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SENATE BILL DRS45266-MQxf-9

Short Title: Gaming Machine Enforcement Act. (Public)

Sponsors: Senator Johnson (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE LOTTERY COMMISSION TO REGULATE THE PLACEMENT
3 AND OPERATION OF VIDEO GAME TERMINALS IN THIS STATE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1.(a) Chapter 18C of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 9.

8 "Video Gaming Terminals.

9 "Part 1. General Provisions.

10 "**§ 18C-200. Definitions.**

11 The following definitions apply in this Article:

- 12 (1) Central monitoring system. – The system that maintains on a real-time basis
13 the financial, integrity, and security controls on VGTs and associated
14 equipment and provides administrative services for its operation.
- 15 (2) Independent testing laboratory. – An independent, nationally recognized
16 testing laboratory approved by the Commission for use in testing whether a
17 VGT complies with the standards set forth in this Article.
- 18 (3) Fraternal establishment. – The location where (i) a qualified fraternal
19 organization that derives its charter from a national fraternal organization or
20 (ii) a veteran's organization that derives its charter from a national veterans
21 organization regularly meets.
- 22 (4) License. – Authorization granted by the Commission permitting an applicant
23 to engage in the defined activities of VGTs.
- 24 (5) Manufacturer. – An individual, partnership, corporation, trust, association,
25 joint venture, limited liability company, or other business entity that
26 manufactures, assembles, services, or produces VGTs or their major
27 components.
- 28 (6) Net terminal revenue. – Money inserted into a VGT minus any prizes paid.
- 29 (7) Operator. – An individual, partnership, corporation, trust, association, joint
30 venture, limited liability company, or other business entity that owns or
31 services a VGT for which a VGT permit has been issued by the Commission
32 and that places VGTs or associated equipment for public use in this State.
- 33 (8) Permit. – A permanently affixed tag or sticker issued to a licensed operator
34 for each VGT approved by and registered with the Commission.
- 35 (9) Playing station. – A VGT or portion of a VGT that allows a player to operate
36 the device independently of, or simultaneously with, another player.



- 1 (10) Point of sale. – Accounting and reporting system to be used to accurately
2 report the accounting of each VGT.
- 3 (11) Retailer. – An establishment under contract with a licensed operator to allow
4 the placement of VGTs.
- 5 (12) Truck stop establishment. – A facility that (i) is at least a three-acre facility
6 with a convenience store, (ii) has separate diesel islands for fueling
7 commercial motor vehicles, and (iii) sells at retail more than 10,000 gallons
8 of diesel or bio-diesel fuel per month.
- 9 (13) Video gaming terminal (VGT). – A device that is any electronic computerized
10 video machine operated upon the insertion of cash, player's club card, or other
11 form of promotional credit; is available to play; and which uses a video display
12 and microprocessors in which the player may receive free plays or credits that
13 can be redeemed for cash. The term does not include a machine that is for
14 amusement purposes only.

15 **"§§ 18C-201 through 18C-204.** Reserved for future codification purposes.

16 "Part 2. Authority, Revenues, Licenses, and Permits.

17 **"§ 18C-205. Regulation.**

18 The Commission shall have authority to regulate the placement and operation of VGTs as
19 provided in this Article. Nothing in this Article is intended to grant authority for the use or
20 operation of VGTs by the Lottery.

21 **"§ 18C-206. General restrictions.**

22 (a) An operator licensed pursuant to this Article shall not operate or make available for
23 play more than 12 VGTs within a 100-foot radius. In addition, the following types of locations
24 shall not operate or make available for play the following number of VGTs:

- 25 (1) Twelve VGTs in any single fraternal establishment or any single truck stop
26 establishment.
- 27 (2) Eight VGTs in any single retail establishment other than a fraternal
28 establishment or truck stop establishment.

29 (b) Individuals under the age of 21 years may not play a VGT.

