

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 19
Committee Substitute Favorable 2/24/99
Committee Substitute #2 Favorable 3/18/99

Short Title: Gambling Boats Regulated.

(Public)

Sponsors:

Referred to:

February 3, 1999

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

8 The General Assembly of North Carolina enacts:

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

11 **"PART 4. CASINO BOATS.**

12 **"§ 14-309.30. Definitions.**

13 The following definitions apply in this Part:

14 (1) Casino boat. – A vessel that meets both of the following conditions:

15 a. Embarks from a point within this State and disembarks at the
16 same or another point within this State without making an
17 intervening stop.

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

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

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

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

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

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

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

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

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

§ 14-309.31. Casino boats prohibited.

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

(1) To operate a casino boat.

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

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

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

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

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

1 **"§ 14-309.32. Enforcement.**

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

- 5 (1) Seize the illegal gambling device.
- 6 (2) Seize any monies, other property, or thing of value used in conjunction
7 with or derived from the unlawful use of the illegal gambling device.
- 8 (3) Seize the vessel upon which an illegal gambling device is found.

9 **"§ 14-309.33. Regulation of gambling boats operating pursuant to federal law.**

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

- 13 (1) The applicable provisions of Chapter 105 of the General Statutes.
- 14 (2) The applicable provisions of Chapter 18B of the General Statutes.
- 15 (3) The Safety of Life at Sea (SOLAS) standards and requirements
16 normally applicable in international waters.
- 17 (4) The passengers must be at least 21 years of age."

18 Section 2. Article 10 of Chapter 18B of the General Statutes is amended by
19 adding a new section to read:

20 **"§ 18B-1010. Gambling boat permit.**

21 (a) Definitions. – The definitions in G.S. 14-309.30 apply in this section.

22 (b) Gambling Boat Permit. – The Commission may issue a 'gambling boat' permit
23 to a person who operates a vessel that is operated pursuant to G.S. 14-309.33 if the
24 vessel meets all of the following conditions:

- 25 (1) It serves meals on each voyage and has a dining area with seating for at
26 least 36 people.
- 27 (2) Its gross receipts from food and nonalcoholic beverages are greater than
28 its gross receipts from alcoholic beverages.
- 29 (3) It has its home port in an area of this State where issuance of all of the
30 permits listed in subsection (c) are legal.
- 31 (4) All of its passengers embark at the vessel's home port or at other ports
32 listed on a preannounced itinerary.
- 33 (5) It meets the requirements of all other applicable provisions in this
34 Chapter.

35 (c) Other Permits. – The Commission may issue the following permits to a person
36 who holds a gambling boat permit; however, no off-premises sales may be made pursuant
37 to these permits:

- 38 (1) On-Premises Malt Beverage Permit.
- 39 (2) On-Premises Unfortified Wine Permit.
- 40 (3) On-Premises Fortified Wine Permit.
- 41 (4) Mixed Beverages Permit.

42 (d) Restrictions. – The permits are valid only during voyages that leave from and
43 return to the vessel's home port. If the vessel docks in other areas within this State, the

1 permits are valid in that area only if the sales are legal in that area, unless the vessel
2 docks in that area because of an emergency. Liquor purchased for resale in mixed
3 beverages may be purchased only from the local board for the jurisdiction of the vessel's
4 home port.

5 (e) Record Keeping. – The permittee must comply with all Commission rules
6 regarding record keeping and reporting for tour boats."

7 Section 3. G.S. 18B-902(d) reads as rewritten:

8 "(d) Fees. – An application for an ABC permit shall be accompanied by payment of
9 the following application fee:

