

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 6
Judiciary I Committee Substitute Adopted 4/17/03
House Committee Substitute Favorable 6/30/04

Short Title: Increase Regulation of Amusement Devices.

(Public)

Sponsors:

Referred to:

February 10, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE REGULATION OF THE POSSESSION OR OPERATION
3 OF VIDEO GAMING MACHINES AND TO PROVIDE FUNDING FOR THIS
4 REGULATION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.(a)** G.S. 14-306(c) reads as rewritten:

7 "(c) Any video machine, the operation of which is made lawful by ~~subsection~~
8 subdivision (b)(2) of this section, shall have affixed to it in view of the player a sticker
9 informing that person that it is a criminal offense with the potential of imprisonment to
10 pay more than ~~that which~~ what is allowed by law. In addition, if the machine has an
11 attract chip ~~which that~~ allows programming, the static display shall contain the same
12 ~~message-message~~ message regarding the illegality of payments in excess of those allowed by
13 law. All machines referred to in subdivision (b)(2) of this section shall be equipped with
14 a hand count feature to permit the reconciliation of the number of plays and the number
15 of paper coupons issued."

16 **SECTION 1.(b)** All machines required to be equipped with the hand count
17 feature required under this section shall be equipped with the feature within 60 days
18 after the effective date of this act.

19 **SECTION 2.(a)** G.S. 14-306.1 reads as rewritten:

20 "§ 14-306.1. **Types of machines and devices prohibited by law; penalties.**

21 (a) Ban on New Machines. – It shall be unlawful for any person to operate, allow
22 to be operated, place into operation, or keep in that person's possession for the purpose
23 of operation any video gaming machine as defined in subsection (c) of this section
24 unless either:

25 (1) Such machine was:

26 a. Lawfully in operation, and available for play, within this State
27 on or before June 30, 2000; and

1 b. Listed in this State by January 31, 2000 for ad valorem taxation
2 for the 2000-2001 tax year; or

3 (2) Such machine is within the scope of the exclusion provided in
4 G.S. 14-306(b)(1).

5 (b) Prohibition of More Than Three Existing Video Gaming Machines at One
6 Location. – It shall be unlawful for any person to operate, allow to be operated, place
7 into operation, or keep in that person's possession for the purpose of operation at one
8 location more than three video gaming machines as defined in subsection (c).

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

12 (1) A video poker game or any other kind of video playing card game.

13 (2) A video bingo game.

14 (3) A video craps game.

15 (4) A video keno game.

16 (5) A video lotto game.

17 (6) Eight liner.

18 (7) Pot-of-gold.

19 (8) A video game based on or involving the random or chance matching of
20 different pictures, words, numbers, or symbols not dependent on the
21 skill or dexterity of the player.

22 For the purpose of this section, a video gaming machine is a video machine ~~which~~
23 that requires deposit of any coin, token, or use of any credit card, debit card, or any
24 other payment method ~~that requires payment in order~~ to activate play of any of the
25 games listed in this subsection. The enumeration of games in the list in this subsection
26 does not authorize the possession or operation of such game if it is otherwise prohibited
27 by law.

28 For the purpose of this section, a video gaming machine includes those that are
29 within the scope of the exclusion provided in G.S. 14-306(b)(2), but does not include
30 those that are within the scope of the exclusion provided in G.S. 14-306(b)(1).

31 (d) Age Requirement. – It shall be an infraction for any person under the age of
32 18 years to play any video gaming machine defined in subsection (c) of this section. It
33 shall be unlawful for the operator of the video gaming machine to knowingly allow a
34 person under the age of 18 years to play any video gaming machine as proscribed by
35 this subsection.

36 (e) Hours of Operation. – It shall be unlawful to operate or allow the operation of
37 any video gaming machine during the hours of 2:00 A.M. Sunday through 7:00 A.M.
38 Monday.

39 (f) Plain View. – Any video gaming machine available for operation shall be in
40 plain view of persons visiting the premises.

41 (g) Advertising Prohibited. – It is unlawful to advertise the operation of video
42 gaming machines by use of on-premise or off-premise signs.

43 (g1) Serial Number Required. – Every video gaming machine shall have a unique
44 serial number that shall be permanently affixed to the machine.