30 (c) A city or county may not exact zoning or other ordinances designed to tax, relocate,
31 limit, restrict, or eliminate VGTs or licenses, permits, or certifications for VGT manufacturers,
32 operators, or location retailers.

33 (d) No more than 34,000 VGTs may be placed into operation in this State.

34 **"§ 18C-207. Ownership of VGT net terminal revenue; expenses for operation of VGTs.**

35 (a) The Commission shall require licensed retailers to place all net terminal revenue due
36 to the Commission in a segregated account in an institution insured by the Federal Deposit
37 Insurance Corporation not later than the close of the next banking day after the date of the
38 collection of the net terminal revenue by the licensed retailer until the date the net terminal
39 revenue is paid over to the Commission. Net terminal revenue shall be deemed to be the property
40 of the Commission. The Commission may require a licensed retailer to establish a single, separate
41 electronic funds transfer account, if available, for the purpose of receiving net terminal revenue
42 from the licensed retailer, making payments to the Commission, and receiving payments from
43 the Commission. Unless otherwise authorized by the Commission, a licensed retailer shall
44 establish a separate bank account for net terminal revenue which shall be kept separate and apart
45 from all other funds and assets and shall not be commingled with any other funds or assets. In
46 the event a person receiving net terminal revenue becomes insolvent, the net terminal revenue
47 due to the Commission from the insolvent person shall have preference over all debts or demands.
48 After receipt by the Commission of net terminal revenue from a licensed retailer, the Commission
49 shall do all of the following:

- 50 (1) Retain a sum equal to fifteen percent (15%) of the net terminal revenue.

- 1 (2) Provide, within five business days of receipt, a sum equal to forty percent
2 (40%) of the net terminal revenue to the licensed retailer for the cost
3 associated with allowing the VGTs to be placed.
- 4 (3) Provide, within five business days of receipt, an amount equal to forty percent
5 (40%) of the net terminal revenue to the licensed operator for the cost of
6 purchasing, securing, operating, and servicing the machines.
- 7 (4) Provide, within five business days of receipt, an amount equal to five percent
8 (5%) of the net terminal revenue to the licensed manufacturer.

9 (b) The State finds that there is a compelling State interest in ensuring the most efficient,
10 accurate, and honest regulation of VGTs in this State. The Commission shall promptly request
11 for proposal a central monitoring system from at least two suppliers of central monitoring systems
12 who are not licensed manufacturers, operators, or retailers in this State. The Commission shall
13 use commercially reasonable efforts to adopt and implement the central monitoring system as
14 soon as possible, but no later than two years after the effective date of this Article. When the
15 central monitoring system is adopted, then the following must be enacted:

- 16 (1) The central monitoring system shall be linked by a communications network
17 through which all VGTs in a location shall connect to a single point of
18 commerce and must not use a slot machine interface board or "SMIB" for the
19 purpose of accounting and reporting to the State. In no event shall the terminal
20 approved by the Commission limit participation to only one manufacturer or
21 one type of VGT.
- 22 (2) Within 12 months after the procurement of a central monitoring system and
23 certification of that system, all VGTs shall be linked by a communications
24 network to the central monitoring system for purposes of monitoring and
25 reading device activities as provided for in this section. When the Commission
26 is satisfied with the operation of the central monitoring system, it shall certify
27 the effective status of the central monitoring system and notify all licensees of
28 such certification.
- 29 (3) When the VGT is able to be linked to the central monitoring system, the VGT
30 must adhere to the standards adopted by the Commission with regard to the
31 hardware and software requirements of the central monitoring system.
- 32 (4) The central monitoring system shall be designed and operated to allow the
33 monitoring and reading of all VGTs for the purpose of compliance with regard
34 to their obligations to the State. The central monitoring system shall be located
35 within and administered by the Commission.
- 36 (5) The central monitoring system shall not provide for the monitoring or reading
37 of personal or financial information concerning patrons of VGTs.
- 38 (6) Any entity that acts as a supplier for the Commission in building, operating,
39 maintaining, or contracting to build, operate, or maintain a central monitoring
40 system shall be prohibited from obtaining a license as a manufacturer,
41 operator, or retail location.

