

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** Senate Bill 6 (Fourth Edition)

**SHORT TITLE:** Strengthen Law Enforcement vs. Video Poker

**SPONSOR(S):** Reps. Culpepper, Harrell, G. Allen, Owens

	<b>FISCAL IMPACT</b>				
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2004-05</u></b>	<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>
<b>REVENUES:</b>					
Registration Fees	\$2,268,900	\$2,268,900	\$2,268,900	\$2,268,900	\$2,268,900
Excise Tax		Unable to	Determine		
<b>EXPENDITURES:</b>					
AOC		Unable to	Determine		
ALE	\$2,260,547	\$1,274,014	\$1,274,014	\$1,274,014	\$1,274,014
DOC		Unable to	Determine		
DOR		Unable to	Determine		
<b>POSITIONS:</b>					
ALE	24	24	24	24	24
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Administrative Office of the Courts; Correction; Crime Control & Public Safety; Revenue					
<b>EFFECTIVE DATE:</b> October 1, 2004					

**BILL SUMMARY:**

February 5, 2003

S 6. BAN VIDEO POKER/ALL BUT RESERVATIONS. TO PROHIBIT THE POSSESSION OR OPERATION OF VIDEO GAMING MACHINES EXCEPT BY A FEDERALLY RECOGNIZED INDIAN TRIBE AS AUTHORIZED BY THE INDIAN GAMING REGULATORY ACT AND A VALID TRIBAL-STATE COMPACT. As title indicates. Repeals GS 14-306.1 (regulates possession and operation of video gaming machines). Adds new GS 14-306.1A to essentially ban possession and operation of video gaming machines currently allowed under GS 14-306.1, except allows possession and operation of video gaming machines by federally recognized Indian tribe as specified in section, and allows possession for assembly, repair, manufacture, warehousing, and transport for sale in other states. Repeals GS 14-309(b) (punishment for violation of GS 14-306.1), effective for offenses committed on or after Dec. 1, 2002. Repeals GS 105-256(d)(1) (Dep't of Revenue to supply reports of video gaming machine owners to Joint Legislative Comm'n on Governmental Operations), but repeal does not affect

reports for activities before Dec. 1, 2003. Act effective Dec. 1, 2003, and applies to offenses committed on or after that date, but also applies to compacts and amendments executed before that date. If act is ruled by court to prohibit possession or operation of video gaming machines by federally recognized tribe because that activity is not allowed elsewhere, act is void.

April 17, 2003

S 6. BAN VIDEO POKER/ALL BUT RESERVATIONS. Intro. 2/10/03. Senate committee substitute makes the following changes to 1st edition. Makes technical changes only.

June 30, 2004

S 6. INCREASE REGULATION OF AMUSEMENT DEVICES (NEW). Intro. 2/10/03. House committee substitute makes the following changes to 2nd edition. Replaces existing bill with completely new bill. Amends GS 14-306(c) to require that within 60 days of effective date of act lawful video machines shall be equipped with a hand count feature to permit the reconciliation of the number of plays and the number of paper coupons issued. Enacts new GS 14-306.1(g1), requiring that all video gaming machines have a unique serial number affixed to machine, and new GS 14.306.1(g2), prohibiting video gaming machines from displaying or announcing the words “jackpot,” “casino,” or “Las Vegas.” Amends GS 14.306.1(i) to require that owners of lawful video gaming machines register with the Alcohol Law Enforcement Div’n (was, County Sheriff) by July 1 (was, Oct. 1, 2000) of each year and to require payment of a \$300 fee upon annual registration. Requires that fees collected be used to enforce sec. Enacts new GS 14.306.1(i2) requiring owners to allow Div’n access to any location where a video gaming machine is present. Deletes GS 14.306.1(j) (report on receipts and prizes awarded). Enacts new GS 14-298(b) establishing procedures for retention and destruction of seized video gaming machines.

Enacts new GS Ch. 105, Art. 2E, effective Oct. 1, 2004, imposing an excise tax of \$5,000 per machine for possession of an illegal video gaming machine and providing for the imposition of penalties, taxes, and interest for failure to pay excise tax. Requires that unencumbered net proceeds of tax be distributed to law enforcement agency involved in investigation leading to assessment. Requires that state and local law enforcement agencies report video game seizures. Makes technical changes.

