

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1180

Short Title: Video Sweepstakes Entertainment Tax. (Public)

Sponsors: Representatives Owens, Spear, Collins, and McGee (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee B, if favorable, Finance.

May 30, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPOSE A STATE TAX ON THE PRIVILEGE OF OPERATING A VIDEO
3 SWEEPSTAKES ESTABLISHMENT IN THIS STATE AND USE THE PROCEEDS
4 FROM THE STATE TAX FOR LOCAL LAW ENFORCEMENT AND PUBLIC
5 EDUCATION AND TO AUTHORIZE COUNTIES AND CITIES TO IMPOSE A TAX
6 ON THE PRIVILEGE OF OPERATING A VIDEO SWEEPSTAKES ESTABLISHMENT.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Chapter 105 of the General Statutes is amended by adding a new
9 article to read:

10 "Article 2E.

11 "Video Sweepstakes Entertainment Tax.

12 "**§ 105-113.120. Purpose; administration.**

13 (a) Purpose. – Taxes in this Article are imposed for the privilege of operating a video
14 sweepstakes establishment in this State. It is unlawful to operate a video sweepstakes
15 establishment without a license issued under this Article and without paying the tax due under
16 this Article. The taxes imposed in this Article provide revenue for the State's education needs
17 and for local law enforcement.

18 (b) Administration. – Article 9 of this Chapter applies to this Article.

19 "**§ 105-113.121. Definitions.**

20 The following definitions apply in this Article:

- 21 (1) Enter or entry. – The act or process by which a person becomes eligible to
22 receive any prize offered in a sweepstakes.
- 23 (2) Prize. – Any gift, award, gratuity, good, service, credit, or anything else of
24 value that may be transferred to a person, whether possession of the prize is
25 actually transferred, or placed on an account or other record as evidence of
26 the intent to transfer the prize.
- 27 (3) Sweepstakes. – Any game, advertising scheme or plan, or other promotion
28 that, with or without payment of any consideration, a person may enter to
29 win or become eligible to receive any prize, the determination of which is
30 based upon chance.
- 31 (4) Video display. – Visual information capable of being seen by a sweepstakes
32 entrant, regardless of whether the information is communicated through
33 actual or simulated game play; video images; an "instant reveal" whereby the
34 information is immediately displayed on a screen; or by any other type,
35 method, or mode of communication that is capable of being seen.



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1 (5) Video sweepstakes establishment. – A place of business in which a video
2 sweepstakes machine or device is operated.

3 (6) Video sweepstakes machine or device. – A mechanically, electrically, or
4 electronically operated machine or device that is owned, leased, or otherwise
5 possessed by a sweepstakes sponsor or promoter, or any of the sweepstakes
6 sponsor's or promoter's partners, affiliates, subsidiaries, or contractors, that is
7 intended to be used by a sweepstakes entrant, that uses energy, and that is
8 capable of video display on a screen or other mechanism.

9 **"§ 105-113.122. License tax on video sweepstakes establishment.**

10 (a) License Required. – The license tax imposed by this Article is an annual tax. The
11 tax is due by January 1 of each year. The tax is imposed for the privilege of engaging in the
12 operation of a video sweepstakes establishment during the calendar year that begins on the
13 January 1 due date of the tax. The full amount of a license tax applies to a person who, during a
14 calendar year, begins to operate a video sweepstakes establishment for which this Article
15 requires a license. The tax for each license is two thousand dollars (\$2,000).

16 (b) Application for License. – To obtain a license required by this Article, an applicant
17 must file an application with the Secretary on a form provided by the Secretary and pay the tax
18 due for the license. An application must include the applicant's name, address, federal employer
19 identification number, and any other information required by the Secretary. A license is not
20 transferable or assignable and must be displayed at the place of business for which it is issued.

21 (c) Requirements. – An applicant for a license must meet the following requirements:

22 (1) If the applicant is a corporation, the applicant must either be incorporated in
23 this State or be authorized to transact business in this State.

24 (2) If the applicant for a license is a limited liability company, the applicant
25 must either be organized in this State or be authorized to transact business in
26 this State.

27 (3) If the applicant for a license is a limited partnership, the applicant must
28 either be formed in this State or be authorized to transact business in this
29 State.

30 (4) If the applicant for a license is an individual or a general partnership, the
31 applicant must designate an agent for service of process and give the agent's
32 name and address.

