

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE BILL 458*

Senate Rules and Operations of the Senate Committee Substitute Adopted 5/10/06

Short Title: Ban Video Poker/All But Reservations.

(Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

1
2 AN ACT TO PROHIBIT THE POSSESSION OR OPERATION OF VIDEO GAMING
3 MACHINES EXCEPT BY A FEDERALLY RECOGNIZED INDIAN TRIBE AS
4 AUTHORIZED BY THE INDIAN GAMING REGULATORY ACT AND A
5 VALID TRIBAL-STATE COMPACT.

6 Whereas, the State of North Carolina desires to clearly set forth its policy
7 against commercial forms of gaming; and

8 Whereas, the State of North Carolina desires to recognize the unique
9 relationship between it and the federally recognized Indian tribe within the State; and

10 Whereas, the State of North Carolina desires to make it clear that it does not
11 consider the activities of the Eastern Band of Cherokee Indians conducted pursuant to
12 the Compact between the State and the Eastern Band of Cherokee Indians to be
13 commercial gaming because the Federal Indian Gaming Regulatory Act restricts the use
14 of proceeds from gaming operations conducted by federally recognized Indian tribes to
15 governmental services and activities that further the self-determination of the tribe; and

16 Whereas, the State of North Carolina desires to reaffirm that all activities
17 conducted pursuant to such Compact or any amendment thereto are not commercial
18 gaming and that same are lawful and not against the public policy of the State of North
19 Carolina; and

20 Whereas, the State of North Carolina recognizes the tribe's substantial capital
21 investment in reliance on the Compact, the payments made by the tribe pursuant to the
22 Compact, and the creation of jobs and other positive impacts the tribe's activities have
23 brought to the entire economy of Western North Carolina; and

24 Whereas, the State, through this legislation, intends to make it clear that the
25 State will honor its commitments under the Compact and amendments, to further
26 express its legislative intent to fully recognize the rights of the tribe in its special
27 sovereign governmental authority to conduct gaming on tribal lands, and to express the
28 intent of the State to recognize as lawful, on tribal lands, all gaming activities conducted

1 by the tribe pursuant to the approved Tribal-State Compact as the same may from time
2 to time be amended by the tribe and the State; Now, therefore,
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 14-306.1 is repealed.

5 **SECTION 2.** Part 1 of Article 37 of Chapter 14 of the General Statutes is
6 amended by adding a new section to read:

7 **"§ 14-306.1A. Types of machines and devices prohibited by law; penalties.**

8 (a) Ban on Machines. – It shall be unlawful for any person to operate, allow to be
9 operated, place into operation, or keep in that person's possession for the purpose of
10 operation any video gaming machine as defined in subsection (b) of this section, except
11 for the exemption for a federally recognized Indian tribe under subsection (e) of this
12 section for whom it shall be lawful to operate and possess machines as listed in
13 subsection (b) of this section if conducted in accordance with an approved Class III
14 Tribal-State Compact applicable to that tribe, as provided in G.S. 147-12(14) and
15 G.S. 71A-8.

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

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

20 (2) A video bingo game.

21 (3) A video craps game.

22 (4) A video keno game.

23 (5) A video lotto game.

24 (6) Eight liner.

25 (7) Pot-of-gold.

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

29 For the purpose of this section, a video gaming machine is a video machine which
30 requires deposit of any coin or token, or use of any credit card, debit card, or any other
31 method that requires payment to activate play of any of the games listed in this
32 subsection. The enumeration of games in the list in this subsection does not authorize
33 the possession or operation of such game if it is otherwise prohibited by law.

34 For the purpose of this section, a video gaming machine includes those that are
35 within the scope of the exclusion provided in G.S. 14-306(b)(2) unless conducted in
36 accordance with an approved Class III Tribal-State Compact applicable to that tribe as
37 provided in G.S. 147-12(14) and G.S. 71A-8. For the purpose of this section, a video
38 gaming machine does not include those that are within the scope of the exclusion
39 provided in G.S. 14-306(b)(1).

40 (c) Exemption for Certain Machines. – This section shall not apply to
41 assemblers, repairers, manufacturers, sellers, lessors, or transporters of video gaming
42 machines who assemble, repair, manufacture, sell, lease or transport them for use
43 out-of- state as long as the machines, while located in this State, cannot be used to play
44 the prohibited games and does not apply to those who assemble, repair, manufacture,

1 sell, or lease such machines for use only by a federally recognized Indian tribe if such
2 machines may be lawfully used on Indian land under the Indian Gaming Regulatory
3 Act.

