

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

4

HOUSE BILL 19
Committee Substitute Favorable 2/24/99
Committee Substitute #2 Favorable 3/18/99
Fourth Edition Engrossed 3/25/99

Short Title: Gambling Boats Regulated.

(Public)

Sponsors:

Referred to:

February 3, 1999

A BILL TO BE ENTITLED
AN ACT TO PROHIBIT CASINO BOATS FROM OPERATING IN NORTH
CAROLINA, TO REGULATE CERTAIN GAMBLING BOATS THAT OPERATE
IN NORTH CAROLINA PURSUANT TO FEDERAL LAW, TO LEVY A
PRIVILEGE TAX ON GAMBLING BOATS OPERATING IN NORTH
CAROLINA, AND TO REQUIRE WITHHOLDING FROM CERTAIN
GAMBLING BOAT WINNINGS.

The General Assembly of North Carolina enacts:

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

"PART 4. CASINO BOATS.

"§ 14-309.30. Definitions.

The following definitions apply in this Part:

- (1) Casino boat. – A vessel that meets both of the following conditions:
 - a. Embarks from a point within this State and disembarks at the same or another point within this State without making an intervening stop.

1 b. Is operated or maintained for the purpose of gambling and carries
2 or operates gambling devices for the use of its passengers or
3 otherwise provides facilities for the purpose of gambling.

4 (2) Gambling. – A game of chance at which money, property, or some other
5 thing of value is bet, whether the same be in stake or not.

6 (3) Gambling device. – A device as defined in 15 U.S.C. § 1171 and any
7 other device used to facilitate gambling, such as a gaming table and a
8 punchboard.

9 (4) Intervening stop. – When a vessel does all of the following:

10 a. Docks at a port within the boundaries of another state, possession
11 of the United States, or foreign country.

12 b. Remains continuously at that port for at least six hours.

13 c. Allows passengers to disembark the vessel for sightseeing,
14 shopping, or other similar tourism-related activities at that port.

15 (5) Operate. – To manage, supervise, control, or own, either alone or in
16 association with others.

17 (6) Vessel. – A boat, barge, ship, vessel, or watercraft.

18 "**§ 14-309.31. Casino boats prohibited.**

19 (a) Unlawful Activity. – It shall be unlawful to do any one or more of the
20 following:

21 (1) To operate a casino boat.

22 (2) To manufacture, recondition, repair, sell, transport, possess, or use a
23 gambling device on a casino boat.

24 (3) To solicit, entice, induce, persuade, or procure, or to aid in soliciting,
25 enticing, inducing, persuading, or procuring a person to visit or embark
26 on a casino boat.

27 (b) Penalty and Conviction. – A person who violates subsection (a) of this section
28 shall be guilty of a Class A1 misdemeanor. Upon conviction, a court of competent
29 jurisdiction shall enter an order directing the seizure, forfeiture, and sale of the vessel,
30 along with all of its gear, engines, tackle, and all other nautical, navigation, and safety
31 equipment, furniture, and personal property of any description. The proceeds of a sale in
32 accordance with this subsection shall be applied, in order, to the costs of seizure, storage,
33 and sale, with the balance paid to the public school fund in the county in which the
34 property is seized.

35 (c) Applicability. – This section shall not apply to possession or transportation of
36 gambling devices on United States-flagged or foreign-flagged vessels during travel from
37 a foreign nation or another state or possession of the United States up to the first point of
38 entry into North Carolina waters or during travel to a foreign nation or another state or
39 possession of the United States from the point of departure from North Carolina waters.

40 (d) Prosecution for Other Offenses. – Nothing contained in this section shall
41 preclude prosecution for another offense under this Article or for the use of a gambling
42 device on a vessel while docked within the territorial waters of this State.

43 "**§ 14-309.32. Enforcement.**

1 A law enforcement officer with subject matter and territorial jurisdiction over a vessel
2 may take any one or more of the following actions if the officer has probable cause to
3 believe that a violation of G.S. 14-309.31 is occurring on the vessel:

4 (1) Seize the illegal gambling device.

5 (2) Seize any monies, other property, or thing of value used in conjunction
6 with or derived from the unlawful use of the illegal gambling device.

7 (3) Seize the vessel upon which an illegal gambling device is found.

8 **"§ 14-309.33. Regulation of gambling boats operating pursuant to federal law.**

9 The operator of a vessel, the operation of which would be illegal in this State except
10 for the exclusions provided in 15 U.S.C. § 1175(b)(2), shall comply with all of the
11 following:

12 (1) The applicable provisions of Chapter 105 of the General Statutes.

13 (2) The Safety of Life at Sea (SOLAS) standards and requirements
14 normally applicable in international waters.

15 (3) The passengers must be at least 21 years of age."

16 Section 2. G.S. 105-228.90(b) is amended by adding a new subdivision to
17 read:

18 "(4) Gambling boat voyage. – A voyage of a commercial vessel transporting
19 passengers engaged in gambling aboard the vessel, during which
20 passengers embark in this State and disembark only in this State or a
21 contiguous state."