1 (g2) Certain Display Prohibited. – No video gaming machine shall visually
2 display the words "jackpot," "casino," or "Las Vegas," nor shall any machine audibly
3 emit those words.

4 (h) Proximity to Other Locations Regulated; Permanent Building Required. –
5 Each location where it is lawful to operate any video gaming machines as defined in
6 G.S. 14-306.1(c) shall be at least 300 feet in any plane from any other location where
7 such machines are operated. For the purpose of this section, a location is a permanent
8 building having, or being within, a single exterior structure. Notwithstanding this
9 subsection, two or more places where video gaming machines were lawfully operated
10 under separate ownership on June 30, 2000, shall be considered to be separate locations
11 more than 300 feet from each other, regardless of the distance from each other or
12 whether they are located in the same building or edifice. Video gaming machines as
13 defined in G.S. 14-306.1(c) may be operated only within permanent buildings.

14 (i) Annual Registration With Sheriff. The Alcohol Law Enforcement Division of
15 the Department of Crime Control and Public Safety. – No later than October 1, 2000,
16 the On or before July 1 of every year, the owner of any video game- gaming machine
17 which is regulated by this section shall register the machine with the Sheriff of the
18 county in which the machine is located shall register each machine with the Alcohol
19 Law Enforcement Division of the Department of Crime Control and Public Safety
20 (Division) using a standardized registration form or online process supplied by the
21 Sheriff Division. The registration shall contain all of the following information for each
22 machine:

- 23 (1) The name and address of the owner.
- 24 (2) The serial number of the machine.
- 25 (3) The name and address of the location of the machine at the time of
26 registration.
- 27 (4) The name of the owner of the location of the machine.

28 The registration form shall be signed under oath by the The owner of the machine.
29 machine shall sign the registration form under oath. A material false statement or
30 omission in the registration form shall subject the owner to seizure of the machine under
31 G.S. 14-298 in addition to any other punishment imposed by law. The owner of the
32 machine shall pay to the Division a fee of three hundred dollars (\$300.00) for each
33 machine registered, payable on July 1 of every year. Fees collected pursuant to this
34 subsection shall be used by the Division for administering and enforcing this section
35 and G.S. 14-298, 14-306, 14-306.2, and 14-309. At any time that the video gaming
36 machine is moved to a different location, the owner shall reregister the machine with the
37 Sheriff prior to its being placed in operation. At a minimum, the registration form shall
38 require that the registrant provide evidence of the date on which the machine was placed
39 in operation, the serial number of the machine, the location of the facility at which the
40 machine is operated, and the name of the owner of the facility at which the machine is
41 operated. Each Sheriff shall report to the Joint Legislative Commission on
42 Governmental Operations no later than November 1, 2000, on the total number of
43 machines registered in that county, itemizing how many locations have one, two, or

1 ~~three machines. Upon proper registration and payment of the fee, the Division shall~~
2 ~~affix a decal that has a unique number to the machine.~~

3 (i1) Notification Required When Machine Relocated. – The owner of a registered
4 machine shall report any change in the location of the machine to the Division within
5 five days of the relocation and before the machine is operational.

6 (i2) Authority to Enter to Inspect. – Persons owning or controlling any location
7 where a video gaming machine is operated or housed shall allow the Division to enter
8 the location at any time to inspect the machine.

9 ~~(j) Report on Receipts and Prizes and Merchandise Awarded.~~—~~The owner of~~
10 ~~each machine or the agent of that owner shall report each calendar quarter to the~~
11 ~~Department of Revenue, under oath on a form provided by that Department, the total~~
12 ~~amount of gross receipts itemized by each machine, the number of machines at that~~
13 ~~location, and the total value of prizes and merchandise awarded to players of each~~
14 ~~machine at that location. The report shall be filed by the fifteenth day of the month after~~
15 ~~the quarter ends. Failure of the owner or agent to timely file the required report, or filing~~
16 ~~a report containing a material false statement shall subject the owner of the machine to~~
17 ~~seizure of the machine under G.S. 14-298 in addition to any other punishment imposed~~
18 ~~by law. Upon request of the Sheriff of the county, the Department of Revenue shall~~
19 ~~forward a copy of the report to the Sheriff of the county where the machines are located.~~
20 ~~The Department of Revenue shall compile the reports and make a summary report each~~
21 ~~quarter to the Joint Legislative Commission on Governmental Operations.~~

