

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

H

3

**HOUSE BILL 80
Committee Substitute Favorable 3/19/09
Senate Judiciary I Committee Substitute Adopted 6/17/10**

Short Title: Ban Electronic Sweepstakes.

(Public)

Sponsors:

Referred to:

February 9, 2009

A BILL TO BE ENTITLED
AN ACT TO BAN THE USE OF ELECTRONIC MACHINES AND DEVICES FOR
SWEEPSTAKES PURPOSES.

The General Assembly of North Carolina enacts:

Whereas, the 1791 General Assembly determined that "all public gaming-tables are destructive of the morality of the inhabitants of this State, and tend greatly to the encouragement of vice and dissipation" (Law of 1791, Chapter 5); and

Whereas, the State of North Carolina has continuously prohibited public gaming in North Carolina since 1791; and

Whereas, the State of North Carolina specifically prohibited the use of slot machines in 1937; and

Whereas, the State of North Carolina specifically prohibited the use of video poker machines in 2000 and again in 2006; and

Whereas, the State of North Carolina has previously determined that such purpose should be carried out to prevent the operation of bingo by professionals for profit, prevent commercialized gambling, prevent the disguise of bingo and other game forms or promotional schemes, and prevent participation by criminal and other undesirable elements; and

Whereas, any federally recognized Indian tribe may conduct such video poker games in accordance with an approved Class III Tribal-State Gaming Compact applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8; and

Whereas, the State of North Carolina has previously determined that no video poker machine may be utilized for play under Chapter 18C of the General Statutes; and

Whereas, since 2006, companies have developed electronic machines and devices to gamble through pretextual sweepstakes relationships with Internet service, telephone cards, and office supplies, among other products; and

Whereas, companies using electronic machines and devices for sweepstakes have sought, and received, declaratory relief from the courts; and

Whereas, such electronic sweepstakes systems utilizing video poker machines and other similar simulated game play create the same encouragement of vice and dissipation as other forms of gambling, in particular video poker by encouraging repeated play, even when allegedly used as a marketing technique; and

"Whereas, it hath appeared to this General Assembly that the before recited acts hath not that good effect which was intended" (Laws of 1799, Chapter 12); Now, therefore, The General Assembly of North Carolina enacts:

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



"§ 14-306.4. Electronic machines and devices for sweepstakes prohibited.

(a) Definitions. – For the purposes of this section, the following definitions apply:

(1) "Electronic machine or device" means anything that uses energy and is capable of displaying information on a screen or other mechanism that can be viewed by a person in order to (i) enter a sweepstakes, or (ii) engage in any activity or process associated with the sweepstakes, including viewing information which would notify the person that the person is eligible, will receive, or is entitled to receive a prize. This section is applicable to an electronic machine or device whether or not:

a. It is server-based.

b. It uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries.

c. It utilizes software such that the simulated game influences or determines the winning or value of the prize.

d. It selects prizes from a predetermined finite pool of entries.

e. It utilizes a mechanism that reveals the content of a predetermined sweepstakes entry.

f. It predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed.

g. It utilizes software to create a game result.

h. It requires deposit of any coin or token or use of any credit card, debit card, or other method of payment to activate the machine or device.

i. It requires purchase of a related product or prepaid card.

j. The related product, if any, has legitimate value.

k. It reveals the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded.

l. It determines and associates the prize with an entry or entries at the time the sweepstakes is entered.

(2) "Enter" or "entry" means the act or process by which a person becomes eligible to receive any prize offered in a sweepstakes.

(3) "Prize" means any gift, award, gratuity, good, service, or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

(4) "Sweepstakes" means any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, the determination of which is based upon chance.

(b) It shall be unlawful for any person to own, lease, or have possession of and operate an electronic machine or device; or to allow to be operated an electronic machine or device; or to own, lease, or have possession of and place into operation an electronic machine or device to conduct a sweepstakes or to engage in any process or activity associated with a sweepstakes, unless specifically authorized in subsection (c) of this section.

(c) Notwithstanding subsection (b) of this section, it shall not be unlawful to use an electronic machine or device:

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

(2) When the electronic machine or device is used only by the person conducting the sweepstakes and is used for the purpose of accepting an entrant's identifying information, creating a Web site to provide information about a sweepstakes being conducted, maintaining records of sweepstakes

1 entries, or the operation of software necessary to conduct the sweepstakes
2 that complies with all of the provisions of sub-subdivisions (4)b. through
3 (4)h. of this subsection.

4 (3) For the purpose of notifying an entrant in a sweepstakes that the entrant has
5 received, or is eligible to receive, a prize, provided the sweepstakes complies
6 with all of the provisions of sub-subdivisions (4)b. through (4)h. of this
7 subsection.

8 (4) To conduct a sweepstakes that satisfies all of the following criteria:

9 a. Entry is conducted in one of the following ways:

10 1. Using a customer reward card at a cash register capable of
11 calculating sales and use tax required to be collected under
12 G.S. 105-164.4 in conjunction with the purchase of a good or
13 service, by either the cashier or entrant electronically
14 scanning the customer reward card or the cashier or entrant
15 entering the phone number associated with the customer
16 reward card.

17 2. By electronically transmitting a person's identifying
18 information.

