

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2010-103
HOUSE BILL 80**

**AN ACT TO BAN THE USE OF ELECTRONIC MACHINES AND DEVICES FOR
SWEEPSTAKES PURPOSES.**

The General Assembly of North Carolina enacts:

Whereas, the 1791 General Assembly determined that "all public gaming-tables are destructive of the morality of the inhabitants of this State, and tend greatly to the encouragement of vice and dissipation" (Law of 1791, Chapter 5); and

Whereas, the State of North Carolina has continuously prohibited public gaming in North Carolina since 1791; and

Whereas, the State of North Carolina specifically prohibited the use of slot machines in 1937; and

Whereas, the State of North Carolina specifically prohibited the use of video poker machines in 2000 and again in 2006; and

Whereas, the State of North Carolina has previously determined that such purpose should be carried out to prevent the operation of bingo by professionals for profit, prevent commercialized gambling, prevent the disguise of bingo and other game forms or promotional schemes, and prevent participation by criminal and other undesirable elements; and

Whereas, any federally recognized Indian tribe may conduct such video poker games in accordance with an approved Class III Tribal-State Gaming Compact applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8; and

Whereas, the State of North Carolina has previously determined that no video poker machine may be utilized for play under Chapter 18C of the General Statutes; and

Whereas, since 2006, companies have developed electronic machines and devices to gamble through pretextual sweepstakes relationships with Internet service, telephone cards, and office supplies, among other products; and

Whereas, companies using electronic machines and devices for sweepstakes have sought, and received, declaratory relief from the courts; and

Whereas, such electronic sweepstakes systems utilizing video poker machines and other similar simulated game play create the same encouragement of vice and dissipation as other forms of gambling, in particular video poker, by encouraging repeated play, even when allegedly used as a marketing technique; and

"Whereas, it hath appeared to this General Assembly that the before recited acts hath not that good effect which was intended" (Laws of 1799, Chapter 12); Now, therefore, The General Assembly of North Carolina enacts:

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

§ 14-306.4. Electronic machines and devices for sweepstakes prohibited.

(a) Definitions. – For the purposes of this section, the following definitions apply:

(1) "Electronic machine or device" means a mechanically, electrically or electronically operated machine or device, that is owned, leased or otherwise possessed by a sweepstakes sponsor or promoter, or any of the sweepstakes sponsor's or promoter's partners, affiliates, subsidiaries or contractors, that is intended to be used by a sweepstakes entrant, that uses energy, and that is capable of displaying information on a screen or other mechanism. This section is applicable to an electronic machine or device whether or not:

a. It is server-based.

b. It uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries.



- c. It utilizes software such that the simulated game influences or determines the winning or value of the prize.
 - d. It selects prizes from a predetermined finite pool of entries.
 - e. It utilizes a mechanism that reveals the content of a predetermined sweepstakes entry.
 - f. It predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed.
 - g. It utilizes software to create a game result.
 - h. It requires deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of payment to activate the electronic machine or device.
 - i. It requires direct payment into the electronic machine or device, or remote activation of the electronic machine or device.
 - j. It requires purchase of a related product.
 - k. The related product, if any, has legitimate value.
 - l. It reveals the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded.
 - m. It determines and associates the prize with an entry or entries at the time the sweepstakes is entered.
 - n. It is a slot machine or other form of electrical, mechanical, or computer game.
- (2) "Enter" or "entry" means the act or process by which a person becomes eligible to receive any prize offered in a sweepstakes.
- (3) "Entertaining display" means visual information, capable of being seen by a sweepstakes entrant, that takes the form of actual game play, or simulated game play, such as, by way of illustration and not exclusion:
- a. A video poker game or any other kind of video playing card game.
 - b. A video bingo game.
 - c. A video craps game.
 - d. A video keno game.
 - e. A video lotto game.
 - f. Eight liner.
 - g. Pot-of-gold.
 - h. A video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player.
 - i. Any other video game not dependent on skill or dexterity that is played while revealing a prize as the result of an entry into a sweepstakes.
- (4) "Prize" means any gift, award, gratuity, good, service, credit, or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.
- (5) "Sweepstakes" means any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, the determination of which is based upon chance.
- (b) Notwithstanding any other provision of this Part, it shall be unlawful for any person to operate, or place into operation, an electronic machine or device to do either of the following:
- (1) Conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize.
 - (2) Promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize.
- (c) It is the intent of this section to prohibit any mechanism that seeks to avoid application of this section through the use of any subterfuge or pretense whatsoever.
- (d) Nothing in this section shall be construed to make illegal any activity which is lawfully conducted on Indian lands pursuant to, and in accordance with, an approved

Tribal-State Gaming Compact applicable to that Tribe as provided in G.S. 147-12(14) and G.S. 71A-8.