22 ~~(k) Report to 2001 Session.~~—~~The North Carolina Sheriffs' Association, Inc.,~~
23 ~~after consultation with the Division of Alcohol Law Enforcement, and the Conference~~
24 ~~of District Attorneys of North Carolina, shall report to the Joint Legislative Commission~~
25 ~~on Governmental Operations no later than January 1, 2001, its estimates of the costs of~~
26 ~~the registration process and the cost of enforcement of this section, along with suggested~~
27 ~~fees to make the registration and enforcement self-supporting, and recommendations as~~
28 ~~to a system with registration at the State level and primary enforcement at the local~~
29 ~~level. Such fee schedule is not effective until approved by the General Assembly.~~

30 (l) Exemption for Certain Machines. – This section shall not apply to
31 assemblers, manufacturers, and transporters of video gaming machines who assemble,
32 manufacture, and transport them for sale in another state as long as the machines, while
33 located in this State, cannot be used to play the prohibited games, and does not apply to
34 those who assemble, manufacture, and sell such machines for the use only by a federally
35 recognized Indian Tribe if such machines may be lawfully used on Indian Land under
36 the Indian Gaming Regulatory Act.

37 (m) Ban on Warehousing. – It is unlawful to warehouse any video gaming
38 machine ~~except unless:~~

39 (1) ~~in~~ The machine is being warehoused in conjunction with the permitted
40 assembly, manufacture, and transportation of such machines under
41 subsection (l) of this ~~section-section;~~ or

42 (2) The machine is registered under subsection (i) of this section.

43 (n) Exemption for Activities Under IGRA. – This section does not make any
44 activities of a federally recognized Indian Tribe unlawful or against public policy,

1 which are lawful for any federally recognized Indian Tribe under the Indian Gaming
2 Regulatory Act, Public Law 100-497.

3 (o) No Local Preemption. – This section does not preempt any more restrictive
4 ordinance lawfully adopted under Article 18 of Chapter 153A of the General Statutes or
5 under Article 19 of Chapter 160A of the General Statutes.

6 (p) No person who has been convicted:

7 (1) Once under G.S. 14-309(a) or (b) may own or possess any video
8 gaming machine as defined in G.S. 14-306.1 for a period of one year.

9 (2) Twice under G.S. 14-309(a) or (b) may own or possess any video
10 gaming machine as defined in G.S. 14-306.1 for a period of two years.

11 (3) Three or more times under G.S. 14-309(a) or (b) may own or possess
12 any video gaming machine.

13 (q) Not Legalizing Unlawful Activity. – This section does not make lawful any
14 activity which is currently unlawful."

15 **SECTION 2.(b)** Notwithstanding G.S. 14-306.1(i), owners of video gaming
16 machines regulated under G.S. 14-306.1 and that meet the criteria set forth in
17 G.S. 14-306.1(a)(1) shall register and pay the fee for all machines with the Alcohol Law
18 Enforcement Division of the Department of Crime Control and Public Safety no later
19 than October 1, 2004.

20 **SECTION 3.** G.S. 14-298 reads as rewritten:

21 "**~~§ 14-298. Gaming tables, illegal punchboards, slot machines, and prohibited~~**
22 **~~video game machines to be destroyed by police officers.~~**Seizure of
23 **unlawful gaming items.**

24 (a) ~~All sheriffs and officers of police are hereby authorized and directed, on~~
25 ~~information made to them on oath~~Any law enforcement officer, including an agent of
26 the Alcohol Law Enforcement Division of the Department of Crime Control and Public
27 Safety, may seize that any gaming table prohibited to be used by G.S. 14-289 through
28 G.S. 14-300, any illegal punchboard or illegal slot machine, or any video game machine
29 prohibited to be used by G.S. 14-306 or G.S. 14-306.1, that is in the possession or use of
30 any person within the limits of their jurisdiction, jurisdiction when probable cause exists
31 as to the unlawful possession or use. to destroy the same by every means in their power;
32 ~~and they shall call to their aid all the good citizens of the county, if necessary, to effect~~
33 ~~its destruction.~~

34 (b) Any law enforcement agency in possession of an item seized pursuant to
35 subsection (a) of this section shall retain the item pending a disposition order from a
36 district or superior court judge. At the conclusion of any criminal proceeding regarding
37 an item seized, upon application by the law enforcement agency, district attorney, or
38 owner of the seized item, and after notice and opportunity to be heard by all parties, if
39 the court determines that the item was unlawfully possessed at the time it was seized,
40 the court shall enter an order releasing the item to the law enforcement agency to be
41 destroyed or used for training purposes. If the court determines that the item was
42 lawfully possessed at the time it was seized, the item shall be ordered released to its
43 owner upon satisfactory proof of ownership."