19 b. There is no entertaining display or reveal of a prize associated with
20 an entry.

21 c. The person conducting the sweepstakes shall not allow any entrant to
22 subdivide an entry into multiple entries or to substitute or subdivide a
23 prize awarded in the sweepstakes.

24 d. The entrant is notified of any prize awarded in the sweepstakes by
25 mail, e-mail, text, or phone on a date later than the date of entry.

26 e. The entrant is not notified of any prize awarded in the sweepstakes at
27 the time or place of entry.

28 f. The sweepstakes is open for a minimum of seven calendar days and
29 prizes are determined by a random drawing of entries conducted after
30 this time period.

31 g. The person conducting the sweepstakes makes available upon request
32 a list of all sweepstakes prizes and prize winners from the previous
33 12 months.

34 h. The person conducting the sweepstakes provides a free method of
35 entry into the sweepstakes.

36 (d) It is the intent of this section to prohibit any electronic machine or device or other
37 mechanism that seeks to avoid application of this section through the use of any subterfuge or
38 pretense whatsoever. It is the intent of this section to allow a person to provide the person's
39 name, address, phone number, or other identifying information to enter a sweepstakes, either
40 singularly or in connection with filling out a survey form, and to allow a person conducting a
41 sweepstakes to notify an entrant of the status or outcome of any sweepstakes.

42 (e) Nothing in this section shall be construed to make illegal any of the following:

43 (1) Any activity which is lawfully conducted on Indian lands pursuant to, and in
44 accordance with, an approved Tribal-State Gaming Compact applicable to
45 that Tribe as provided in G.S. 147-12(14) and G.S. 71A-8.

46 (2) Any lottery game lawfully conducted in accordance with Chapter 18C of the
47 General Statutes.

48 (3) Any raffle or bingo game lawfully conducted in accordance with Part 2 of
49 this Article.

50 (f) Each violation of this section shall be considered a separate offense.

1 (g) Any person who violates this section is guilty of a Class 1 misdemeanor for the first
2 offense and is guilty of a Class H felony for a second offense and a Class G felony for a third or
3 subsequent offense.

4 (h) Any electronic machine or device, or other property, used in violation of this section
5 shall be seized and disposed of according to G.S. 15-11.1."

6 **SECTION 2.** G.S. 14-306(a) reads as rewritten:

7 "(a) Any machine, apparatus or device is a slot machine or device within the provisions
8 of G.S. 14-296 through 14-309, if it is one that is adapted, or may be readily converted into one
9 that is adapted, for use in such a way that, as a result of the insertion of any piece of money or
10 coin or ~~token; other object, any credit card, debit card, or any other method that requires~~
11 payment to activate play; or any prepaid card, such machine or device is caused to operate or
12 may be operated in such manner that the user may receive or become entitled to receive any
13 piece of money, credit, allowance or thing of value, or any check, slug, token or memorandum,
14 whether of value or otherwise, or which may be exchanged for any money, credit, allowance or
15 any thing of value, or which may be given in trade, or the user may secure additional chances
16 or rights to use such machine, apparatus or device; or any other machine or device designed
17 and manufactured primarily for use in connection with gambling and which machine or device
18 is classified by the United States as requiring a federal gaming device tax stamp under
19 applicable provisions of the Internal Revenue Code. This definition is intended to embrace all
20 slot machines and similar devices except slot machines in which is kept any article to be
21 purchased by depositing any coin or thing of value, and for which may be had any article of
22 merchandise which makes the same return or returns of equal value each and every time it is
23 operated, or any machine wherein may be seen any pictures or heard any music by depositing
24 therein any coin or thing of value, or any slot weighing machine or any machine for making
25 stencils by the use of contrivances operated by depositing in the machine any coin or thing of
26 value, or any lock operated by slot wherein money or thing of value is to be deposited, where
27 such slot machines make the same return or returns of equal value each and every time the
28 same is operated and does not at any time it is operated offer the user or operator any additional
29 money, credit, allowance, or thing of value, or check, slug, token or memorandum, whether of
30 value or otherwise, which may be exchanged for money, credit, allowance or thing of value or
31 which may be given in trade or by which the user may secure additional chances or rights to
32 use such machine, apparatus, or device, or in the playing of which the operator does not have a
33 chance to make varying scores or tallies."

34 **SECTION 3.** G.S. 14-306.1A(b) reads as rewritten:

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

- 38 (1) A video poker game or any other kind of video playing card game.
- 39 (2) A video bingo game.
- 40 (3) A video craps game.
- 41 (4) A video keno game.
- 42 (5) A video lotto game.
- 43 (6) Eight liner.
- 44 (7) Pot-of-gold.
- 45 (8) A video game based on or involving the random or chance matching of
46 different pictures, words, numbers, or symbols not dependent on the skill or
47 dexterity of the player.

48 For the purpose of this section, a video gaming machine is a video machine which requires
49 deposit of any coin or token, or use of any credit card, debit card, or any other method that
50 requires ~~payment~~ payment, or any prepaid card to activate play of any of the games listed in
51 this subsection.

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

6 **SECTION 4.** This act becomes effective December 1, 2010, and applies to
7 offenses committed on or after that date.