July 8, 2004

S 6. STRENGTHEN LAW ENFORCEMENT VS. VIDEO POKER (NEW). Intro. 2/10/03. House committee substitute makes the following changes to 3rd edition. Amends GS 14-306.1(i) and (i1) to require the state to send annual reports to each county’s sheriff describing the number of video gaming machines in the county and to notify appropriate sheriffs when machines are relocated. Reinstates GS 14-306.1(j) which was deleted in the 3rd edition. Modifies the date for mandatory registration and payment of fees from Oct. 1, 2004, to Dec. 1, 2004. Adds new GS 14-298(c), which provides that the court may release the machine to law enforcement officers if the machine was either unlawfully possessed or unlawfully used with the knowledge of the owner. Requires the Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety to submit a report to the General Assembly regarding the implementation of the law. Provides that the illegal video gaming machine tax applies to machines possessed on or after Dec. 1, 2004 (was Oct. 1, 2004). Makes technical changes.

*Source: Bill Digest S.B. 6 (02/05/2003)*

**ASSUMPTIONS AND METHODOLOGY:** Current law allows only those video gaming machines that were lawfully in operation in the state on or before June 30, 2000. Owners of these machines must report on a quarterly basis to the Department of Revenue (DOR) the “gross receipts from video gaming machines, itemized by each machine, the total number of machines at each location, and the total value of prizes and merchandise awarded to players of each machine at a location.” Section 2 of the bill establishes an annual \$300 registration fee on each video gaming machine to be paid on or before December 1, 2004. As of December 31, 2002, (the most recent date for which DOR has usable data), there were 9,025 video gaming machines in service at 4,063 locations. Excluded from this total are about 1,000 machines that were identified as “out of service” for any reason.

	Number of Machines
Total Machines in Service	9,025
Machines reported as having some gross receipts	8,228
Machines reported as having annual gross receipts greater than \$300	7,563

For the purposes of estimating the impact, it is assumed that owners would dispose of those machines that are either out of service or have gross annual receipts of less than \$300. As a result, an estimated 7,563 video gaming machines would be registered in FY 2004-05 with a projected \$2,268,900 in registration fees collected. Note that this is a conservative estimate based only on the number of machines currently operating and grossing more than \$300 annually. This approach was chosen given that it is not possible to predict the decisions of individual video gaming machine owners as to whether or not to pay the \$300 annual registration fee on machines that are out of service, warehoused, or that do not gross annual profits in excess of the registration fee.

**Administrative Office of the Courts**

Several provisions add requirements for owners of gaming machines. Violation of new requirements would be subject to the general criminal penalties in G.S. 7A-309 (which applies to violations of G.S. 14-304 through -309, and includes both misdemeanor and felony punishments). The additional opportunities to violate the regulations of gaming machines can be expected to translate into some additional charges, but AOC has no data from which to make an estimate.

Section 4 of the bill amends G.S. 14-309 making it a Class G felony to knowingly own or possess a machine that was not lawfully under G.S. 14-306.1(a)(1). Such an offense is now a Class 1 misdemeanor for the first offense, a Class I felony for a second offense, or a Class H felony for a third or subsequent offense. AOC data for calendar 2003 reveal one Class 1 misdemeanor under G.S. 7A-306.1(a). Unless the number of charges increases from enhanced enforcement or some other reason, AOC would not expect a major impact from this provision of the bill standing alone.

Section 6 of the bill enacts a new Article levying a tax on illegal video gaming machines. Information gathered pursuant to the new Article is confidential. (For example, a person who has an illegal gaming machine must file a report for payment of the tax, but the person is not required to give his or her name, social security number or other identifying information; stamps are issued that may be affixed to the illegal machine, proving payment of the tax.) It is a misdemeanor for any person to release information obtained under the Article. Presumably, the custodians of such information are state employees, who would comply with the non-disclosure, and AOC would

expect relatively few charges. AOC is unable to estimate how many new criminal charges or civil actions might arise from failures to pay the tax.