4 (d) Ban on Warehousing. – It is unlawful to warehouse any video gaming
5 machine except in conjunction with the activities permitted under subsection (c) of this
6 section.

7 (e) Exemption for Activities Under IGRA. – Notwithstanding any other
8 prohibitions in State law, the form of Class III gaming otherwise prohibited by
9 subsections (a) through (d) of this section may be legally conducted on Indian lands
10 which are held in trust by the United States government for and on behalf of federally
11 recognized Indian tribes if conducted in accordance with an approved Class III
12 Tribal-State Gaming Compact applicable to that tribe as provided in G.S. 147-12(14)
13 and G.S. 71A-8."

14 **SECTION 3.** G.S. 14-306.2 reads as rewritten:

15 **"§ 14-306.2. Violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A a violation of the ABC laws.**

16 A violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A is a violation of the gambling statutes
17 for the purposes of G.S. 18B-1005(a)(3)."

18 **SECTION 4.** G.S. 147-12(14) reads as rewritten:

19 ~~"(14) To~~ Notwithstanding subsections (a) through (d) of G.S. 14-306.1A, to
20 negotiate and enter into Class III Tribal-State gaming compacts, and
21 amendments thereto, on behalf of the ~~State~~ State, consistent with State
22 law (G.S. 14-306.1A(e) and G.S. 71A-8) and the Indian Gaming
23 Regulatory Act, Public Law 100-497, as necessary to allow a federally
24 recognized Indian tribe to operate gaming activities—activities,
25 including those games allowed pursuant to G.S. 14-306.1A(e), in this
26 State as permitted under federal law. The Governor is authorized to
27 execute and enter into Class III Tribal-State gaming compacts, and
28 amendments thereto, on behalf of the State, and his official signature
29 shall render the agreement binding upon the State; provided that the
30 compact or amendments thereto have previously been reported to the
31 Joint Legislative Commission on Governmental Operations for its
32 comment and review."

33 **SECTION 5.** G.S. 71A-8 reads as rewritten:

34 **"§ 71A-8. Authorization for federally recognized Indian tribes.**

35 In recognition of the governmental relationship between the State, federally
36 recognized Indian tribes and the United States, a federally recognized Indian tribe may
37 conduct games consistent with the Indian Gaming Regulatory Act, Public Law 100-497,
38 that are in accordance with a valid Tribal-State compact executed by the Governor
39 pursuant to G.S. 147-12(14) and approved by the U.S. Department of Interior under the
40 Indian Gaming Regulatory Act, and such ~~games~~ games, including those permitted under
41 G.S. 14-306.1A(e), shall ~~not be unlawful or~~ be lawful and not against the public policy
42 of the State if the State permits such gaming for any purpose by any person,
43 organization, or entity. if conducted by a federally recognized Indian tribe on federal

1 Indian Trust Lands within the State in accordance with a Tribal-State Gaming Compact
2 applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8."

3 **SECTION 6.** Effective with respect to offenses committed on or after
4 December 1, 2006, G.S. 14-309(b) is repealed.

5 **SECTION 7.** G.S. 105-256(d)(1) is repealed, but that repeal does not affect
6 reports for activities prior to December 1, 2006.

7 **SECTION 8.** G.S. 14-309 reads as rewritten:

8 **"§ 14-309. Violation made criminal.**

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

12 (b) Notwithstanding the provisions of subsection (a) of this section, any person
13 violating the provisions of ~~G.S. 14-306.1~~ G.S. 14-306.1A involving the operation of five
14 or more machines prohibited by that section is guilty of a Class G felony."

15 **SECTION 9.** This act becomes effective December 1, 2006, and applies to
16 offenses committed on or after that date but also applies to compacts and amendments
17 thereto executed before that date. If a court of competent jurisdiction in this State issues
18 a stay to prohibit possession or operation of video gaming machines by a federally
19 recognized Indian tribe, as authorized by a valid Tribal-State Compact, because that
20 activity is not allowed on non-Indian lands pursuant to this act, this act is suspended and
21 shall not have the force of law until such time as the stay is dissolved or a final order is
22 entered. If a court of competent jurisdiction in this State issues a final order that
23 prohibits the possession or operation of video gaming machines by a federally
24 recognized Indian tribe, as authorized by a valid Tribal-State Compact, because that
25 activity is not allowed on non-Indian lands, this act is void.