42 **"§ 18C-208. Video game terminal permit required.**

43 (a) The Commission shall make available a VGT permit that shall be affixed to all
44 approved VGTs in a location in a manner set forth by the Commission. The placement of the
45 VGT permit represents that the machine has been registered and approved for operation in the
46 State.

47 (b) The Commission shall issue the VGT permits annually at the beginning of each fiscal
48 year.

49 (c) Manufacturers, licensed operators, and retail establishments must make VGTs and
50 associated equipment available for inspection by the Commission. No VGT shall be issued a
51 permit unless the game software is certified by an independent testing laboratory.

1 (d) Any terminal or machine that does not display the VGTs permit as required by this
2 section is illegal and subject to confiscation by any law enforcement officer.

3 (e) No device may be placed in operation without having a valid decal affixed
4 prominently on the front of the device where it is visible at all times so law enforcement or
5 representatives of the Commission need not move a device to see the decal. After the first of the
6 year, the previous year's decals must be removed entirely, or covered entirely by placing the
7 current year's decal over it. If a device has more than one playing station, each station must have
8 a valid decal.

9 (f) The VGT permit shall be issued upon payment of the terminal fee pursuant to
10 G.S. 18C-212(b).

11 **"§ 18C-209. Types of licenses.**

12 The Commission shall issue the following types of licenses associated with VGTs:

13 (1) Manufacturer license.

14 (2) Operator license.

15 (3) Retailer license.

16 **"§ 18C-210. Minimum qualifications for licensure.**

17 (a) The Commission may not approve an applicant if any of the following apply:

18 (1) The applicant has been convicted of a felony in any state or federal court of
19 the United States within 10 years of issuance of the license or employs officers
20 or directors who have been convicted of a felony or any gambling offense in
21 any state or federal court of the United States within 10 years of issuance of
22 the license.

23 (2) The applicant is less than 21 years of age.

24 (3) The applicant has falsified the application.

25 (4) The applicant is not current in filing all applicable tax returns to this State and
26 in payment of all taxes, interest, and penalties owed to this State, excluding
27 items under formal appeal under applicable statutes. Upon request of the
28 Director, the Department of Revenue shall provide this information about a
29 specific person to the Commission.

30 (5) The applicant fails to provide all information and documentation requested by
31 the Commission.

32 (b) The applicant must furnish all information, documents, certifications, consents,
33 waivers, individual history forms, and other materials required or requested by the Commission
34 for purposes of determining qualification for that type of license. If the applicant is a public
35 company, the applicant must file with the Commission a copy of any disclosure statement
36 involving ownership of the public company required to be filed with the United States Securities
37 and Exchange Commission.

38 (c) The applicant must submit to a background investigation, including each partner,
39 director, officer, and all stockholders of five percent (5%) or more of any business entity, except
40 for institutional investors.

41 (d) The burden of proof for establishing qualification under this section shall be on the
42 applicant.

43 (e) No licensee or applicant to be a licensee shall pay, give, or make any economic
44 opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, including food
45 and beverages of greater than one hundred dollars (\$100.00), to the Director, to any member or
46 employee of the Commission, or to any member of the immediate family residing in the same
47 household as one of these individuals.

