

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS65063-MHF-140 (05/10)

Short Title: Lottery Commission Regulate Video Gaming.

(Public)

Sponsors: Senator Boseman.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW VIDEO GAMING FOR THE PURPOSE OF PROFIT SHARING
3 WITH THE STATE OF NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. The General Statutes are amended by adding a new Chapter to read:

6 "**Chapter 18D.**

7 "**Video Gaming Entertainment.**

8 "Article 1.

9 "General Provisions.

10 "**§ 18D-101. Citation.**

11 This Chapter shall be known as, and may be cited as, the Video Gaming Entertainment Act.

12 "**§ 18D-102. Definitions.**

13 The following definitions apply in this Chapter:

14 (1) Commission. – The North Carolina State Lottery Commission.

15 (2) Gross income. – Wagers inserted into a video gaming machine minus credits
16 paid out in cash.

17 (3) Licensed establishment. – Any establishment owned or managed by a permit
18 holder and licensed by the Commission.

19 (4) Licensed operator. – A person who owns a video gaming machine for which
20 a video gaming permit has been issued by the Commission.

21 (5) Manufacturer. – An individual, partnership, corporation, or association that
22 assembles, repairs, or produces video gaming machines or associated
23 equipment for sale or use in this State.

24 (6) Video gaming machine. – As defined in G.S. 14-306.1A.

25 (7) Video gaming permit. – A permanently affixed tag or other device issued to
26 a licensed operator for each video gaming machine approved by and
27 registered with the Commission.

28 (8) Wager. – A sum of money or thing of value risked on an uncertain
29 occurrence.

30 "**§ 18D-103. Video gaming; allocation of revenues.**

31 Subject to the limitations set forth in this Chapter, the Commission may initiate games
32 played using a video gaming machine. The Commission shall determine the allocation of net
33 income from video gaming machines, and the procedures for the monitoring, collection, and
34 distribution of income from the video gaming machines, provided that no less than forty-eight
35 percent (48%) of the total annual revenues shall be transferred to the North Carolina State



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1 Lottery Fund following the procedures in Article 7 of Chapter 18C of the General Statutes, and
2 no more than one and one-half percent (1.5%) of the total annual revenues shall be allocated for
3 administrative expenses of the Commission.

4 **"§ 18D-104. Preemption of local regulation.**

5 A county or municipality shall not enact any ordinance or regulation relating to video
6 gaming machines, and this Chapter preempts all existing county or municipal ordinances or
7 regulations that would impose additional restrictions, requirements, or fees relating to the
8 operation of video gaming machines. To the extent that this Chapter conflicts with any local
9 act, this Chapter prevails to the extent of the conflict, and any local act imposing a tax or fee on
10 video gaming terminals is hereby repealed.

11 "Article 2.

12 "Permits.

13 **"§ 18D-201. Video gaming permit required on video gaming machines.**

14 (a) The Commission shall make available a video gaming permit that shall be affixed to
15 all approved video gaming machines in a location and manner set forth by the Commission.
16 The placement of the video gaming permit represents that the machine has been registered,
17 inspected, and approved for operation in the State.

18 (b) The Commission shall issue the video gaming permit annually, based on the number
19 of approved machines registered with the Commission per licensed operator.

20 (c) No person other than authorized Commission personnel and the licensed operator
21 may affix or remove a video gaming permit.

22 (d) Manufacturers and licensed operators must make video gaming machines and
23 associated equipment available for inspection by the Commission. No video gaming machine
24 shall be issued a permit unless the machine's software is compatible with the Commission's
25 central monitoring system and the games initiated and approved by the Commission.

26 (e) No video gaming machine may be transported out of the State until the video
27 gaming permit has been removed.

28 **"§ 18D-202. Qualifications for licensed operator.**

29 (a) Except as provided in subsection (b) of this section, an individual, group of
30 individuals, corporation, partnership, or association whom the Commission determines is
31 qualified to receive a license under this Chapter shall be issued an operator's license.

32 (b) The Commission may not approve a licensed operator applicant if any of the
33 following apply:

34 (1) The applicant has not been a resident of North Carolina for at least three
35 years immediately preceding the application.

