.

22. Each skill type game requires the player to use his/her knowledge to perform a skill function to determine whether a potential winning combination of two or more symbol icons are present after the symbols are presented to the player.

23. The skill process must be completed within the allotted time limit. The player cannot win a prize without the correct skill interaction within the limited time.

24. Game play begins with the player selecting an available game theme and one of the play levels from which to participate. A player may change the desired play level at any time prior to engaging in game play.

25. Each game’s skill type is based on one of the following skill types: Nudge, Nudge with Additional Symbol Match, or Symbol Swap.

26. Maverick offers eighteen (18) different game themes among the three (3) skill type games, including Bucks and Bucks, Bustin Vegas, Cash Bash, Diamonds Forever, Fishing Mob, Four Leaf Cash, Go Bananas, Hotter Than, Junkyard Dogs, Luck Duck, Money Train, Party Fever, Pay Dirt, Sir Lot O’ Cash, Sweet Shop, Tiki Time, Vulcanus, and Wild Billy. The different skill games and themes are separated into game collections.

27. Nudge Pack 1, Nudge Pack 2, Nudge Pack 3, and Nudge Pack 4 are game collections within Maverick.

a. Nudge Pack 1 includes Junkyard Dogs, Money Train, and Diamonds Forever

- b. Nudge Pack 2 includes Party Fever, Go Bananas, and Lucky Duck
- c. Nudge Pack 3 includes Sweet Shop, Sir Lot O' Cash, and Four Leaf Cash.
- d. Nudge Pack 4 includes Fishing Mob, Pay Dirt, and Tiki Treasure.

### **Nudge Skill Type Games**

28. Fishing Mob, Go Bananas, Junkyard Dogs, Money Train, Party Fever, Pay Dirt, Sir Lot O' Cash, and Sweet Shop are themes for the Nudge Skill Type games, which are described more fully below:

- a. The Nudge Skill Type themes are single line games presented as three (3) columns of symbols, each column displaying three (3) symbols to the player.
- b. To complete a single play, the player must correctly choose to judge one of the three columns either up or down.
- c. The choice of which column to nudge, and the direction (up or down), is up to the player.
- d. If the player chooses the correct column and direction to complete the combination of winning symbols, the player will receive the awarded prize.
- e. If the player chooses the wrong column or the wrong direction, the player will forfeit the prize.

29. After initiation of a game, and the presentation of the nine symbols, the player is presented with the choice to nudge. In addition, a "Timer" will appear and begin a countdown. The player must make a selection within a 20-second time limit once the countdown timer appears to receive a prize. If they do not make a selection within the allotted time limit, the player will forfeit the potential prize. In any event, the player cannot win a prize without the correct skill interaction within the limited time.

30. The Nudge Skill Type themes offer two features that grant the player “Free Plays” depending on the game theme selected. The two features offered, including the associated game themes have been described in detail below:

- a. The “Bonus Feature” is presented to the player, in the event that the player performed the Nudge Skill task and achieves three (3) “Bonus” symbols on the payline. When the Bonus Feature is initiated, the player will receive up to twenty (20) “Free Plays,” which will play automatically, or be awarded Credits. The game themes which contain the Bonus Feature are: Fishing Mob, Pay Dirt, Sir Lot O’ Cash, and Sweet Shop.
- b. The “Free Plays” feature is presented to the player, in the event that a player performs the Nudge Skill task and achieves three (3) “Free Play” symbols on the payline. When the Free Plays feature is initiated, the player must select one (1) of the three (3) “Free Play” symbols that active the Free Play feature, which will review the number of Free Plays that will be granted to the player. The player will then receive up to twenty (20) “Free Plays,” which will play automatically. The game themes which contain the Free Play feature are: Go Bananas, Junkyard Dogs, Money Train, and Party Fever.
  - i. Game themes which contain the Free Plays feature also contain a “Mystery Prize” feature, which can only be triggered through the Free Plays feature. The Mystery Prize feature is presented to the player upon the game by correctly aligning three (3) Mystery Prize symbols on the payline during the Free Plays feature. The player is tasked with selecting one (1) of the three (3) available Mystery Prize symbols which will reveal a prize to the player.