48 **"§ 18C-211. Retailer qualifications; restrictions.**

49 (a) In addition to the criteria set out in G.S. 18C-210, the Commission may not approve
50 an application for a VGT retailer license if the applicant meets any of the following criteria:

- 1 (1) Is a person whose establishment would be engaged exclusively in the business
2 of possessing VGTs.
- 3 (2) Is a person who resides in the same household as a member of the
4 Commission, the Director, or any other employee of the Commission.
- 5 (b) No person with or applying for a retail license shall have an interest in any person or
6 immediate family member of a person with an operator's license or manufacturer's license.
- 7 (c) A licensed retailer must be allowed to possess only a VGT retailer license and must
8 not possess an operator license or manufacturer license.
- 9 (d) The applicant for a VGTs retailer's license shall provide, in addition to other
10 information required by the Commission, all of the following information:
- 11 (1) Name of the licensed establishment.
- 12 (2) Address of the licensed establishment.
- 13 (3) Phone number of the licensed establishment.
- 14 (4) Name, address, and phone number of each owner of the licensed
15 establishment.
- 16 (e) A VGT retailer is required to enter into a written contract with only one licensed
17 operator per location.
- 18 (f) A VGT retailer must also hold an active license to sell beer, wine, liquor, or tobacco
19 products.

20 **"§ 18C-212. Fees.**

- 21 (a) The Commission shall charge each applicant for a manufacturer's license an annual
22 fee of fifty thousand dollars (\$50,000).
- 23 (b) The Commission shall charge each applicant for an operator's license an annual fee
24 of twenty-five thousand dollars (\$25,000) and an annual terminal fee of one hundred fifty dollars
25 (\$150.00) per terminal.
- 26 (c) The Commission shall charge each applicant for a retailer license an annual fee of one
27 thousand dollars (\$1,000) per retail location and an annual terminal fee of one hundred fifty
28 dollars (\$150.00) per terminal.
- 29 (d) In addition to the annual license fees, the Commission may charge a one-time license
30 application fee not to exceed one thousand dollars (\$1,000).
- 31 (e) Failure to pay the specified fees shall be cause for revocation of the entity's license.
- 32 (f) All licenses issued by the Commission are renewable annually unless sooner
33 cancelled or terminated. No license issued by the Commission is transferable or assignable.
- 34 (g) The annual terminal fees collected under subsection (c) of this section shall be
35 allocated to the county where the terminal is located and shall be used to mitigate the increased
36 burden placed upon local communities from the impact of the regulated machines.

37 **"§ 18C-213. Requirements and limitations on operators.**

- 38 (a) In order to be licensed as an operator, the business, corporation, or entity shall meet
39 the following criteria:
- 40 (1) Has an office located in the State.
- 41 (2) Is qualified to do business according to the Secretary of State's Office for at
42 least three consecutive years prior to the filing of an application for licensure.
- 43 (3) Incorporation or formation in the State for at least three consecutive years
44 prior to the filing of an application for licensure.
- 45 (4) The majority of owners must have resided in the State for at least three
46 consecutive years prior to the filing of an application for licensure.
- 47 (b) Licensed operators must purchase from licensed manufacturers the following major
48 components:
- 49 (1) Cabinet.
- 50 (2) Game board/motherboard.
- 51 (3) Game software.

1 **"§ 18C-230. Enforcement.**

2 The Commission and any law enforcement agency shall have enforcement authority under
3 this Article.

4 **"§ 18C-231. Inspection of premises, records, activities.**

5 At any time during normal business hours, the Commission or any law enforcement agency
6 may inspect an establishment of a licensed VGTs retailer, licensed operator, or a licensed
7 manufacturer. The inspection may include the examination of licenses, equipment, and permits
8 related to the operation.

9 **"§ 18C-232. Criminal offenses.**

10 (a) Any person who tampers with or damages a VGT with intent to interfere with the
11 proper operation of that terminal, or any person who, with intent to manipulate the outcome,
12 payoff, or operation of a VGT, manipulates the outcome, payoff, or operation of a VGT by
13 physical tampering or any other means, is guilty of a Class 1 misdemeanor.

14 (b) A licensed operator who intentionally falsely reports or fails to report the amount due
15 required by the Commission is guilty of a Class 2 misdemeanor and is subject to termination of
16 his or her license by the Commission.

