

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

5

SENATE BILL 6
Judiciary I Committee Substitute Adopted 4/17/03
House Committee Substitute Favorable 6/30/04
House Committee Substitute #2 Favorable 7/8/04
House Committee Substitute #3 Reported Without Prejudice 7/12/04

Short Title: Strengthen Law Enforcement vs. Video Poker.

(Public)

Sponsors:

Referred to:

February 10, 2003

A BILL TO BE ENTITLED

1 AN ACT TO STRENGTHEN THE LAW ENFORCEMENT STATUTES
2 PERTAINING TO VIDEO GAMING MACHINES BY PROVIDING THAT
3 MACHINES BE EQUIPPED WITH A HAND COUNT FEATURE; TO PROVIDE
4 THAT VIDEO GAMING MACHINES SHALL HAVE A UNIQUE SERIAL
5 NUMBER THAT SHALL BE PERMANENTLY AFFIXED TO THE MACHINE;
6 TO PROVIDE FOR THE ANNUAL REGISTRATION OF VIDEO GAMING
7 MACHINES WITH THE ALCOHOL LAW ENFORCEMENT DIVISION OF THE
8 DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY (DIVISION);
9 TO REQUIRE EVERY OWNER OF A VIDEO GAMING MACHINE TO PAY A
10 THREE HUNDRED DOLLAR FEE PER MACHINE TO THE DIVISION FOR
11 USE IN ENFORCING CERTAIN GAMING STATUTES; TO PERMIT
12 REGISTERED MACHINES TO BE WAREHOUSED; TO PROVIDE THAT ANY
13 PERSON WHO KNOWINGLY OWNS A MACHINE THAT VIOLATES
14 G.S. 14-306.1(a)(1) IS GUILTY OF A CLASS G FELONY; AND TO LEVY AN
15 EXCISE TAX ON ILLEGAL VIDEO GAMING MACHINES OF FIVE
16 THOUSAND DOLLARS PER MACHINE.
17

18 The General Assembly of North Carolina enacts:

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

20 "(c) Any video machine, the operation of which is made lawful by ~~subsection~~
21 subdivision (b)(2) of this section, shall have affixed to it in view of the player a sticker
22 informing that person that it is a criminal offense with the potential of imprisonment to
23 pay more than ~~that which~~what is allowed by law. In addition, if the machine has an
24 attract chip ~~which~~that allows programming, the static display shall contain the same
25 ~~message.~~message regarding the illegality of payments in excess of those allowed by
26 law. All machines referred to in subdivision (b)(2) of this section shall be equipped with

1 a hand count feature to permit the reconciliation of the number of plays and the number
2 of paper coupons issued."

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

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

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

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

12 (1) Such machine was:

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

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

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

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

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

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

27 (2) A video bingo game.

28 (3) A video craps game.

29 (4) A video keno game.

30 (5) A video lotto game.

31 (6) Eight liner.

32 (7) Pot-of-gold.

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

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

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

1 (d) Age Requirement. – It shall be an infraction for any person under the age of
2 18 years to play any video gaming machine defined in subsection (c) of this section. It
3 shall be unlawful for the operator of the video gaming machine to knowingly allow a
4 person under the age of 18 years to play any video gaming machine as proscribed by
5 this subsection.

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

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

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

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

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

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

28 (i) Annual Registration With ~~Sheriff~~the Alcohol Law Enforcement Division of
29 the Department of Crime Control and Public Safety. – ~~No later than October 1, 2000,~~
30 ~~the~~On or before July 1 of every year, the owner of any video game gaming machine
31 which is regulated by this section shall register the machine with the Sheriff of the
32 county in which the machine is located shall register each machine with the Alcohol
33 Law Enforcement Division of the Department of Crime Control and Public Safety
34 (Division) using a standardized registration form or online process supplied by the
35 ~~Sheriff~~Division. The registration shall contain all of the following information for each
36 machine:

37 (1) The name and address of the owner.

38 (2) The serial number of the machine.

39 (3) The name and address of the location of the machine at the time of
40 registration.

41 (4) The name of the owner of the location of the machine.