36 (2) The applicant has been convicted of a felony or any gambling offense in any
37 state or federal court of the United States within 10 years of entering into the
38 contract, or employs officers and directors who have been convicted of a
39 felony or any gambling offense in any state or federal court of the United
40 States within 10 years of entering into the contract.

41 (3) The applicant is less than 21 years of age.

42 (4) The applicant has falsified the application.

43 (5) The applicant is not current in filing all applicable tax returns to the State
44 and in payment of all taxes, interest, and penalties owed to the State,
45 excluding items under formal appeal under applicable statutes.

46 (6) The applicant is a permit holder or an employee of a licensed establishment.

47 (c) The applicant must furnish all information, documents, certifications, consents,
48 waivers, individual history forms, and other materials required or requested by the Commission
49 for purposes of determining qualification for an operator's license. The Commission may not
50 approve a licensed operator applicant if the applicant fails to provide information and
51 documentation requested by the Commission.

1 (d) The applicant must submit to a background investigation, including each partner,
2 director, officer, and all stockholders of any business entity. The application shall be
3 accompanied by the fee to cover the cost of the criminal record check conducted under
4 G.S. 114-19.26.

5 (e) A licensed operator may not make available a total of more than 500 video gaming
6 machines in the State to be played or operated at any one time.

7 (f) The burden of proof for establishing qualification under this section shall be on the
8 applicant.

9 **"§ 18D-203. Licensed establishments.**

10 (a) The Commission may not license any establishment in which the applicant is:

11 (1) A natural person under 21 years of age.

12 (2) A person whose establishment would be engaged exclusively in the business
13 of housing video gaming machines.

14 (3) A person who is not current in filing all applicable tax returns to the State
15 and in payment of all taxes, interest, and penalties owed to the State,
16 excluding items under formal appeal under applicable statutes. Upon request
17 of the Director, the Department of Revenue shall provide this information
18 about a specific person to the Commission.

19 (b) The applicant for a licensed operator's status shall provide all of the following
20 information to the Commission:

21 (1) Name of the licensed establishment.

22 (2) Address of the licensed establishment.

23 (3) Phone number of the licensed establishment.

24 (4) Name, address, and phone number of the owner of the licensed
25 establishment.

26 (c) The application shall be accompanied by the fee to cover the cost of the criminal
27 record check conducted under G.S. 114-19.26.

28 (d) There shall be no more than one licensed establishment per single roofline.

29 (e) The establishment shall meet all siting requirements set forth by G.S. 18D-301.

30 **"§ 18D-204. Fees.**

31 (a) The Commission shall charge each applicant for an operator's license a fee of five
32 thousand dollars (\$5,000) for an operator's license valid for 10 years. The operator's license
33 may be renewed in the ninth year.

34 (b) The Commission shall charge a licensed operator an annual fee of two hundred fifty
35 dollars (\$250.00) per video gaming machine. The fee shall be prorated on a quarterly basis and
36 may not be refunded if the video gaming machine ceases operation before the permit expires.
37 Failure to pay shall be cause for revocation of the operator's license.

38 (c) The Commission shall be entitled to an administrative expense reimbursement
39 withholding of four percent (4%) of the fees collected under this section. The remainder of fees
40 collected under this section shall be distributed by the Commission to the county where the
41 establishment is located, except that if the establishment is located within the corporate limits
42 of a city, the Commission shall distribute to the city.

43 "Article 3.

44 "Video Gaming Machines.

45 **"§ 18D-301. Possession.**

46 (a) Only video gaming machines with a video gaming permit may be placed in a
47 licensed establishment. No more than 10 video gaming machines with a video gaming permit
48 may be located in any licensed establishment.

49 (b) In order to control access to video gaming machines by minors, video gaming
50 machines may be placed only on the premises of an establishment issued an on-premises malt
51 beverage permit, on-premises unfortified or fortified wine permit, or mixed beverages permit

1 by the North Carolina Alcoholic Beverage Control Commission under Chapter 18B of the
2 General Statutes.

3 (c) Licensed operators shall file with the Commission the location of any establishment
4 in which permitted video gaming machines are located, and those locations shall be licensed
5 establishments. The Commission shall not issue any license for an establishment located within
6 50 feet of a church, public school, or any nonpublic school as defined by Parts 1 or 2 of Article
7 39 of Chapter 115C of the General Statutes.

