

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 6
Judiciary I Committee Substitute Adopted 4/17/03
House Committee Substitute Favorable 6/30/04
House Committee Substitute #2 Favorable 7/8/04

Short Title: Strengthen Law Enforcement vs. Video Poker.

(Public)

Sponsors:

Referred to:

February 10, 2003

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE LAW REGULATING GAMING MACHINES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-306(c) reads as rewritten:

"(c) Any video machine, the operation of which is made lawful by ~~subsection~~ subdivision (b)(2) of this section, shall have affixed to it in view of the player a sticker informing that person that it is a criminal offense with the potential of imprisonment to pay more than ~~that which~~ what is allowed by law. In addition, if the machine has an attract chip ~~which~~ that allows programming, the static display shall contain the same ~~message.~~ message regarding the illegality of payments in excess of those allowed by law. All machines referred to in subdivision (b)(2) of this section shall be equipped with a hand count feature to permit the reconciliation of the number of plays and the number of paper coupons issued."

SECTION 1.(b) All machines required to be equipped with the hand count feature required under this section shall be equipped with the feature within 60 days after the effective date of this act.

SECTION 2.(a) G.S. 14-306.1 reads as rewritten:

"§ 14-306.1. Types of machines and devices prohibited by law; penalties.

(a) Ban on New Machines. – It shall be unlawful for any person to operate, allow to be operated, place into operation, or keep in that person's possession for the purpose of operation any video gaming machine as defined in subsection (c) of this section unless either:

(1) Such machine was:

- a. Lawfully in operation, and available for play, within this State on or before June 30, 2000; and
- b. Listed in this State by January 31, 2000 for ad valorem taxation for the 2000-2001 tax year; or

1 (2) Such machine is within the scope of the exclusion provided in
2 G.S. 14-306(b)(1).

3 (b) Prohibition of More Than Three Existing Video Gaming Machines at One
4 Location. – It shall be unlawful for any person to operate, allow to be operated, place
5 into operation, or keep in that person's possession for the purpose of operation at one
6 location more than three video gaming machines as defined in subsection (c).

7 (c) Definitions. – As used in this section, a video gaming machine means a slot
8 machine as defined in G.S. 14-306(a) and other forms of electrical, mechanical, or
9 computer games such as by way of illustration:

10 (1) A video poker game or any other kind of video playing card game.

11 (2) A video bingo game.

12 (3) A video craps game.

13 (4) A video keno game.

14 (5) A video lotto game.

15 (6) Eight liner.

16 (7) Pot-of-gold.

17 (8) A video game based on or involving the random or chance matching of
18 different pictures, words, numbers, or symbols not dependent on the
19 skill or dexterity of the player.

20 For the purpose of this section, a video gaming machine is a video machine
21 ~~which~~that requires deposit of any coin, token, or use of any credit card, debit card, or
22 any other payment method ~~that requires payment in order~~ to activate play of any of the
23 games listed in this subsection. The enumeration of games in the list in this subsection
24 does not authorize the possession or operation of such game if it is otherwise prohibited
25 by law.

26 For the purpose of this section, a video gaming machine includes those that are
27 within the scope of the exclusion provided in G.S. 14-306(b)(2), but does not include
28 those that are within the scope of the exclusion provided in G.S. 14-306(b)(1).

29 (d) Age Requirement. – It shall be an infraction for any person under the age of
30 18 years to play any video gaming machine defined in subsection (c) of this section. It
31 shall be unlawful for the operator of the video gaming machine to knowingly allow a
32 person under the age of 18 years to play any video gaming machine as proscribed by
33 this subsection.

34 (e) Hours of Operation. – It shall be unlawful to operate or allow the operation of
35 any video gaming machine during the hours of 2:00 A.M. Sunday through 7:00 A.M.
36 Monday.

37 (f) Plain View. – Any video gaming machine available for operation shall be in
38 plain view of persons visiting the premises.

39 (g) Advertising Prohibited. – It is unlawful to advertise the operation of video
40 gaming machines by use of on-premise or off-premise signs.

41 (g1) Serial Number Required. – Every video gaming machine shall have a unique
42 serial number that shall be permanently affixed to the machine.

1 (g2) Certain Display Prohibited. – No video gaming machine shall visually display
2 the words "jackpot", "casino", or "Las Vegas", nor shall any machine audibly emit those
3 words.