44 **SECTION 4.** G.S. 14-309 reads as rewritten:

1 **"§ 14-309. Violation made ~~criminal~~criminal; prima facie evidence of violation.**

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

5 (b) Notwithstanding the provisions of subsection (a) of this section, any person
6 violating the provisions of G.S. 14-306.1 involving the operation of five or more
7 machines prohibited by that section or knowingly owning or possessing a machine that
8 violates G.S. 14-306.1(a)(1), is guilty of a Class G felony.

9 (c) The absence of the decal on a machine that is affixed by the Division of
10 Alcohol Law Enforcement pursuant to G.S. 14-306.1(i) shall be prima facie evidence
11 that the person knowingly owned or possessed a machine that violates
12 G.S. 14-306.1(a)(1)."

13 **SECTION 5.** G.S. 14-307 reads as rewritten:

14 **"§ 14-307. Issuance of license prohibited.**

15 There shall be no ~~State, county,~~ county or municipal tax levied for the
16 privilege of operating the machines or devices the operation of which is prohibited by
17 G.S. 14-304 through 14-309."

18 **SECTION 6.** Chapter 105 of the General Statutes is amended by adding a
19 new Article to read:

20 "Article 2E.

21 "Illegal Video Gaming Machine Tax.

22 **"§ 105-113.120. Purpose.**

23 The purpose of this Article is to levy an excise tax to generate revenue for the
24 General Fund. Nothing in this Article may in any manner provide immunity from
25 criminal prosecution for a person who possesses an illegal video gaming machine.

26 **"§ 105-113.121. Definitions.**

27 The following definitions apply in this Article:

- 28 (1) Illegal video gaming machine. – A video gaming machine that is
29 prohibited under G.S. 14-306.1.
30 (2) Local law enforcement agency. – A municipal police department, a
31 county police department, or a sheriff's office.
32 (3) Person. – Defined in G.S. 105-228.90.
33 (4) Secretary. – Defined in G.S. 105-228.90.
34 (5) State law enforcement agency. – Any State agency, force, department,
35 or unit responsible for enforcing criminal laws.
36 (6) Video gaming machine. – Defined in G.S. 14-306.1.

37 **"§ 105-113.122. Excise tax on illegal video gaming machines.**

38 (a) Tax Imposed. – An excise tax at the rate of five thousand dollars (\$5,000) per
39 machine is levied on the possession of an illegal video gaming machine.

40 (b) Revenue Stamps. – The Secretary shall issue stamps to affix to illegal video
41 gaming machines to indicate payment of the tax required by this Article. A person who
42 possesses an illegal video gaming machine shall report the taxes payable under this
43 Article at the time and on the form prescribed by the Secretary. A person who possesses
44 an illegal video gaming machine is not required to give his or her name, address, social

1 security number, or other identifying information on the form. Upon payment of the tax,
2 the Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes
3 may be paid and stamps may be issued either by mail or in person.

4 (c) Reports. – Every local law enforcement agency and every State law
5 enforcement agency must report to the Department within 48 hours after seizing an
6 illegal video gaming machine, or making an arrest of an individual in possession of an
7 illegal gaming machine, upon which a stamp has not been affixed. The report must be in
8 the form prescribed by the Secretary and it must include the time and place of the arrest
9 or seizure, the identification of an individual in possession of the illegal video gaming
10 machine and that individual's social security number, and any other information
11 prescribed by the Secretary. The report must be made when the arrest or seizure
12 involves any illegal video gaming machine upon which a stamp has not been affixed as
13 required by this Article.