8 (d) Video gaming machines with a video gaming permit may not be played by persons
9 less than 18 years of age.

10 (e) The Commission shall adopt rules regulating temporary replacement of a video
11 gaming machine for servicing and repair. The Commission may not charge an additional fee for
12 the temporary replacement video gaming machine.

13 (f) The Commission may engage an independent firm experienced in security
14 procedures, including computer security and systems security, to conduct a comprehensive
15 study and evaluation of all aspects of security in the operation of the video gaming machines.
16 At a minimum, such a security assessment should include a review of network vulnerability,
17 application vulnerability, application code review, wireless security, security policy and
18 processes, security/privacy program management, technology infrastructure and security
19 controls, security organization and governance, and operational effectiveness.

20 **"§ 18D-302. Play.**

21 A video gaming machine with a video gaming permit may not allow more than five dollars
22 (\$5.00) to be played on a single wager.

23 **"§ 18D-303. Video gaming contract.**

24 (a) The Commission shall develop a model contract to be used between licensed
25 operators and licensed establishments. The Commission may seek input into the development
26 of the model contract from licensed operators and permit holders.

27 (b) All contracts between licensed operators and licensed establishments shall address
28 the need to report to the Internal Revenue Service and the Commission any credits paid out in
29 cash to individuals playing the video gaming machine.

30 (c) Other than the share of net income authorized by the Commission under this
31 Chapter, a licensed operator shall not offer any item of value to a licensed establishment or an
32 employee of a licensed establishment in exchange for allowing the licensed operator to place
33 video gaming machines in the licensed establishment.

34 **"§ 18D-304. Transportation between licensed establishments in the State.**

35 Any person transporting a video gaming machine from one licensed establishment to
36 another in the State, other than for servicing or repair, shall notify the Commission in writing
37 prior to the transportation of the video gaming machine. The written notification shall contain
38 at least all of the following:

- 39 (1) The full name and address of the person or entity transporting the video
40 gaming machine.
- 41 (2) The reason for the transportation of the video gaming machine.
- 42 (3) The full name, address, and license number of the licensed establishment
43 where the video gaming machine is currently located.
- 44 (4) The full name and address of the person or entity to whom the video gaming
45 machine is being delivered and the destination of the video gaming machine
46 if it is different from the address.
- 47 (5) The serial number and model number of the video gaming machine.
- 48 (6) The video gaming machine permit number.
- 49 (7) The expected date and time of the transportation.

50 "Article 4.

51 "Enforcement.

1 **"§ 18D-401. Enforcement.**

2 The Commission shall have sole enforcement authority of this Chapter.

3 **"§ 18D-402. Inspection of premises, records, activities.**

4 At any time during normal business hours, the Commission may inspect a licensed
5 establishment or a licensed manufacturer. The inspection may include the examination of
6 records, equipment, and proceeds related to the operation."

7 **SECTION 2.** G.S. 14-292 reads as rewritten:

8 **"§ 14-292. Gambling.**

9 Except as provided in Chapter 18C or Chapter 18D of the General Statutes or in Part 2 of
10 this Article, any person or organization that operates any game of chance or any person who
11 plays at or bets on any game of chance at which any money, property or other thing of value is
12 bet, whether the same be in stake or not, shall be guilty of a Class 2 misdemeanor. This section
13 shall not apply to a person who plays at or bets on any lottery game being lawfully conducted
14 in any state."

15 **SECTION 3.** G.S. 14-293 reads as rewritten:

16 **"§ 14-293. Allowing gambling in houses of public entertainment; penalty.**

17 Except as provided in Chapter 18C or Chapter 18D of the General Statutes, if any keeper of
18 an ordinary or other house of entertainment, or of a house wherein alcoholic beverages are
19 retailed, shall knowingly suffer any game, at which money or property, or anything of value, is
20 bet, whether the same be in stake or not, to be played in any such house, or in any part of the
21 premises occupied therewith; or shall furnish persons so playing or betting either on said
22 premises or elsewhere with drink or other thing for their comfort or subsistence during the time
23 of play, he shall be guilty of a Class 2 misdemeanor. Any person who shall be convicted under
24 this section shall, upon such conviction, forfeit his license to do any of the businesses
25 mentioned in this section, and shall be forever debarred from doing any of such businesses in
26 this State. The court shall embody in its judgment that such person has forfeited his license, and
27 no board of county commissioners, board of town commissioners or board of aldermen shall
28 thereafter have power or authority to grant to such convicted person or his agent a license to do
29 any of the businesses mentioned herein."