4 (h) Proximity to Other Locations Regulated; Permanent Building Required. –
5 Each location where it is lawful to operate any video gaming machines as defined in
6 G.S. 14-306.1(c) shall be at least 300 feet in any plane from any other location where
7 such machines are operated. For the purpose of this section, a location is a permanent
8 building having, or being within, a single exterior structure. Notwithstanding this
9 subsection, two or more places where video gaming machines were lawfully operated
10 under separate ownership on June 30, 2000, shall be considered to be separate locations
11 more than 300 feet from each other, regardless of the distance from each other or
12 whether they are located in the same building or edifice. Video gaming machines as
13 defined in G.S. 14-306.1(c) may be operated only within permanent buildings.

14 (i) Annual Registration With Sheriff. The Alcohol Law Enforcement Division of
15 the Department of Crime Control and Public Safety. – No later than October 1, 2000,
16 the On or before July 1 of every year, the owner of any video game gaming machine
17 which is regulated by this section shall register the machine with the Sheriff of the
18 county in which the machine is located shall register each machine with the Alcohol
19 Law Enforcement Division of the Department of Crime Control and Public Safety
20 (Division) using a standardized registration form or online process supplied by the
21 Sheriff Division. The registration shall contain all of the following information for each
22 machine:

23 (1) The name and address of the owner.

24 (2) The serial number of the machine.

25 (3) The name and address of the location of the machine at the time of
26 registration.

27 (4) The name of the owner of the location of the machine.

28 The registration form shall be signed under oath by the The owner of the machine.
29 machine shall sign the registration form under oath. A material false statement or
30 omission in the registration form shall subject the owner to seizure of the machine under
31 G.S. 14-298 in addition to any other punishment imposed by law. The owner of the
32 machine shall pay to the Division a fee of three hundred dollars (\$300.00) for each
33 machine registered, payable on July 1 of every year. Fees collected pursuant to this
34 subsection shall be used by the Division for administering and enforcing this section
35 and G.S. 14-298, 14-306, 14-306.2, and 14-309. At any time that the video gaming
36 machine is moved to a different location, the owner shall reregister the machine with the
37 Sheriff prior to its being placed in operation. At a minimum, the registration form shall
38 require that the registrant provide evidence of the date on which the machine was placed
39 in operation, the serial number of the machine, the location of the facility at which the
40 machine is operated, and the name of the owner of the facility at which the machine is
41 operated. Each Sheriff shall report to the Joint Legislative Commission on
42 Governmental Operations no later than November 1, 2000, on the total number of
43 machines registered in that county, itemizing how many locations have one, two, or
44 three machines. Upon proper registration and payment of the fee, the Division shall affix

1 a decal that has a unique number to the machine. By August 1 of every year, the
2 Division shall send a report to each sheriff that describes the number of machines and
3 the location of the machines in that sheriff's county.

4 (i1) Notification Required When Machine Relocated. – The owner of a registered
5 machine shall report any change in the location of the machine to the Division within
6 five days of the relocation and before the machine is operational. The Division shall
7 notify the sheriff of the county to which the machine is relocated of the change in
8 location.

9 (i2) Authority to Enter to Inspect. – Persons owning or controlling any location
10 where a video gaming machine is operated or housed shall allow the Division to enter
11 the location at any time to inspect the machine.

12 (j) Report on Receipts and Prizes and Merchandise Awarded. – The owner of
13 each machine or the agent of that owner shall report each calendar quarter to the
14 Department of Revenue, under oath on a form provided by that Department, the total
15 amount of gross receipts itemized by each machine, the number of machines at that
16 location, and the total value of prizes and merchandise awarded to players of each
17 machine at that location. The report shall be filed by the fifteenth day of the month after
18 the quarter ends. Failure of the owner or agent to timely file the required report, or filing
19 a report containing a material false statement shall subject the owner of the machine to
20 seizure of the machine under G.S. 14 298 in addition to any other punishment imposed
21 by law. Upon request of the Sheriff of the county, the Department of Revenue shall
22 forward a copy of the report to the Sheriff of the county where the machines are located.
23 The Department of Revenue shall compile the reports and make a summary report each
24 quarter to the Joint Legislative Commission on Governmental Operations.

25 ~~(k) Report to 2001 Session. – The North Carolina Sheriffs' Association, Inc.,~~
26 ~~after consultation with the Division of Alcohol Law Enforcement, and the Conference~~
27 ~~of District Attorneys of North Carolina, shall report to the Joint Legislative Commission~~
28 ~~on Governmental Operations no later than January 1, 2001, its estimates of the costs of~~
29 ~~the registration process and the cost of enforcement of this section, along with suggested~~
30 ~~fees to make the registration and enforcement self-supporting, and recommendations as~~
31 ~~to a system with registration at the State level and primary enforcement at the local~~
32 ~~level. Such fee schedule is not effective until approved by the General Assembly.~~

33 (l) Exemption for Certain Machines. – This section shall not apply to
34 assemblers, manufacturers, and transporters of video gaming machines who assemble,
35 manufacture, and transport them for sale in another state as long as the machines, while
36 located in this State, cannot be used to play the prohibited games, and does not apply to
37 those who assemble, manufacture, and sell such machines for the use only by a federally
38 recognized Indian Tribe if such machines may be lawfully used on Indian Land under
39 the Indian Gaming Regulatory Act.

