

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**HOUSE BILL 29**

Short Title: Ban Video Poker/All But Reservations. (Public)

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Sponsors: Representatives Sutton; Brown, Capps, and Kiser.

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Referred to: Rules, Calendar, and Operations of the House.

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February 2, 2005

A BILL TO BE ENTITLED

1  
2 AN ACT TO PROHIBIT THE POSSESSION OR OPERATION OF VIDEO GAMING  
3 MACHINES EXCEPT BY A FEDERALLY RECOGNIZED INDIAN TRIBE AS  
4 AUTHORIZED BY THE INDIAN GAMING REGULATORY ACT AND A  
5 VALID TRIBAL-STATE COMPACT.

6       Whereas, the State of North Carolina desires to clearly set forth its policy  
7 against commercial forms of gaming; and

8       Whereas, the State of North Carolina desires to recognize the unique  
9 relationship between it and the federally recognized Indian tribe within the State; and

10       Whereas, the State of North Carolina desires to make it clear that it does not  
11 consider the activities of the Eastern Band of Cherokee Indians conducted pursuant to  
12 the Compact between it and the Eastern Band of Cherokee Indians to be commercial  
13 gaming because the Federal Indian Gaming Regulatory Act restricts the use of proceeds  
14 from gaming operations conducted by federally recognized Indian tribes to  
15 governmental services and activities that further the self-determination of the tribe; and

16       Whereas, the State of North Carolina desires to reaffirm that all activities  
17 conducted pursuant to such Compact or any amendment thereto are not commercial  
18 gaming and that same are lawful and not against the public policy of the State of North  
19 Carolina; and

20       Whereas, the State of North Carolina recognizes the tribe's substantial capital  
21 investment in reliance on the Compact, the payments made by the tribe pursuant to the  
22 Compact, and the creation of jobs and other positive impacts the tribe's activities have  
23 brought to the entire economy of Western North Carolina; and

24       Whereas, the State, through this legislation, intends to make it clear that the  
25 State will honor its commitments under the Compact and amendments, to further  
26 express its legislative intent to fully recognize the rights of the tribe in its special  
27 sovereign governmental authority to conduct gaming on tribal lands, and to express the  
28 intent of the State to recognize as lawful, on tribal lands, all gaming activities conducted

1 by the tribe pursuant to the approved Tribal-State Compact as the same may from time  
2 to time be amended by the tribe and the State; Now, therefore,  
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 14-306.1 is repealed.

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

7 "**§ 14-306.1A. Types of machines and devices prohibited by law; penalties.**

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

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

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

20 (2) A video bingo game.

21 (3) A video craps game.

22 (4) A video keno game.

23 (5) A video lotto game.

24 (6) Eight liner.

25 (7) Pot-of-gold.

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

29 For the purpose of this section, a video gaming machine is a video machine which  
30 requires deposit of any coin or token, or use of any credit card, debit card, or any other  
31 method that requires payment to activate play of any of the games listed in this  
32 subsection. The enumeration of games in the list in this subsection does not authorize  
33 the possession or operation of such game if it is otherwise prohibited by law.

34 For the purpose of this section, a video gaming machine includes those that are  
35 within the scope of the exclusion provided in G.S. 14-306(b)(2) unless conducted in  
36 accordance with an approved Class III Tribal-State Compact applicable to that tribe as  
37 provided in G.S. 147-12(14) and G.S. 71A-8. For the purpose of this section, a video  
38 gaming machine does not include those that are within the scope of the exclusion  
39 provided in G.S. 14-306(b)(1).

40 (c) Exemption for Certain Machines. – This section shall not apply to  
41 assemblers, repairers, manufacturers, and transporters of video gaming machines who  
42 assemble, repair, manufacture, and transport them for sale in another state as long as the  
43 machines, while located in this State, cannot be used to play the prohibited games and  
44 does not apply to those who assemble, repair, manufacture, and sell such machines for

1 use only by a federally recognized Indian tribe if such machines may be lawfully used  
2 on Indian land under the Indian Gaming Regulatory Act.

3 (d) Ban on Warehousing. – It is unlawful to warehouse any video gaming  
4 machine except in conjunction with the permitted assembly, repair, manufacture, and  
5 transportation of such machines under subsection (c) of this section.

6 (e) Exemption for Activities Under IGRA. – Notwithstanding any other  
7 prohibitions in State law, the form of Class III gaming otherwise prohibited by  
8 subsections (a) through (d) of this section may be legally conducted on Indian lands  
9 which are held in trust by the United States Government for and on behalf of federally  
10 recognized Indian tribes if conducted in accordance with an approved Class III  
11 Tribal-State Gaming Compact applicable to that tribe as provided in G.S. 147-12(14)  
12 and G.S. 71A-8."

13 **SECTION 3.** G.S. 14-306.2 reads as rewritten:

14 **"§ 14-306.2. Violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A a violation of the ABC laws.**

15 A violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A is a violation of the gambling statutes  
16 for the purposes of G.S. 18B-1005(a)(3)."