### **Nudge Skill Type Game with Additional Symbol Match**

31. Diamonds Forever, Four Leaf Cash, Lucky Duck, and Tiki Time are themes for Nudge Skill Type games, which are described more fully below.

- a. The Nudge Additional Symbol Match Skill Type themes are single line games presented as three (3) columns of symbols, each column displaying three (3) symbols to the player.
- b. In addition to the three (3) columns, the themes under this category contain an additional two (2) extra symbols which are used to award prizes that require four (4), and up to five (5), symbol matches on the center single payline.
- c. To complete a single play, the player must choose to nudge one of the first three columns either up or down to match a minimum of three (3) symbols in a row starting with the leftmost symbol on the center payline.
- d. If the first three (3) symbol columns on the center payline all match, the player can match up to five (5) symbols by incorporating the two (2) extra symbols.
- e. The choice of which column to nudge, and the direction (up or down), is up to the player.
- f. If the player chooses the correct column and direction to complete the combination of winning symbols, the player will receive the prize.
- g. If the player chooses the wrong column, or the wrong direction, the player will forfeit the potential prize.

32. After initiation of a game, and the presentation of the nine symbols in the three columns plus the two additional symbols, the player is presented with the choice to nudge one of the first 3 symbol columns.



33. In addition, a “Timer” will appear and begin a countdown. The player must make a selection within a 20-second time limit once the countdown timer appears to receive a prize. If the player does not make a selection within the time limit, the player will forfeit the potential prize. In any event, the player cannot win a prize without the correct skill interaction within the limited time.

34. If the first three (3) symbol columns on the center payline all match, the player becomes eligible to match up to five (5) consecutive symbols starting with the leftmost symbol column, and including the two (2) additional extra symbols.

35. The Nudge - Additional Symbol Match Skill Type themes, contains a Base Game “Free Plays” feature and Bonus Game “Free Plays” feature. The two features offered, including the associated game themes have been described in detail below:

- a. During the Base Game “Free Plays” feature all prizes, except the Progressive Jackpot, will pay twice the prize. The Base Game “Free Plays” feature is initiated when the player correctly nudges to achieve three (3), four (4), or five (5) “Bonus” symbols on the center payline. The Base Game “Free Plays” feature is presented with five (5) columns to the player. The Base Game “Free Plays” feature grants the player ten (10) “Free Plays” which will play automatically.
- b. Game themes which contain the Base Game “Free Plays” feature also contain a Bonus Game “Free Games” feature, which can only be triggered through the Base Game “Free Plays” feature. The Base Game “Free Plays” feature is initiated when the player achieves three (3), four (4), or five (5) of the “Free Games” symbols anywhere on the reels as scatter-pay symbols, which awards ten (10) additional free

plays. The Bonus Game “Free Games” feature is presented with five (5) columns to the player.

### **Symbol Swap Skill Type Game**

36. Bucks and Bucks, Bustin Vegas, Cash Bash, Hotter Than, Vulcanus, and Wild Billy are themes for the Symbol Swap Skill Type games, which are described more fully below.

- a. The Symbol Swap Skill Type themes, are 20 line games presented as five (5) columns of symbols, each column displaying three (3) symbols to the player.
- b. Below the five (5) columns of symbols, the player is also presented with a swappable symbol, and three (3) additional symbols.
- c. To complete a single play, the player must use skill by choosing one (1) of the three (3) symbols presented to be replaced with the swappable symbol in order for all of the three (3) symbols to match.
- d. The objective is to achieve a winning outcome by replacing one of the three (3) offered symbols with the swappable symbol in order to align a prize winning combination of symbols, which may result in a potential win on one or more of the 20 paylines.
- e. The choice of which of the three (3) symbols to select and replace with the swappable symbol, is up to the player.
- f. If the player chooses the wrong symbol to swap, they will forfeit the potential prize.

37. After initiation of a game, a “Timer” will begin a countdown, and the player is presented with the choice to swap symbols. The player must make a selection within a 20-second time limit once the countdown timer appears to receive a prize. If the player does not make a selection within the allotted time limit, the player will forfeit the potential prize.

38. The Symbol Swap Skill Type themes, contains a Free Game Feature. For the Free Game Feature to be initiated, the player must use skill by correctly swapping symbols. If the player correctly swaps the Hot Free Spin Symbols, he/she can receive up to five (5), ten (10), twenty (20) or sixty (60) Free Games, which will play automatically.