AOC has no data from which to estimate the impact of this bill. However increased workload of the district court judges, superior court judges, district attorneys, clerks, and court reporters would be expected. There would also be an increase in expenditures for jury fees and indigent defense. AOC staff indicated that the court system is under funded, overstretched, and in need of significant additional resources to manage the demands of the existing workload. Therefore any impact on the courts is substantial under current circumstances and the court system cannot absorb any additional workload without additional resources

### **Department of Correction**

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. If, for example, there were two Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. The daily operating cost per inmate ranges from \$46.23 for minimum security to \$74.56 for close security, with an average cost for all custody levels of \$57.92. Those offenders not given active sentences (58%) would be supervised by the Division of Community Corrections at a cost of \$8.40 to \$10.06 per offender per day.

Every Class 1 misdemeanor conviction has the potential to impact the Department of Correction through probation supervision, payments to counties for jailed offenders, or, for offenders with a prior record, a short prison term. Class 1 misdemeanants may be sentenced to community, intermediate, or active punishments. Depending on Prior Record Level and sanction, the potential impact on DOC ranges from \$0 to \$5,520 per offender. Based on prior-year data, the most likely punishment is supervised or unsupervised probation. Supervised probation, without community service, would cost approximately \$639 per offender per year. About 17 percent of Class 1 misdemeanants received active sentences. The majority of these sentences are less than 90 days, which means that the offenders serve their time in a county jail. The Department of Correction reimburses the county at a rate of \$18 per offender per day for sentences between 30 and 90 days. Sentences of more than 90 days are served in prison at a cost of \$46 per offender per day. For offenders sentenced to unsupervised probation, ordered only to pay fines or restitution, or sentenced to active time of less than 30 days, there is no impact on the Department of Correction.

### **Department of Crime Control and Public Safety, Alcohol Law Enforcement Division**

Under the proposed bill, all video gaming machines shall be registered with the Alcohol Law Enforcement (ALE) Division in the Department of Crime Control and Public Safety no later than December 1, 2004. The proceeds from the annual registration of \$300 per machine will be used to cover ALE's costs of registration, monitoring, and other enforcement activities. The bill requires ALE to develop a registration process using either a standardized registration form or an on-line process and to send an initial notification to each sheriff by January 1, 2005 of the number and location of machines in the county. ALE would have primary responsibility for enforcement of the registration requirements, including on site inspection of video gaming machines. The bill also specifies that by August 1 of each year, ALE shall send a report to each sheriff's office describing the number and location of video gaming machines in the county. Section 7 requires ALE to report on or before July 21, 2005 to the JPS Appropriations Subcommittee on the status of the administration and enforcement of the video gaming machines statute resulting from the bill. ALE

indicated that the following staff and other resources would be needed to implement the proposed bill in the first year:

20 New Agent Positions	\$ 1,809,060
BLET Training	\$ 134,370
Reclassification of existing agents to supervisory positions	\$ 153,287
Administrative Assistant II	\$ 35,878
Office Assistant IV (2 positions)	\$ 56,113
Accounting Technician	\$28,056
Computer equipment, desks, etc for support staff	\$ 18,783
Specialized Training	\$ 25,000
<b>Total</b>	<b>\$2,260,547</b>

Of this amount, \$986,533 is non-recurring cost associated with training, vehicles, equipment, etc.

**Department of Revenue**

Section 6 of the bill establishes a \$5,000 excise tax, to be collected by the Department of Revenue (DOR), on all illegal video gaming machines. There is no data available from which to estimate the number of illegal machines that would be subject to this tax or the potential cost to DOR to collect this tax. The bill does allow DOR to deduct from the excise taxes collected, the expenses incurred in performing the duties imposed by the bill.

**SOURCES OF DATA:** Administrative Office of the Courts; Department of Crime Control and Public Safety; NC Sentencing and Policy Advisory Commission; and the Department of Revenue

**TECHNICAL CONSIDERATIONS:** none

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**DATE:** July 12, 2004

**Signed Copy Located in the NCGA Principal Clerk's Offices**