

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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**SENATE DRS35008-RK-11 (01/07)**

Short Title: Broaden Sweepstakes Law.

(Public)

Sponsors: Senator Vaughan.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO BROADEN SWEEPSTAKES LAW TO INCLUDE SWEEPSTAKES THAT USE ANY TYPE OF VISUAL DISPLAY, TO SUPPLEMENT CURRENT LAW WHICH MAKES GAME PLAY OR SIMULATED GAME PLAY UNLAWFUL.

Whereas, the General Assembly enacted House Bill 80 in the 2010 Regular Session to make it unlawful to conduct or promote sweepstakes through the use of electronic machines or devices which use game play or simulated game play; and

Whereas, methods have been developed to conduct sweepstakes through the use of electronic machines or devices which, although they utilize a visual display, do not use game play or simulated game play; and

Whereas, the video display may not take the form of game play or simulated game play which is unlawful under House Bill 80, but still create the same poverty, addiction, and corruption to which House Bill 80 was directed; and

Whereas, attempts to skirt the criminal laws against games of chance have been persistent throughout the decades, and commented upon by our State Supreme Court in 1915, in the case of State v. Lipkin:

"[I]t is not possible to escape the law's condemnation, for it will strip the transaction of all its thin and false apparel and consider it in its very nakedness. It will look to the substance and not to the form of it, in order to disclose its real elements and the pernicious tendencies which the law is seeking to prevent. The Court will inquire, not into the name, but into the game, however skillfully disguised, in order to ascertain if it is prohibited, or if it has the element of chance. It is the one playing at the game who is influenced by the hope enticingly held out, which is often false or disappointing, that he will, perhaps and by good luck, get something for nothing, or a great deal for a very little outlay. This is the lure that draws the credulous and unsuspecting into the deceptive scheme, and it is what the law denounces as wrong and demoralizing."

Whereas, it is the intent of the General Assembly to make it unlawful to provide this type of electronic machine or device to a person who believes that by "hope enticingly held out" that he or she will get "something for nothing or a great deal for a very little outlay;" and,

Whereas, a sweepstake's use of an electronic machine or device with a visual display creates a lure based upon chance and is a deceptive scheme; Now, therefore, The General Assembly of North Carolina enacts:



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

3 **"§ 14-306.4A. Electronic machines and devices for sweepstakes unlawful.**

4       (a)     For the purpose of this section, the definitions contained within G.S. 14-306.4(a)(1),  
5 (a)(2), (a)(4), and (a)(5) are adopted herein by reference.

6       (b)     It shall be unlawful for any person to operate, or place into operation, an electronic  
7 machine or device to conduct or promote a sweepstakes.

8       (c)     It is the intent of this section to prohibit any mechanism that seeks to avoid  
9 application of this section through the use of any subterfuge or pretense whatsoever.

10       (d)     Nothing in this section shall be construed to make illegal any activity which is  
11 lawfully conducted on Indian lands pursuant to, and in accordance with, an approved  
12 Tribal-State Gaming Compact applicable to that Tribe as provided in G.S. 147-12(14) and  
13 G.S. 71A-8.

14       (e)     Each violation of this section shall be considered a separate offense.

15       (f)     Notwithstanding the provisions of G.S. 14-309(a), any person who violates this  
16 section is guilty of:

17           (1)     A Class 2 misdemeanor for the first offense, and is guilty of a Class H felony  
18                 for a second offense and a Class G felony for a third or subsequent offense.

19           (2)     A Class G felony if the offense involves the possession of five or more  
20                 machines.

21       (g)     Nothing in this act is intended to repeal or affect the provisions of G.S. 14-306.4. A  
22 violation of this section is a lesser-included offense of G.S. 14-306.4."

23           **SECTION 2.** G.S. 14-309 reads as rewritten:

24 **"§ 14-309. Violation made criminal.**

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

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

31       (c)     Notwithstanding the provisions of subsection (a) of this section, any person  
32 violating the provisions of ~~G.S. 14-306.3(b)~~ G.S. 14-306.3(b), 14-306.4(b), or 14-306.4A(b)  
33 involving the possession of five or more machines prohibited by that subsection is guilty of a  
34 Class G felony."

35           **SECTION 3.** This act is effective when it becomes law.