30 **SECTION 4.** G.S. 14-296 reads as rewritten:

31 **"§ 14-296. Illegal slot machines and punchboards defined.**

32 Except as provided in Chapter 18D of the General Statutes, ~~An~~an illegal slot machine or
33 punchboard within the contemplation of G.S. 14-295 through 14-298 is defined as a device
34 where the user may become entitled to receive any money, credit, allowance, or any thing of
35 value, as defined in G.S. 14-306."

36 **SECTION 5.** G.S. 14-299 reads as rewritten:

37 **"§ 14-299. Property exhibited by gamblers to be seized; disposition of same.**

38 Except as provided in Chapter 18C or Chapter 18D of the General Statutes or in
39 G.S. 14-292, all moneys or other property or thing of value exhibited for the purpose of alluring
40 persons to bet on any game, or used in the conduct of any such game, including any motor
41 vehicle used in the conduct of a lottery within the purview of G.S. 14-291.1, shall be liable to
42 be seized by any court of competent jurisdiction or by any person acting under its warrant.
43 Moneys so seized shall be turned over to and paid to the treasurer of the county wherein they
44 are seized, and placed in the general fund of the county. Any property seized which is used for
45 and is suitable only for gambling shall be destroyed, and all other property so seized shall be
46 sold in the manner provided for the sale of personal property by execution, and the proceeds
47 derived from said sale shall (after deducting the expenses of keeping the property and the costs
48 of the sale and after paying, according to their priorities all known prior, bona fide liens which
49 were created without the lienor having knowledge or notice that the motor vehicle or other
50 property was being used or to be used in connection with the conduct of such game or lottery)

1 be turned over and paid to the treasurer of the county wherein the property was seized, to be
2 placed by said treasurer in the general fund of the county."

3 **SECTION 6.** G.S. 14-301 reads as rewritten:

4 "**§ 14-301. Operation or possession of slot machine; separate offenses.**

5 Except as provided in Chapter 18D of the General Statutes, ~~It~~ shall be unlawful for any
6 person, firm or corporation to operate, keep in his possession or in the possession of any other
7 person, firm or corporation, for the purpose of being operated, any slot machine or device
8 where the user may become entitled to receive any money, credit, allowance, or any thing of
9 value, as defined in G.S. 14-306. Each time said machine is operated as aforesaid shall
10 constitute a separate offense."

11 **SECTION 7.** G.S. 14-302 reads as rewritten:

12 "**§ 14-302. Punchboards, vending machines, and other gambling devices; separate**
13 **offenses.**

14 Except as provided in Chapter 18D of the General Statutes, ~~It~~ shall be unlawful for any
15 person, firm or corporation to operate or keep in his possession, or the possession of any other
16 person, firm or corporation, for the purpose of being operated, any punchboard, slot machine or
17 device where the user may become entitled to receive any money, credit, allowance, or any
18 thing of value, as defined in G.S. 14-306. Each time said punchboard, slot machine or device
19 where the user may become entitled to receive any money, credit, allowance, or any thing of
20 value, as defined in G.S. 14-306 is operated, played, or patronized by the paying of money or
21 other thing of value therefor, shall constitute a separate violation of this section as to operation
22 thereunder."

23 **SECTION 8.** G.S. 14-304 reads as rewritten:

24 "**§ 14-304. Manufacture, sale, etc., of slot machines and devices.**

25 Except as provided in Chapter 18D of the General Statutes, ~~It~~ shall be unlawful to
26 manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away,
27 transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give
28 away, or to permit the operation of, or for any person to permit to be placed, maintained, used
29 or kept in any room, space or building owned, leased or occupied by him or under his
30 management or control, any slot machine or device where the user may become entitled to
31 receive any money, credit, allowance, or any thing of value, as defined in G.S. 14-306."