40 (m) Ban on Warehousing. – It is unlawful to warehouse any video gaming
41 machine ~~except~~unless:

42 (1) in~~in~~ The machine is being warehoused in conjunction with the permitted
43 assembly, manufacture, and transportation of such machines under
44 subsection (l) of this ~~section~~section; or

1 (2) The machine is registered under subsection (i) of this section.

2 (n) Exemption for Activities Under IGRA. – This section does not make any
3 activities of a federally recognized Indian Tribe unlawful or against public policy,
4 which are lawful for any federally recognized Indian Tribe under the Indian Gaming
5 Regulatory Act, Public Law 100-497.

6 (o) No Local Preemption. – This section does not preempt any more restrictive
7 ordinance lawfully adopted under Article 18 of Chapter 153A of the General Statutes or
8 under Article 19 of Chapter 160A of the General Statutes.

9 (p) No person who has been convicted:

10 (1) Once under G.S. 14-309(a) or (b) may own or possess any video
11 gaming machine as defined in G.S. 14-306.1 for a period of one year.

12 (2) Twice under G.S. 14-309(a) or (b) may own or possess any video
13 gaming machine as defined in G.S. 14-306.1 for a period of two years.

14 (3) Three or more times under G.S. 14-309(a) or (b) may own or possess
15 any video gaming machine.

16 (q) Not Legalizing Unlawful Activity. – This section does not make lawful any
17 activity which is currently unlawful."

18 **SECTION 2.(b)** Notwithstanding G.S. 14-306.1(i), owners of video gaming
19 machines regulated under G.S. 14-306.1 and that meet the criteria set forth in
20 G.S. 14-306.1(a)(1) shall register and pay the fee for all machines with the Alcohol Law
21 Enforcement Division of the Department of Crime Control and Public Safety no later
22 than December 1, 2004, and the Division shall notify the sheriffs no later than January
23 1, 2005.

24 **SECTION 3.** G.S. 14-298 reads as rewritten:

25 **"§ 14-298. ~~Gaming tables, illegal punchboards, slot machines, and prohibited~~**
26 **~~video game machines to be destroyed by police officers.~~Seizure of**
27 **unlawful gaming items.**

28 ~~(a) All sheriffs and officers of police are hereby authorized and directed, on~~
29 ~~information made to them on oath~~Any law enforcement officer, including an agent of
30 the Alcohol Law Enforcement Division of the Department of Crime Control and Public
31 Safety, may seize ~~that~~ any gaming table prohibited to be used by G.S. 14-289 through
32 G.S. 14-300, any illegal punchboard or illegal slot machine, or any video game machine
33 prohibited to be used by G.S. 14-306 or G.S. 14-306.1, ~~that~~ is in the possession or use of
34 any person within the limits of their ~~jurisdiction,~~ jurisdiction when probable cause exists
35 as to the unlawful possession or use.~~to destroy the same by every means in their power;~~
36 ~~and they shall call to their aid all the good citizens of the county, if necessary, to effect~~
37 ~~its destruction.~~

38 ~~(b) Any law enforcement agency in possession of an item seized pursuant to~~
39 ~~subsection (a) of this section shall retain the item pending a disposition order from a~~
40 ~~district or superior court judge.~~district or superior court judge.

41 ~~(c) At the conclusion of any criminal proceeding regarding an item seized, upon~~
42 ~~application by the law enforcement agency, district attorney, or owner of the seized~~
43 ~~item, and after notice and opportunity to be heard by all parties, if the court finds that~~
44 ~~either of the following occurred or existed at the time the item was seized, the court~~
either of the following occurred or existed at the time the item was seized, the court

1 shall enter an order releasing the item to the law enforcement agency to be destroyed or
2 used for training purposes:

3 (1) The item was unlawfully possessed.

4 (2) The item was being unlawfully used with the knowledge of the owner
5 of the item.

6 If the court does not find that either condition occurred or existed at the time the
7 item was seized, the item shall be ordered released to its owner upon satisfactory proof
8 of ownership."

