

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**HOUSE BILL 458\***

**Senate Rules and Operations of the Senate Committee Substitute Adopted 5/10/06  
Third Edition Engrossed 5/11/06**

Short Title: Ban Video Poker/All But Reservations.

(Public)

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Sponsors:

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Referred to:

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March 3, 2005

A BILL TO BE ENTITLED

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

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 the State and the Eastern Band of Cherokee Indians to be  
13 commercial gaming because the Federal Indian Gaming Regulatory Act restricts the use  
14 of proceeds 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.

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

39 (c) Exemption for Certain Machines. – This section shall not apply to  
40 assemblers, repairers, manufacturers, sellers, lessors, or transporters of video gaming  
41 machines who assemble, repair, manufacture, sell, lease or transport them for use  
42 out-of- state as long as the machines, while located in this State, cannot be used to play  
43 the prohibited games and does not apply to those who assemble, repair, manufacture,  
44 sell, or lease such machines for use only by a federally recognized Indian tribe if such

1 machines may be lawfully used on Indian land under the Indian Gaming Regulatory  
2 Act.

3 (d) Ban on Warehousing. – It is unlawful to warehouse any video gaming  
4 machine except in conjunction with the activities permitted under subsection (c) of this  
5 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. This section does not make any activities of a federally recognized  
13 Indian Tribe unlawful or against public policy, which are lawful for any federally  
14 recognized Indian Tribe under the Indian Gaming Regulatory Act, Public Law 100-  
15 497."

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

17 "**§ 14-306.2. Violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A a violation of the ABC laws.**

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

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

21 "(14) ~~To~~ Notwithstanding subsections (a) through (d) of G.S. 14-306.1A, to  
22 negotiate and enter into Class III Tribal-State gaming compacts, and  
23 amendments thereto, on behalf of the ~~State~~ State, consistent with State  
24 law (G.S. 14-306.1A(e) and G.S. 71A-8) and the Indian Gaming  
25 Regulatory Act, Public Law 100-497, as necessary to allow a federally  
26 recognized Indian tribe to operate gaming ~~activities~~ activities,  
27 including those games allowed pursuant to G.S. 14-306.1A(e), in this  
28 State as permitted under federal law. The Governor is authorized to  
29 execute and enter into Class III Tribal-State gaming compacts, and  
30 amendments thereto, on behalf of the State, and his official signature  
31 shall render the agreement binding upon the State; provided that the  
32 compacts or amendments are reported to the Joint Legislative  
33 Commission on Governmental Operations."

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

35 "**§ 71A-8. Authorization for federally recognized Indian tribes.**

36 In recognition of the governmental relationship between the State, federally  
37 recognized Indian tribes and the United States, a federally recognized Indian tribe may  
38 conduct games consistent with the Indian Gaming Regulatory Act, Public Law 100-497,  
39 that are in accordance with a valid Tribal-State compact executed by the Governor  
40 pursuant to G.S. 147-12(14) and approved by the U.S. Department of Interior under the  
41 Indian Gaming Regulatory Act, and such ~~games~~ games, including those permitted under  
42 G.S. 14-306.1A(e), shall not be unlawful or be lawful and not against the public policy  
43 of the State if the State permits such gaming for any purpose by any person,  
44 organization, or entity. if conducted by a federally recognized Indian tribe on federal

1 Indian Trust Lands within the State in accordance with a Tribal-State Gaming Compact  
2 applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8."

3         **SECTION 6.** Effective with respect to offenses committed on or after  
4 December 1, 2006, G.S. 14-309(b) is repealed.

5         **SECTION 7.** G.S. 105-256(d)(1) is repealed, but that repeal does not affect  
6 reports for activities prior to December 1, 2006.

7         **SECTION 8.** G.S. 14-309 reads as rewritten:

8 **"§ 14-309. Violation made criminal.**

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

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

15         **SECTION 9.** This act becomes effective December 1, 2006, and applies to  
16 offenses committed on or after that date but also applies to compacts and amendments  
17 thereto executed before that date, but if there is a final Order by a court of competent  
18 jurisdiction that prohibits possession or operation of video gaming machines by a  
19 federally recognized Indian tribe because that activity is not allowed elsewhere, this act  
20 is void.