(e) Each violation of this section shall be considered a separate offense.

(f) Any person who violates this section is guilty of a Class 1 misdemeanor for the first offense and is guilty of a Class H felony for a second offense and a Class G felony for a third or subsequent offense."

SECTION 2. G.S. 14-298 reads as rewritten:

"§ 14-298. Seizure of illegal gaming items.

Upon a determination that probable cause exists to believe that any gaming table prohibited to be used by G.S. 14-289 through G.S. 14-300, any illegal punchboard or illegal slot machine, ~~or any video game machine prohibited to be used by G.S. 14-306 or G.S. 14-306.1A, or any game terminal described in G.S. 14-306.3(b)~~G.S. 14-306.3(b), or any electronic machine or device using an entertaining display in violation of G.S. 14-306.4 is in the illegal possession or use of any person within the limits of their jurisdiction, all sheriffs and law enforcement officers are authorized to seize the items in accordance with applicable State law. Any law enforcement agency in possession of that item shall retain the item pending a disposition order from a district or superior court judge. Upon application by the law enforcement agency, district attorney, or owner, and after notice and opportunity to be heard by all parties, if the court determines that the item is unlawful to possess, it shall enter an order releasing the item to the law enforcement agency for destruction or for training purposes. If the court determines that the item is not unlawful to possess and will not be used in violation of the law, the item shall be ordered released to its owner upon satisfactory proof of ownership. The foregoing procedures for release shall not apply, however, with respect to an item seized for use as evidence in any criminal action or proceeding until after entry of final judgment."

SECTION 3. G.S. 14-306(a) reads as rewritten:

"(a) Any machine, apparatus or device is a slot machine or device within the provisions of G.S. 14-296 through 14-309, if it is one that is adapted, or may be readily converted into one that is adapted, for use in such a way that, as a result of the ~~insertion~~payment of any piece of money or coin or ~~token or other object, or any credit card, debit card, prepaid card, or any other method that requires payment to activate play, whether directly into the slot machine or device or resulting in remote activation,~~ such machine or device is caused to operate or may be operated in such manner that the user may receive or become entitled to receive any piece of money, credit, allowance or thing of value, or any check, slug, token or memorandum, whether of value or otherwise, or which may be exchanged for any money, credit, allowance or any thing of value, or which may be given in trade, or the user may secure additional chances or rights to use such machine, apparatus or device; or any other machine or device designed and manufactured primarily for use in connection with gambling and which machine or device is classified by the United States as requiring a federal gaming device tax stamp under applicable provisions of the Internal Revenue Code. This definition is intended to embrace all slot machines and similar devices except slot machines in which is kept any article to be purchased by depositing any coin or thing of value, and for which may be had any article of merchandise which makes the same return or returns of equal value each and every time it is operated, or any machine wherein may be seen any pictures or heard any music by depositing therein any coin or thing of value, or any slot weighing machine or any machine for making stencils by the use of contrivances operated by depositing in the machine any coin or thing of value, or any lock operated by slot wherein money or thing of value is to be deposited, where such slot machines make the same return or returns of equal value each and every time the same is operated and does not at any time it is operated offer the user or operator any additional money, credit, allowance, or thing of value, or check, slug, token or memorandum, whether of value or otherwise, which may be exchanged for money, credit, allowance or thing of value or which may be given in trade or by which the user may secure additional chances or rights to use such machine, apparatus, or device, or in the playing of which the operator does not have a chance to make varying scores or tallies."

SECTION 4. G.S. 14-306.1A(b) reads as rewritten:

"(b) Definitions. – As used in this section, a video gaming machine means a slot machine as defined in G.S. 14-306(a) and other forms of electrical, mechanical, or computer games such as, by way of ~~illustration:~~illustration and not exclusion:

- (1) A video poker game or any other kind of video playing card game.
- (2) A video bingo game.

- (3) A video craps game.
- (4) A video keno game.
- (5) A video lotto game.
- (6) Eight liner.
- (7) Pot-of-gold.
- (8) A video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player.
- (9) Any other video game not dependent on skill or dexterity that is played while revealing a prize as the result of an entry into a sweepstakes.

For the purpose of this section, a video gaming machine is a video machine which requires deposit of any coin or token, or use of any credit card, debit card, prepaid card, or any other method that requires ~~payment~~ payment, whether directly into the video gaming machine or resulting in remote activation, to activate play of any of the games listed in this subsection.

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

SECTION 5. Nothing in this act shall be construed to make lawful any machine or device that is unlawful under any other provision of law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SECTION 6. This act becomes effective December 1, 2010, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 8th day of July, 2010.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 3:14 p.m. this 20th day of July, 2010