9 **SECTION 4.** G.S. 14-309 reads as rewritten:

10 **"§ 14-309. Violation made ~~eriminal~~criminal; prima facie evidence of violation.**

11 (a) Any person who violates any provision of G.S. 14-304 through 14-309 is
12 guilty of a Class 1 misdemeanor for the first offense, and is guilty of a Class I felony for
13 a second offense and a Class H felony for a third or subsequent offense.

14 (b) Notwithstanding the provisions of subsection (a) of this section, any person
15 violating the provisions of G.S. 14-306.1 involving the operation of five or more
16 machines prohibited by that section or knowingly owning or possessing a machine that
17 violates G.S. 14-306.1(a)(1), is guilty of a Class G felony.

18 (c) The absence of the decal on a machine that is affixed by the Division of
19 Alcohol Law Enforcement of the Department of Crime Control and Public Safety
20 pursuant to G.S. 14-306.1(i) shall be prima facie evidence that the person knowingly
21 owned or possessed a machine that violates G.S. 14-306.1(a)(1)."

22 **SECTION 5.** G.S. 14-307 reads as rewritten:

23 **"§ 14-307. Issuance of license prohibited.**

24 There shall be no ~~State, county, county~~ or municipal tax levied for the privilege of
25 operating the machines or devices the operation of which is prohibited by G.S. 14-304
26 through 14-309."

27 **SECTION 6.** Chapter 105 of the General Statutes is amended by adding a
28 new Article to read:

29 "Article 2E.

30 "Illegal Video Gaming Machine Tax.

31 **"§ 105-113.120. Purpose.**

32 The purpose of this Article is to levy an excise tax to generate revenue for the
33 General Fund. Nothing in this Article may in any manner provide immunity from
34 criminal prosecution for a person who possesses an illegal video gaming machine.

35 **"§ 105-113.121. Definitions.**

36 The following definitions apply in this Article:

37 (1) Illegal video gaming machine. – A video gaming machine that is
38 prohibited under G.S. 14-306.1.

39 (2) Local law enforcement agency. – A municipal police department, a
40 county police department, or a sheriff's office.

41 (3) Person. – Defined in G.S. 105-228.90.

42 (4) Secretary. – Defined in G.S. 105-228.90.

43 (5) State law enforcement agency. – Any State agency, force, department,
44 or unit responsible for enforcing criminal laws.

1 (6) Video gaming machine. – Defined in G.S. 14-306.1.

2 **"§ 105-113.122. Excise tax on illegal video gaming machines.**

3 (a) Tax Imposed. – An excise tax at the rate of five thousand dollars (\$5,000) per
4 machine is levied on the possession of an illegal video gaming machine.

5 (b) Revenue Stamps. – The Secretary shall issue stamps to affix to illegal video
6 gaming machines to indicate payment of the tax required by this Article. A person who
7 possesses an illegal video gaming machine shall report the taxes payable under this
8 Article at the time and on the form prescribed by the Secretary. A person who possesses
9 an illegal video gaming machine is not required to give his or her name, address, social
10 security number, or other identifying information on the form. Upon payment of the tax,
11 the Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes
12 may be paid and stamps may be issued either by mail or in person.

13 (c) Reports. – Every local law enforcement agency and every State law
14 enforcement agency must report to the Department within 48 hours after seizing an
15 illegal video gaming machine, or making an arrest of an individual in possession of an
16 illegal gaming machine, upon which a stamp has not been affixed. The report must be in
17 the form prescribed by the Secretary, and it must include the time and place of the arrest
18 or seizure, the identification of an individual in possession of the illegal video gaming
19 machine and that individual's social security number, and any other information
20 prescribed by the Secretary. The report must be made when the arrest or seizure
21 involves any illegal video gaming machine upon which a stamp has not been affixed as
22 required by this Article.

23 (d) Payment. – The tax imposed by this Article is payable by any person who
24 actually or constructively possesses an illegal video gaming machine in this State upon
25 which the tax has not been paid, as evidenced by a stamp. The tax is payable within 48
26 hours after the person acquires actual or constructive possession of a non-tax-paid
27 illegal video gaming machine, exclusive of Saturdays, Sundays, and legal holidays of
28 this State, in which case the tax is payable on the next working day. Upon payment of
29 the tax, the person shall permanently affix the appropriate stamps to the illegal video
30 gaming machine. Once the tax due on an illegal video gaming machine has been paid,
31 no additional tax is due under this Article even though the illegal video gaming machine
32 may be handled by other people.

33 (e) Administration. – Article 9 of this Chapter applies to this Article.