17 **SECTION 4.** G.S. 147-12(14) reads as rewritten:

18 "(14) ~~To~~ Notwithstanding subsections (a) through (d) of G.S. 14-306.1A, to  
19 negotiate and enter into Class III Tribal-State gaming compacts, and  
20 amendments thereto, on behalf of the ~~State~~ State, consistent with State  
21 law (G.S. 14-306.1A(e) and G.S. 71A-8) and the Indian Gaming  
22 Regulatory Act, Public Law 100-497, as necessary to allow a federally  
23 recognized Indian tribe to operate gaming ~~activities~~ activities,  
24 including those games allowed pursuant to G.S. 14-306.1A(e), in this  
25 State as permitted under federal law."

26 **SECTION 5.** G.S. 71A-8 reads as rewritten:

27 **"§ 71A-8. Authorization for federally recognized Indian tribes.**

28 In recognition of the governmental relationship between the State, federally  
29 recognized Indian tribes and the United States, a federally recognized Indian tribe may  
30 conduct games consistent with the Indian Gaming Regulatory Act, Public Law 100-497,  
31 that are in accordance with a valid Tribal-State compact executed by the Governor  
32 pursuant to G.S. 147-12(14) and approved by the U.S. Department of Interior under the  
33 Indian Gaming Regulatory Act, and such ~~games~~ games, including those permitted under  
34 G.S. 14-306.1A(e), shall not be unlawful or be lawful and not against the public policy  
35 of the State if the State permits such gaming for any purpose by any person,  
36 organization, or entity. if conducted by a federally recognized Indian tribe on federal  
37 Indian Trust Lands within the State in accordance with a Tribal-State Gaming Compact  
38 applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8."

39 **SECTION 6.** G.S. 14-298 reads as rewritten:

40 **"§ 14-298. ~~Gaming tables, illegal punchboards, slot machines, and prohibited~~**  
41 **~~video game machines to be destroyed by police officers.~~ Seizure of**  
42 **unlawful gaming items.**

43 (a) ~~All sheriffs and officers of police are hereby authorized and directed, on~~  
44 ~~information made to them on oath~~ Any law enforcement officer, including an agent of

1 the Alcohol Law Enforcement Division of the Department of Crime Control and Public  
2 Safety, may seize that any gaming table prohibited to be used by G.S. 14-289 through  
3 G.S. 14-300, any illegal punchboard or illegal slot machine, or any video game machine  
4 prohibited to be used by G.S. 14-306 or G.S. 14-306.1, 14-306.1A, that is in the  
5 possession or use of any person within the limits of their jurisdiction, jurisdiction when  
6 probable cause exists as to the unlawful possession or use, to destroy the same by every  
7 means in their power; and they shall call to their aid all the good citizens of the county,  
8 if necessary, to effect its destruction.

9 (b) Any law enforcement agency in possession of an item seized pursuant to  
10 subsection (a) of this section shall retain the item pending a disposition order from a  
11 district or superior court judge.

12 (c) At the conclusion of any criminal proceeding regarding an item seized, upon  
13 application by the law enforcement agency, district attorney, or owner of the seized  
14 item, and after notice and opportunity to be heard by all parties, if the court finds that  
15 either of the following occurred or existed at the time the item was seized, the court  
16 shall enter an order releasing the item to the law enforcement agency to be destroyed or  
17 used for training purposes:

18 (1) The item was unlawfully possessed.

19 (2) The item was being unlawfully used with the knowledge of the owner  
20 of the item.

21 If the court does not find that either condition occurred or existed at the time the  
22 item was seized, the item shall be ordered released to its owner upon satisfactory proof  
23 of ownership.

24 (d) This section does not prohibit any activities which are legally conducted by a  
25 federally recognized Indian tribe pursuant to G.S. 14-306.1A(e), 147-12(14), and  
26 71A-8."

27 **SECTION 7.** Effective with respect to offenses committed on or after  
28 December 1, 2005, G.S. 14-309(b) is repealed.

29 **SECTION 8.** G.S. 105-256(d)(1) is repealed, but that repeal does not affect  
30 reports for activities prior to December 1, 2005.

31 **SECTION 9.** This act becomes effective December 1, 2005, and applies to  
32 offenses committed on or after that date but also applies to compacts and amendments  
33 thereto executed before that date. If a court of competent jurisdiction in this State issues  
34 a stay to prohibit possession or operation of video gaming machines by a federally  
35 recognized Indian tribe, as authorized by a valid Tribal-State Compact, because that  
36 activity is not allowed on non-Indian lands pursuant to this act, this act is suspended and  
37 shall not have the force of law until such time as the stay is dissolved or a final order is  
38 entered. If a court of competent jurisdiction in this State issues a final order that  
39 prohibits the possession or operation of video gaming machines by a federally  
40 recognized Indian tribe, as authorized by a valid Tribal-State Compact, because that  
41 activity is not allowed on non-Indian lands, this act is void.