33 (d) Denial. – The Secretary may investigate an applicant for a license required under
34 this Article to determine whether the information the applicant submits with the application is
35 accurate and whether the applicant is eligible to be licensed under this Article. The Secretary
36 may refuse to issue a license to an applicant that has done any of the following:

37 (1) Submitted false or misleading information on its application.

38 (2) Had a license issued under this Article cancelled by the Secretary for cause.

39 (3) Been convicted of fraud or misrepresentation.

40 (4) Been convicted of any other offense that indicates the applicant may not
41 comply with this Article.

42 (5) Failed to remit payment for a tax debt under this Chapter. The term "tax
43 debt" has the same meaning as defined in G.S. 105-243.1.

44 (6) Failed to file a return due under this Article.

45 **"§ 105-113.123. Tax on video sweepstakes machines.**

46 (a) Tax. – An excise tax is levied on each video sweepstakes machine or device at the
47 rate of one thousand dollars (\$1,000) per machine. Before a person may place a video
48 sweepstakes machine or device into operation, the person must pay the tax due. The excise tax
49 imposed by this Article is an annual tax. The tax is due by January 1 of each year. The full
50 amount of tax applies to a video sweepstakes machine or device that is put into operation
51 during the calendar year.

1 (b) Stamp. – The Secretary must issue stamps to affix to each video sweepstakes
2 machine or device to indicate payment of the tax required by this Article. The stamp must be
3 displayed conspicuously on the video sweepstakes machine or device, and it must clearly
4 indicate the year for which the tax is paid. Upon payment of the tax, the Secretary shall issue a
5 stamp for each video sweepstakes machine or device for which the tax is paid.

6 (c) Report and Payment. – A person who possesses a video sweepstakes machine or
7 device must report the taxes payable under this Article in the form required by the Secretary.
8 The return must include the address where the video sweepstakes machines or devices are
9 located and whether the location is within the corporate limits of a municipality.
10 Notwithstanding any other provision of law, the person is not required to give his or her name
11 or other identifying information on the return, and the return is not required to be verified by
12 oath or affirmation. The tax is due when the return is filed. Taxes may be paid and stamps may
13 be issued either by mail or in person.

14 **"§ 105-113.124. Tax on gross receipts from video sweepstakes machines or devices.**

15 (a) Tax. – A tax is imposed on a person who operates a video sweepstakes
16 establishment. The tax is four percent (4%) of the taxable gross receipts from operating a video
17 sweepstakes machine or device. For purposes of this section, taxable gross receipts are the
18 gross receipts derived by the establishment from a person that results in the person's eligibility
19 to operate a sweepstakes machine or device at the establishment to determine whether the
20 person has won a sweepstakes prize, less the amount of any prizes transferred to a sweepstakes
21 entrant.

22 (b) Report and Payment. – The tax imposed by this section is payable quarterly or
23 monthly in accordance with the schedule and requirements that apply to payments of sales and
24 use tax under G.S. 105-164.16. A return is due quarterly. A quarterly return covers a calendar
25 quarter and is due by the last day of the month that follows the quarter covered by the return. A
26 taxpayer must submit a return on a form provided by the Secretary. The return must include the
27 taxpayer's gross receipts from operating one or more video sweepstakes machines or devices
28 during the reporting period and the prizes awarded during this period to a sweepstakes entrant.

29 **"§ 105-113.125. Bond or letter of credit required.**

30 (a) Initial Bond. – An applicant for a license required under this Article must file with
31 the Secretary a bond or an irrevocable letter of credit. A bond or an irrevocable letter of credit
32 must be conditioned upon compliance with the requirements of this Article, be payable to the
33 State, and be in the form required by the Secretary. The amount of the bond or irrevocable
34 letter of credit is two times the applicant's average expected monthly tax liability under this
35 Article, as determined by the Secretary. The amount may not be less than two thousand dollars
36 (\$2,000) and may not be more than five hundred thousand dollars (\$500,000) per license.

37 (b) Multiple Activities. – An applicant for two or more licenses listed in this Article
38 may file one bond that covers the combined liabilities of the applicant under all the activities.