34 **"§ 105-113.123. Assessments.**

35 Notwithstanding any other provision of law, an assessment against a person who
36 possesses an illegal video gaming machine to which a stamp has not been affixed as
37 required by this Article shall be made as provided in this section. The Secretary shall
38 assess a tax, applicable penalties, and interest based on personal knowledge or
39 information available to the Secretary. The Secretary shall notify the person in writing
40 of the amount of the tax, penalty, and interest due, and demand its immediate payment.
41 The notice and demand shall be either mailed to the person at the person's last known
42 address or served in person. If the person does not pay the tax, penalty, and interest
43 immediately upon receipt of the notice and demand, the Secretary shall collect the tax,
44 penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(g) for

1 jeopardy assessments or the procedure set forth in G.S. 105-242, including causing
2 execution to be issued immediately against the personal property of the person, unless
3 the person files with the Secretary a bond in the amount of the asserted liability for the
4 tax, penalty, and interest. The Secretary shall use all means available to collect the tax,
5 penalty, and interest from any property in which the person has a legal, equitable, or
6 beneficial interest. The person may seek review of the assessment as provided in Article
7 9 of this Chapter.

8 **"§ 105-113.124. Confidentiality of information.**

9 Notwithstanding any other provision of law, information obtained pursuant to this
10 Article is confidential and may not be disclosed or, unless independently obtained, used
11 in a criminal prosecution other than a prosecution for a violation of this Article. Stamps
12 issued pursuant to this Article may not be used in a criminal prosecution other than a
13 prosecution for a violation of this Article. A person who discloses information obtained
14 pursuant to this Article is guilty of a Class 1 misdemeanor. This section does not
15 prohibit the Secretary from publishing statistics that do not disclose the identity of
16 persons or the contents of particular returns or reports.

17 **"§ 105-113.125. Use of tax proceeds.**

18 (a) Special Account. – The Secretary shall credit the net proceeds of the tax
19 levied by this Article to a special nonreverting account, to be called the State Illegal
20 Video Gaming Machine Tax Account, until the tax proceeds are unencumbered. In
21 determining the amount of the net proceeds to be credited, the Secretary shall deduct
22 from the gross proceeds the expenses of the Department of Revenue in performing the
23 duties imposed by this Article. The Secretary shall remit the unencumbered net
24 proceeds as provided in this section on a quarterly or more frequent basis. Net proceeds
25 are unencumbered when either of the following occurs:

- 26 (1) The tax has been fully paid and the taxpayer has no current right under
27 G.S. 105-267 to seek a refund.
28 (2) The taxpayer has been notified of the final assessment of the tax under
29 G.S. 105-241.1 and has neither fully paid nor timely contested the tax
30 under G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.

31 (b) Distribution. – The Secretary shall remit the unencumbered net proceeds that
32 were collected by assessment to the State or local law enforcement agency that
33 conducted the investigation of a person that led to the assessment. If more than one
34 State or local law enforcement agency conducted the investigation, the Secretary shall
35 determine the equitable share for each agency based on the contribution each agency
36 made to the investigation.

37 (c) Refunds. – The refund of a tax that has already been distributed shall be
38 drawn initially from the State Illegal Video Gaming Machine Tax Account. The amount
39 of refunded taxes that had been distributed to a law enforcement agency under this
40 section and any interest shall be subtracted from succeeding distributions from the
41 Account to that law enforcement agency."

42 **SECTION 7.** On or before July 1, 2005, the Division of Alcohol Law
43 Enforcement of the Department of Crime Control and Public Safety shall report to the
44 House and Senate Appropriations Subcommittees on Justice and Public Safety as to the

1 status of the administration and enforcement of the gaming machine statutes that have
2 occurred as a result of this act. This report shall include the following:

- 3 (1) The number of gaming machines registered and how many machines
4 are registered in each county.
- 5 (2) The amount of fees that have been collected by the Division for
6 registering the machines.
- 7 (3) The number of gaming items seized by the Division pursuant to
8 G.S. 14-298(a).
- 9 (4) The number of gaming items destroyed pursuant to court order entered
10 pursuant to G.S. 14-298(b).
- 11 (5) The number of gaming items released to their owners pursuant to
12 G.S. 14-298(b).
- 13 (6) Any suggested changes to the statutes that would further strengthen the
14 Division's ability to enforce the gaming machine statutes.

15 **SECTION 8.** If any provision of this act or its application is held invalid, the
16 invalidity does not affect other provisions or applications of this act that can be given
17 effect without the invalid provisions or application, and to this end the provisions of this
18 act are severable.

19 **SECTION 9.** Section 6 of this act becomes effective December 1, 2004, and
20 applies to illegal video gaming machines possessed on or after that date. Except as
21 otherwise provided in this act, the remainder of this act becomes effective October 1,
22 2004.