42 ~~The registration form shall be signed under oath by the~~The owner of the machine.
43 machine shall sign the registration form under oath. A material false statement or
44 omission in the registration form shall subject the owner to seizure of the machine under

1 G.S. 14-298 in addition to any other punishment imposed by law. The owner of the
2 machine shall pay to the Division a fee of three hundred dollars (\$300.00) for each
3 machine registered, payable on July 1 of every year. Fees collected pursuant to this
4 subsection shall be used by the Division for administering and enforcing this section
5 and G.S. 14-298, 14-306, 14-306.2, and 14-309. At any time that the video gaming
6 machine is moved to a different location, the owner shall reregister the machine with the
7 Sheriff prior to its being placed in operation. At a minimum, the registration form shall
8 require that the registrant provide evidence of the date on which the machine was placed
9 in operation, the serial number of the machine, the location of the facility at which the
10 machine is operated, and the name of the owner of the facility at which the machine is
11 operated. Each Sheriff shall report to the Joint Legislative Commission on
12 Governmental Operations no later than November 1, 2000, on the total number of
13 machines registered in that county, itemizing how many locations have one, two, or
14 three machines. Upon proper registration and payment of the fee, the Division shall affix
15 a decal that has a unique number to the machine. By August 1 of every year, the
16 Division shall send a report to each sheriff that describes the number of machines and
17 the location of the machines in that sheriff's county.

18 (i1) Notification Required When Machine Relocated. – The owner of a registered
19 machine shall report any change in the location of the machine to the Division within
20 five days of the relocation and before the machine is operational. The Division shall
21 notify the sheriff of the county to which the machine is relocated of the change in
22 location.

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

26 (j) Report on Receipts and Prizes and Merchandise Awarded. – The owner of
27 each machine or the agent of that owner shall report each calendar quarter to the
28 Department of Revenue, Revenue and to the Alcohol Law Enforcement Division of the
29 Department of Crime Control and Public Safety, under oath on a form provided by that
30 Department, the Department of Revenue, the total amount of gross receipts itemized by
31 each machine, the number of machines at that location, and the total value of prizes and
32 merchandise awarded to players of each machine at that location. The report shall be
33 filed by the fifteenth day of the month after the quarter ends. Failure of the owner or
34 agent to timely file the required report, or filing a report containing a material false
35 statement shall subject the owner of the machine to seizure of the machine under
36 G.S. 14 298 in addition to any other punishment imposed by law. Upon request of the
37 Sheriff of the county, the Department of Revenue shall forward a copy of the report to
38 the Sheriff of the county where the machines are located. The Department of Revenue
39 shall compile the reports and make a summary report each quarter to the Joint
40 Legislative Commission on Governmental Operations.

41 (k) Report to 2001 Session. – The North Carolina Sheriffs' Association, Inc.,
42 after consultation with the Division of Alcohol Law Enforcement, and the Conference
43 of District Attorneys of North Carolina, shall report to the Joint Legislative Commission
44 on Governmental Operations no later than January 1, 2001, its estimates of the costs of

1 the registration process and the cost of enforcement of this section, along with suggested
2 fees to make the registration and enforcement self-supporting, and recommendations as
3 to a system with registration at the State level and primary enforcement at the local
4 level. Such fee schedule is not effective until approved by the General Assembly.

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

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

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

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

18 (n) Exemption for Activities Under IGRA. – This section does not make any
19 activities of a federally recognized Indian Tribe unlawful or against public policy,
20 which are lawful for any federally recognized Indian Tribe under the Indian Gaming
21 Regulatory Act, Public Law 100-497.

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

25 (p) No person who has been convicted:

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

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

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

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

34 **SECTION 2.(b)** Notwithstanding G.S. 14-306.1(i), owners of video gaming
35 machines regulated under G.S. 14-306.1 and that meet the criteria set forth in
36 G.S. 14-306.1(a)(1) shall register and pay the fee for all machines with the Alcohol Law
37 Enforcement Division of the Department of Crime Control and Public Safety no later
38 than December 1, 2004, and the Division shall notify the sheriffs no later than January
39 1, 2005.

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

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

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

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

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

20 (1) The item was unlawfully possessed.