- 10 (1) On-premises malt beverage permit – \$400.00.
- 11 (2) Off-premises malt beverage permit – \$400.00.
- 12 (3) On-premises unfortified wine permit – \$400.00.
- 13 (4) Off-premises unfortified wine permit – \$400.00.
- 14 (5) On-premises fortified wine permit – \$400.00.
- 15 (6) Off-premises fortified wine permit – \$400.00.
- 16 (7) Brown-bagging permit – \$400.00, unless the application is for a
17 restaurant seating less than 50, in which case the fee shall be \$200.00.
- 18 (8) Special occasion permit – \$400.00.
- 19 (9) Limited special occasion permit – \$50.00.
- 20 (10) Mixed beverages permit – \$1,000.
- 21 (11) Culinary permit – \$200.00.
- 22 (12) Unfortified winery permit – \$300.00.
- 23 (13) Fortified winery permit – \$300.00.
- 24 (14) Limited winery permit – \$300.00.
- 25 (15) Brewery permit – \$300.00.
- 26 (16) Distillery permit – \$300.00.
- 27 (17) Fuel alcohol permit – \$100.00.
- 28 (18) Wine importer permit – \$300.00.
- 29 (19) Wine wholesaler permit – \$300.00.
- 30 (20) Malt beverage importer permit – \$300.00.
- 31 (21) Malt beverage wholesaler permit – \$300.00.
- 32 (22) Bottler permit – \$300.00.
- 33 (23) Salesman permit – \$100.00.
- 34 (24) Vendor representative permit – \$50.00.
- 35 (25) Nonresident malt beverage vendor permit – \$100.00.
- 36 (26) Nonresident wine vendor permit – \$100.00.
- 37 (27) Any special one-time permit under G.S. 18B-1002 – \$50.00.
- 38 (28) Winery special event permit – \$200.00.
- 39 (29) Mixed beverages catering permit – \$200.00.
- 40 (30) Guest room cabinet permit – \$1,000.
- 41 (31) Liquor importer/bottler permit – \$500.00.
- 42 (32) Cider and vinegar manufacturer permit – \$200.00.
- 43 (33) Brew on premises permit – \$400.00.

1 (34) Gambling boat permit – \$10,000."

2 Section 4. G.S. 18B-903(b) reads as rewritten:

3 "(b) Renewal. – Application for renewal of an ABC permit shall be on a form
4 provided by the Commission. An application for renewal shall be accompanied by an
5 application fee of twenty-five percent (25%) of the original application fee set in G.S.
6 18B-902, except ~~that the~~ for the following permits:

7 (1) The renewal application fee for each mixed beverages permit and each
8 guest room cabinet permit shall be seven hundred fifty dollars
9 (\$750.00).

10 (2) The renewal application fee for a gambling boat permit shall be the
11 same as the original application fee.

12 A renewal fee shall not be refundable."

13 Section 5. G.S. 105-228.90(b) is amended by adding a new subdivision to
14 read:

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

19 Section 6. Article 2 of Chapter 105 of the General Statutes is amended by
20 adding a new section to read:

21 **"§ 105-40.1. Gambling boat voyages.**

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

28 Section 7. G.S. 105-163.1 is amended by adding a new subdivision to read:

29 "(5a) Gambling boat operator. – A person engaged in the business of
30 operating gambling boat voyages."

31 Section 8. G.S. 105-163.1(14) reads as rewritten:

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

34 Section 9. Article 4A of Chapter 105 of the General Statutes is amended by
35 adding a new section to read:

36 **"§ 105-163.3A. Gambling boat operators must withhold taxes.**

37 (a) Requirement. – Every gambling boat operator who pays a resident of this State
38 more than six hundred dollars (\$600.00) in gambling winnings during a gambling boat
39 voyage must deduct and withhold from the winnings paid to the resident the State income
40 taxes due on the winnings as provided in this section. The amount of taxes to be withheld
41 is seven percent (7%) of the winnings paid to the resident. The taxes a gambling boat
42 operator withholds are held in trust for the Secretary.

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

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

11 **(1)** The gambling boat operator's name, address, and taxpayer identification
12 number.

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

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

15 **(4)** The total amount deducted and withheld under this section during the
16 calendar year.

17 **(5)** Any other information required by the Secretary.

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

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

27 Section 10. G.S. 105-163.9 reads as rewritten:

28 **"§ 105-163.9. Refund of overpayment to withholding agent.**

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

36 Section 11. G.S. 105-163.10 reads as rewritten:

37 **"§ 105-163.10. Withheld amounts credited to taxpayer for calendar year.**

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

1 taxable years beginning in that calendar year. If the nonresident entity is a pass-through
2 entity, the entity shall pass through and allocate to each owner the owner's share of the
3 credit.

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

10 Section 12. This act is effective when it becomes law. Sections 5 through 11
11 of this act become effective on the first day of the third calendar month after this act
12 becomes law.