22 Section 3. Article 2 of Chapter 105 of the General Statutes is amended by
23 adding a new section to read:

24 **"§ 105-40.1. Gambling boat voyages.**

25 A person engaged in the business of operating gambling boat voyages must pay a tax
26 on the business at the rate of six dollars (\$6.00) for each passenger who embarks on a
27 gambling boat voyage in this State. Within the first 10 days of each month, the taxpayer
28 must report to the Secretary the number of passengers who embarked on the taxpayer's
29 gambling boat voyages during the previous month and must pay the tax at the time the
30 report is due."

31 Section 4. G.S. 105-163.1 is amended by adding a new subdivision to read:

32 "(5a) Gambling boat operator. – A person engaged in the business of
33 operating gambling boat voyages."

34 Section 5. G.S. 105-163.1(14) reads as rewritten:

35 "(14) Withholding agent. – An ~~employer~~ employer, a gambling boat operator,
36 or a payer."

37 Section 6. Article 4A of Chapter 105 of the General Statutes is amended by
38 adding a new section to read:

39 **"§ 105-163.3A. Gambling boat operators must withhold taxes.**

40 (a) Requirement. – Every gambling boat operator who pays a resident of this State
41 more than six hundred dollars (\$600.00) in gambling winnings during a gambling boat
42 voyage must deduct and withhold from the winnings paid to the resident the State income
43 taxes due on the winnings as provided in this section. The amount of taxes to be withheld

1 is seven percent (7%) of the winnings paid to the resident. The taxes a gambling boat
2 operator withholds are held in trust for the Secretary.

3 (b) Returns; Due Date. – A gambling boat operator must file a return with the
4 Secretary on a form prepared by the Secretary and must provide any information required
5 by the Secretary. The return is due and the withheld taxes are payable by the last day of
6 the first month after the end of each calendar quarter during which the gambling boat
7 operator pays gambling winnings to a resident of this State. The Secretary may extend
8 the time for filing the return or paying the tax as provided in G.S. 105-263.

9 (c) Annual Statement. – A gambling boat operator required to deduct and withhold
10 from a resident's gambling winnings under this section must furnish to the resident
11 duplicate copies of a written information statement. The statement is due by January 31
12 following the calendar year and must show the following:

13 (1) The gambling boat operator's name, address, and taxpayer identification
14 number.

15 (2) The resident's name, address, and taxpayer identification number.

16 (3) The total amount of gambling winnings paid during the calendar year.

17 (4) The total amount deducted and withheld under this section during the
18 calendar year.

19 (5) Any other information required by the Secretary.

20 (d) Report to Secretary. – Each gambling boat operator must file with the
21 Secretary an annual report that compiles the information contained in each of the
22 operator's statements to residents and any other information required by the Secretary.
23 This report is due on the date prescribed by the Secretary and is in lieu of the information
24 report required by G.S. 105-154.

25 (e) Records. – If a gambling boat operator does not withhold from any gambling
26 winnings paid to an individual, the operator must obtain from the individual
27 documentation proving that he or she is not a resident of this State. The operator must
28 retain this information with its records."

29 Section 7. G.S. 105-163.9 reads as rewritten:

30 **"§ 105-163.9. Refund of overpayment to withholding agent.**

31 A withholding agent who pays the Secretary more under this Article than the Article
32 requires the agent to pay may obtain a refund of the overpayment by filing an application
33 for a refund with the Secretary. No refund is allowed, however, if the withholding agent
34 withheld the amount of the overpayment from the ~~wages~~wages, winnings, or
35 compensation of the agent's ~~employees~~employees, passengers, or contractors. A
36 withholding agent must file an application for a refund within the time period set in G.S.
37 105-266. Interest accrues on a refund as provided in G.S. 105-266."

38 Section 8. G.S. 105-163.10 reads as rewritten:

39 **"§ 105-163.10. Withheld amounts credited to taxpayer for calendar year.**

40 The amount deducted and withheld under this Article during any calendar year from
41 the ~~wages~~wages, winnings, or compensation of an individual ~~shall be~~is allowed as a
42 credit to that individual against the tax imposed by Article 4 of this Chapter for taxable
43 years beginning in that calendar year. The amount deducted and withheld under this

1 Article during any calendar year from the compensation of a nonresident entity ~~shall be~~ is
2 allowed as a credit to that entity against the tax imposed by Article 4 of this Chapter for
3 taxable years beginning in that calendar year. If the nonresident entity is a pass-through
4 entity, the entity shall pass through and allocate to each owner the owner's share of the
5 credit.

6 If more than one taxable year begins in the calendar year during which the
7 withholding occurred, the amount ~~shall be~~ is allowed as a credit against the tax for the last
8 taxable year so beginning. To obtain the credit allowed in this section, the individual or
9 nonresident entity must file with the Secretary one copy of the withholding statement
10 required by G.S. ~~105-163.3 or G.S. 105-163.3, 105-163.3A, or 105-163.7~~ and any other
11 information the Secretary requires."

12 Section 9. If any section or provision of this act is declared unconstitutional or
13 invalid by the courts, it does not affect the validity of this act as a whole or any part other
14 than the part so declared to be unconstitutional or invalid.

15 Section 10. This act is effective when it becomes law. Sections 2 through 8 of
16 this act become effective on the first day of the third calendar month after this act
17 becomes law.