21 (2) The item was being unlawfully used with the knowledge of the owner
22 of the item.

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

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

27 **"§ 14-309. Violation made ~~criminal~~ criminal; prima facie evidence of violation.**

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

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

35 (c) The absence of the decal on a machine that is affixed by the Division of
36 Alcohol Law Enforcement of the Department of Crime Control and Public Safety
37 pursuant to G.S. 14-306.1(i) shall be prima facie evidence that the person knowingly
38 owned or possessed a machine that violates G.S. 14-306.1(a)(1)."

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

40 **"§ 14-307. Issuance of license prohibited.**

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

1 illegal video gaming machine, exclusive of Saturdays, Sundays, and legal holidays of
2 this State, in which case the tax is payable on the next working day. Upon payment of
3 the tax, the person shall permanently affix the appropriate stamps to the illegal video
4 gaming machine. Once the tax due on an illegal video gaming machine has been paid,
5 no additional tax is due under this Article even though the illegal video gaming machine
6 may be handled by other people.

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

8 **"§ 105-113.123. Assessments.**

9 Notwithstanding any other provision of law, an assessment against a person who
10 possesses an illegal video gaming machine to which a stamp has not been affixed as
11 required by this Article shall be made as provided in this section. The Secretary shall
12 assess a tax, applicable penalties, and interest based on personal knowledge or
13 information available to the Secretary. The Secretary shall notify the person in writing
14 of the amount of the tax, penalty, and interest due and demand its immediate payment.
15 The notice and demand shall be either mailed to the person at the person's last known
16 address or served in person. If the person does not pay the tax, penalty, and interest
17 immediately upon receipt of the notice and demand, the Secretary shall collect the tax,
18 penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(g) for
19 jeopardy assessments or the procedure set forth in G.S. 105-242, including causing
20 execution to be issued immediately against the personal property of the person, unless
21 the person files with the Secretary a bond in the amount of the asserted liability for the
22 tax, penalty, and interest. The Secretary shall use all means available to collect the tax,
23 penalty, and interest from any property in which the person has a legal, equitable, or
24 beneficial interest. The person may seek review of the assessment as provided in Article
25 9 of this Chapter.

26 **"§ 105-113.124. Confidentiality of information.**

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

35 **"§ 105-113.125. Use of tax proceeds.**

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

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

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

6 (b) Distribution. – The Secretary shall remit the unencumbered net proceeds that
7 were collected by assessment to the State or local law enforcement agency that
8 conducted the investigation of a person that led to the assessment. If more than one
9 State or local law enforcement agency conducted the investigation, the Secretary shall
10 determine the equitable share for each agency based on the contribution each agency
11 made to the investigation.

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

17 **SECTION 7.** On or before July 1, 2005, the Division of Alcohol Law
18 Enforcement of the Department of Crime Control and Public Safety shall report to the
19 House of Representatives and Senate Appropriations Subcommittees on Justice and
20 Public Safety as to the status of the administration and enforcement of the gaming
21 machine statutes that have occurred as a result of this act. This report shall include the
22 following:

23 (1) The number of gaming machines registered and how many machines
24 are registered in each county.

25 (2) The amount of fees that have been collected by the Division for
26 registering the machines.

27 (3) The number of gaming items seized by the Division pursuant to
28 G.S. 14-298(a).

29 (4) The number of gaming items destroyed pursuant to court order entered
30 pursuant to G.S. 14-298(b).

31 (5) The number of gaming items released to their owners pursuant to
32 G.S. 14-298(b).

33 (6) Any suggested changes to the statutes that would further strengthen the
34 Division's ability to enforce the gaming machine statutes.

35 **SECTION 8.** If any provision of this act or its application is held invalid, the
36 invalidity does not affect other provisions or applications of this act that can be given
37 effect without the invalid provisions or application, and to this end the provisions of this
38 act are severable.

39 **SECTION 9.** Section 6 of this act becomes effective December 1, 2004, and
40 applies to illegal video gaming machines possessed on or after that date. Except as
41 otherwise provided in this act, the remainder of this act becomes effective October 1,
42 2004.