14 (d) Payment. – The tax imposed by this Article is payable by any person who
15 actually or constructively possesses an illegal video gaming machine in this State upon
16 which the tax has not been paid, as evidenced by a stamp. The tax is payable within 48
17 hours after the person acquires actual or constructive possession of a non-tax-paid
18 illegal video gaming machine, exclusive of Saturdays, Sundays, and legal holidays of
19 this State, in which case the tax is payable on the next working day. Upon payment of
20 the tax, the person shall permanently affix the appropriate stamps to the illegal video
21 gaming machine. Once the tax due on an illegal video gaming machine has been paid,
22 no additional tax is due under this Article even though the illegal video gaming machine
23 may be handled by other people.

24 (e) Administration. – Article 9 of this Chapter applies to this Article.

25 **"§ 105-113.123. Assessments.**

26 Notwithstanding any other provision of law, an assessment against a person who
27 possesses an illegal video gaming machine to which a stamp has not been affixed as
28 required by this Article shall be made as provided in this section. The Secretary shall
29 assess a tax, applicable penalties, and interest based on personal knowledge or
30 information available to the Secretary. The Secretary shall notify the person in writing
31 of the amount of the tax, penalty, and interest due, and demand its immediate payment.
32 The notice and demand shall be either mailed to the person at the person's last known
33 address or served in person. If the person does not pay the tax, penalty, and interest
34 immediately upon receipt of the notice and demand, the Secretary shall collect the tax,
35 penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(g) for
36 jeopardy assessments or the procedure set forth in G.S. 105-242, including causing
37 execution to be issued immediately against the personal property of the person, unless
38 the person files with the Secretary a bond in the amount of the asserted liability for the
39 tax, penalty, and interest. The Secretary shall use all means available to collect the tax,
40 penalty, and interest from any property in which the person has a legal, equitable, or
41 beneficial interest. The person may seek review of the assessment as provided in Article
42 9 of this Chapter.

43 **"§ 105-113.124. Confidentiality of information.**

1 Notwithstanding any other provision of law, information obtained pursuant to this
2 Article is confidential and may not be disclosed or, unless independently obtained, used
3 in a criminal prosecution other than a prosecution for a violation of this Article. Stamps
4 issued pursuant to this Article may not be used in a criminal prosecution other than a
5 prosecution for a violation of this Article. A person who discloses information obtained
6 pursuant to this Article is guilty of a Class 1 misdemeanor. This section does not
7 prohibit the Secretary from publishing statistics that do not disclose the identity of
8 persons or the contents of particular returns or reports.

9 **"§ 105-113.125. Use of tax proceeds.**

10 (a) Special Account. – The Secretary shall credit the net proceeds of the tax
11 levied by this Article to a special nonreverting account, to be called the State Illegal
12 Video Gaming Machine Tax Account, until the tax proceeds are unencumbered. In
13 determining the amount of the net proceeds to be credited, the Secretary shall deduct
14 from the gross proceeds the expenses of the Department of Revenue in performing the
15 duties imposed by this Article. The Secretary shall remit the unencumbered net
16 proceeds as provided in this section on a quarterly or more frequent basis. Net proceeds
17 are unencumbered when either of the following occurs:

18 (1) The tax has been fully paid and the taxpayer has no current right under
19 G.S. 105-267 to seek a refund.

20 (2) The taxpayer has been notified of the final assessment of the tax under
21 G.S. 105-241.1 and has neither fully paid nor timely contested the tax
22 under G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.

23 (b) Distribution. –The Secretary shall remit the unencumbered net proceeds that
24 were collected by assessment to the State or local law enforcement agency that
25 conducted the investigation of a person that led to the assessment. If more than one
26 State or local law enforcement agency conducted the investigation, the Secretary shall
27 determine the equitable share for each agency based on the contribution each agency
28 made to the investigation.

29 (c) Refunds. – The refund of a tax that has already been distributed shall be
30 drawn initially from the State Illegal Video Gaming Machine Tax Account. The amount
31 of refunded taxes that had been distributed to a law enforcement agency under this
32 section and any interest shall be subtracted from succeeding distributions from the
33 Account to that law enforcement agency."

34 **SECTION 7.** If any provision of this act or its application is held invalid, the
35 invalidity does not affect other provisions or applications of this act that can be given
36 effect without the invalid provisions or application, and to this end the provisions of this
37 act are severable.

38 **SECTION 8.** This act becomes effective October 1, 2004, and applies to
39 illegal video gaming machines possessed on or after that date.