32 **SECTION 9.** G.S. 14-305 reads as rewritten:

33 "**§ 14-305. Agreements with reference to slot machines or devices made unlawful.**

34 Except as provided in Chapter 18D of the General Statutes, ~~It~~ shall be unlawful to make or
35 permit to be made with any person any agreement with reference to any slot machines or device
36 where the user may become entitled to receive any money, credit, allowance, or any thing of
37 value, as defined in G.S. 14-306 pursuant to which the user thereof may become entitled to
38 receive any money, credit, allowance, or anything of value or additional chance or right to use
39 such machines or devices, or to receive any check, slug, token or memorandum entitling the
40 holder to receive any money, credit, allowance or thing of value."

41 **SECTION 10.** G.S. 14-306 is amended by adding a new subsection to read:

42 "(e) This section shall not apply to any video gaming machine permitted under Chapter
43 18D of the General Statutes."

44 **SECTION 11.** G.S. 14-306.1A is amended by adding a new subsection to read:

45 "(g) This section shall not apply to any video gaming machine permitted under Chapter
46 18D of the General Statutes."

47 **SECTION 12.** G.S. 18C-161 is rewritten to read:

48 "**§ 18C-161. Types of income to the North Carolina State Lottery Fund.**

49 The following revenues shall be deposited in the North Carolina State Lottery Fund:

50 (1) All proceeds from the sale of lottery tickets or shares.

1 (1a) All net proceeds from video gaming machines licensed by the Commission
2 under Chapter 18D of the General Statutes.

3 "

4 **SECTION 13.** G.S. 18C-164 is rewritten to read:

5 **"§ 18C-164. Transfer of net revenues.**

6 ...

7 (c) The Commission shall distribute the remaining net revenue of the Education Lottery
8 Fund, except for net revenue transferred to the Fund from video gaming terminals regulated
9 under Chapter 18D of the General Statutes as follows, in the following manner:

10 (1) A sum equal to fifty percent (50%) to support reduction of class size in early
11 grades to class size allotments not exceeding 1:18 in order to eliminate
12 achievement gaps and to support academic prekindergarten programs for
13 at-risk four-year-olds who would otherwise not be served in a high-quality
14 education program in order to help those four-year-olds be prepared
15 developmentally to succeed in school.

16 (2) A sum equal to forty percent (40%) to the Public School Building Capital
17 Fund in accordance with G.S. 115C-546.2.

18 (3) A sum equal to ten percent (10%) to the State Educational Assistance
19 Authority to fund college and university scholarships in accordance with
20 Article 35A of Chapter 115C of the General Statutes.

21 (c1) The Commission shall distribute net revenue transferred to the Fund from video
22 gaming terminals regulated under Chapter 18D of the General Statutes as follows, in the
23 following manner:

24 (1) A sum equal to forty percent (40%) to support a vocational training program
25 for one high school in each local educational authority.

26 (2) A sum equal to forty percent (40%) to supplement existing funding for
27 school nutrition programs in order to provide higher quality and healthier
28 foods to students.

29 (3) A sum equal to twenty percent (20%) to the Public School Building Capital
30 Fund in accordance with G.S. 115C-546.2.

31 "

32 **SECTION 14.** Article 4 of Chapter 114 of the General Statutes is amended by
33 adding a new section to read:

34 **"§ 114-19.26. Criminal record checks of video gaming licenses and permits issued by the**
35 **Department of Revenue.**

36 The Department of Justice may provide to the Department of Revenue and to its Director
37 from the State and National Repositories of Criminal Histories the criminal history of any
38 prospective licensed operator and any prospective licensed establishment. The Department of
39 Revenue shall provide to the Department of Justice, along with the request, the fingerprints of
40 the prospective licensee, a form signed by the prospective licensee consenting to the criminal
41 record check and use of fingerprints, and other identifying information required by the State
42 and National Repositories, and any additional information required by the Department of
43 Justice. The fingerprints of the prospective licensee shall be forwarded to the State Bureau of
44 Investigation for a search of the State's criminal history record file, and the State Bureau of
45 Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a
46 national criminal history record check. The Department of Revenue shall keep all information
47 obtained pursuant to this section confidential. The Department of Justice shall charge a
48 reasonable fee only for conducting the checks of the criminal history records authorized by this
49 section."

50 **SECTION 5.** This act becomes effective January 1, 2011, and applies to offenses
51 committed on or after that date.