17 (c) Any person who intentionally violates G.S. 18C-206(a) is guilty of a Class 2
18 misdemeanor and is subject to termination of his or her license by the Commission.

19 (d) Any licensed operator who intentionally violates G.S. 18C-208 shall incur a five
20 thousand dollar (\$5,000) fine for each violation.

21 **"§ 18C-233. Independent testing laboratories.**

22 The game software, and any other component required by the Commission, for all VGTs
23 must be submitted by the licensed manufacturer to an independent, nationally recognized testing
24 laboratory to test for compliance with industry standards and Commission rules and regulations."

25 **SECTION 1.(b)** G.S. 18C-114 reads as rewritten:

26 **"§ 18C-114. Powers and duties of the Commission.**

27 (a) The Commission shall have the following powers and duties:

28 ...

29 (8) To charge a fee of potential ~~contractors~~ and ~~contractors~~, lottery ~~contractors~~
30 contractors, and applicants under Article 9 of this Chapter, to not exceed the
31 cost of the criminal record check of the potential contractors and lottery
32 contractors.

33 ...

34 (12a) To adopt rules to implement this Chapter, including establishing reasonable
35 regulation of video game terminals.

36 (13) Any other powers necessary for the Commission to carry out its
37 responsibilities under this Chapter.

38"

39 **SECTION 1.(c)** G.S. 14-306.4 reads as rewritten:

40 **"§ 14-306.4. Electronic machines and devices for sweepstakes prohibited.**

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

42 (1) "Electronic machine or device" means a mechanically, electrically or
43 electronically operated machine or device, that is owned, leased or otherwise
44 possessed by a sweepstakes sponsor or promoter, or any of the sweepstakes
45 sponsor's or promoter's partners, affiliates, subsidiaries or contractors, that is
46 intended to be used by a sweepstakes entrant, that uses energy, and that is
47 capable of displaying information on a screen or other mechanism. This
48 section is applicable to an electronic machine or device whether or not:

49 a. It is server-based.

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

- 1 c. It utilizes software such that the simulated game influences or
- 2 determines the winning or value of the prize.
- 3 d. It selects prizes from a predetermined finite pool of entries.
- 4 e. It utilizes a mechanism that reveals the content of a predetermined
- 5 sweepstakes entry.
- 6 f. It predetermines the prize results and stores those results for delivery
- 7 at the time the sweepstakes entry results are revealed.
- 8 g. It utilizes software to create a game result.
- 9 h. It requires deposit of any money, coin, or token, or the use of any credit
- 10 card, debit card, prepaid card, or any other method of payment to
- 11 activate the electronic machine or device.
- 12 i. It requires direct payment into the electronic machine or device, or
- 13 remote activation of the electronic machine or device.
- 14 j. It requires purchase of a related product.
- 15 k. The related product, if any, has legitimate value.
- 16 l. It reveals the prize incrementally, even though it may not influence if
- 17 a prize is awarded or the value of any prize awarded.
- 18 m. It determines and associates the prize with an entry or entries at the
- 19 time the sweepstakes is entered.
- 20 n. It is a slot machine or other form of electrical, mechanical, or computer
- 21 game.

22 ...

23 (d1) Nothing in this section shall be construed to make illegal any activity conducted
 24 pursuant to Article 9 of Chapter 18C of the General Statutes.

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

26 (f) Any person who violates this section is guilty of a Class 1 misdemeanor for the first
 27 offense and is guilty of a Class H felony for a second offense and a Class G felony for a third or
 28 subsequent offense."

29 **SECTION 1.(d)** G.S. 14-306.1A reads as rewritten:

30 "**§ 14-306.1A. Types of machines and devices prohibited by law; penalties.**

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

38 ...

39 (f) Machines described in G.S. 14-306(b)(1) and Article 9 of Chapter 18C of the General
 40 Statutes are excluded from this section."

41 **SECTION 2.** This act is effective when it becomes law.