39. Additionally, during the Free Game Feature all wins will award double the prize. Additional Free Games can be awarded during the Free Game Feature.

### **RELEVANT STATUTES AND RULES**

40. Iowa Code Section 17A.9(1)(a) (2015) provides that “[a]ny person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the agency.”

41. An agency’s power to interpret a statute is limited to matters particularly left to the discretion of the agency. *See* Iowa Code §§ 10A.104, 17A.19(11)(c); *see also City of Marion v. Iowa Dep’t of Revenue and Fin.*, 643 N.W.2d 205 (Iowa 2002).

42. Iowa Code Section 99B.10 authorizes the possession, use, and distribution of certain types of electrical and mechanical amusement devices. An “amusement device” is defined as “an electrical or mechanical device possessed and used in accordance with [section 99B.10.] When possessed and used in accordance with that section, an amusement device is not a game of skill or game of chance, and is not a gambling device.” Iowa Code § 99B.1(2). The use of an electrical or mechanical amusement device is not deemed gambling only if the provisions of Iowa Code Section 99B.10(1) are met.

43. Prizes of merchandise exceeding fifty dollars in value and prizes of cash are expressly prohibited. *Id.* § 99B.10(1)(a), (b). No free games may be released, and the device shall not be designed or adapted to enable a person to increase the chances of winning free games or

portions of games by paying more than ordinarily required to play the game. *Id.* § 99B.10(1)(c), (d). Awards given for the use of an amusement device must be redeemed on the premises where the device is located, and only for “merchandise sold in the normal course of business for the premises.” *Id.* § 99B.10(1)(k).

44. Devices “where the outcome is not primarily determined by the skill or knowledge of the operator” must be registered with the Department and must be used in conformance with other express restrictions. Iowa Code § 99B.10(1)(f). “[T]he legislature’s use of the word ‘primarily’ is ‘the litmus test for determining whether the device must be registered.’” *D2 Enterprises v. State Dep’t of Inspections and Appeals*, 2008 WL 373637 (Iowa Ct. App. Feb. 13, 2008) (unpublished decision). Accordingly, if chance plays an equal or greater role than the players’ skill or knowledge in determining the outcome of the game, registration is required. *See id.*

45. Electrical or mechanical amusement devices required to be registered as provided in Section 99B.10 are not gambling devices as defined in 725.9, or devices that play poker, blackjack, or keno. Iowa Code § 99B.10(1)(n). The possession of a gambling device, as defined in Iowa Code Section 725.9(2), is prohibited unless its use is licensed pursuant to Iowa Code chapter 99B. Iowa Code § 725.9(4).

## ANALYSIS

46. In light of Maverick’s design and function, Cardinal contends that Maverick is an electrical and mechanical amusement device that is lawful to own, possess, and offer to use by any person at any location because it complies with the provisions set forth in Iowa Code Section 99B.10(1).

47. Likewise, Cardinal contends that Maverick is an electrical and mechanical amusement device that awards a prize, but the outcome is primarily determined by the skill or knowledge of the operator; therefore, the electrical and mechanical device is not subject to the registration provisions set forth in Iowa Code Sections 99B.10(1)(f), 99B.10(1)(e), (g) – (j), (l) – (n).

48. Cardinal also contends that Maverick is an electrical and mechanical amusement device that awards a prize, but the outcome is primarily determined by the skill or knowledge of the operator; therefore, the electrical and mechanical device is not subject to the penalty provisions set forth in Iowa Code Sections 99B.10A, 99B.10B, and 99B.10C.

49. Finally, Cardinal contends that Maverick is an electrical and mechanical amusement device that awards a prize, but is not an illegal gambling device under Iowa Code Section 725.9.

BASED ON THE FOREGOING, Cardinal requests that the Department issue a declaratory order stating that Cardinal's device known as Maverick v3012-3947 Skill Game, which operates Nudge, Nudge with Additional Symbol Match, or Symbol Swap Skill Games, is an electrical and mechanical amusement device, but is not subject to the registration provisions set forth in Iowa Code Section 99B.10, and the device is subject to the requirements not related to registration set forth in Iowa Code Section 99B.10.

Respectfully submitted,

LEWIS TEIN P.L.



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