39 (c) Adjustment to Bond. – When notified to do so by the Secretary, a person that has
40 filed a bond or an irrevocable letter of credit and that holds a license listed in this Article must
41 file an additional bond or irrevocable letter of credit in the amount required by the Secretary.
42 The person must file the additional bond or irrevocable letter of credit within 30 days after
43 receiving the notice from the Secretary.

44 (d) Replacements. – When a license holder files a bond or an irrevocable letter of credit
45 as a replacement for a previously filed bond or letter of credit and the license holder has paid all
46 taxes and penalties due under this Article, the Secretary must take one of the following actions:

47 (1) Return the previously filed bond or letter of credit.

48 (2) Notify the person liable on the previously filed bond that the person is
49 released from liability on the bond.

50 **"§ 105-113.126. Reasons why the Secretary can cancel a license.**

1 (a) Reasons. – The Secretary may cancel a license issued under this Article upon the
2 written request of the license holder. The Secretary may summarily cancel the license of a
3 license holder when the Secretary finds that the license holder is incurring liability for a tax
4 imposed under this Article after failing to pay a tax when due under this Article. In addition,
5 the Secretary may cancel the license of a license holder that commits one or more of the
6 following acts after holding a hearing on whether the license should be cancelled:

- 7 (1) Fails to obtain a license required by this Article.
- 8 (2) Willfully fails to file a return required by this Article.
- 9 (3) Willfully fails to pay a tax when due under this Article.
- 10 (4) Makes a false statement in an application or return required under this
11 Article.
- 12 (5) Fails to keep records as required by this Article.
- 13 (6) Refused to allow the Secretary or a representative of the Secretary to
14 examine the person's books, accounts, and records concerning a video
15 sweepstakes machine or device.
- 16 (7) Fails to file a replacement bond or an additional bond as required under this
17 Article.
- 18 (8) Violates G.S. 105-113.129(b) or Part 1 of Article 37 of Chapter 14 of the
19 General Statutes.

20 (b) Procedure. – The Secretary must send a person whose license is summarily
21 cancelled a notice of the cancellation and must give the person an opportunity to have a hearing
22 on the cancellation within 10 days after the cancellation. The Secretary must give a person
23 whose license may be cancelled after a hearing at least 10 days' written notice of the date, time,
24 and place of the hearing. A notice of a summary license cancellation and a notice of hearing
25 must be sent by registered mail to the last known address of the license holder.

26 (c) Release of Bond. – When the Secretary cancels a license and the license holder has
27 paid all taxes and penalties due under this Article, the Secretary must take one of the following
28 actions concerning a bond or an irrevocable letter of credit filed by the license holder:

- 29 (1) Return an irrevocable letter of credit to the license holder.
- 30 (2) Return a bond to the license holder or notify the person liable on the bond
31 and the license holder that the person is released from liability on the bond.

32 **"§ 105-113.127. Use of tax proceeds.**

33 (a) Local Law Enforcement Agencies. – Up to six percent (6%) of the tax proceeds
34 collected under G.S. 105-113.122 and G.S. 105-113.123 may be distributed to local law
35 enforcement agencies as follows:

- 36 (1) Four percent (4%) of the tax proceeds collected must be distributed to the
37 county sheriff's departments on a per capita basis according to the most
38 recent annual population estimates certified to the Secretary by the State
39 Budget Officer.
- 40 (2) Two percent (2%) of the tax proceeds collected from a video sweepstakes
41 establishment must be distributed to the municipal police departments on a
42 per capita basis according to the most recent annual population estimates
43 certified to the Secretary by the State Budget Officer.

44 (b) Education. – The remainder of the tax proceeds collected under this Article must be
45 credited to the General Fund and appropriated by the General Assembly in the Current
46 Operations Appropriations Act for the fiscal year that begins the following July 1 for public
47 education.

48 **"§ 105-113.128. Local tax.**

49 (a) Authorization. – A county or city may, by resolution or ordinance respectively,
50 impose taxes as allowed under this section for the privilege of operating a video sweepstakes
51 establishment in that county or city. If a county or city imposes taxes under this section, it is

1 unlawful to operate a video sweepstakes establishment in that county or city without a license
2 issued under this section and without paying the tax due under this section.

3 (b) Privilege License Tax. – A county or city may impose an annual license tax for the
4 privilege of engaging in the operation of a video sweepstakes establishment for which a license
5 is required under this Article. The tax is due by January 1 of each year. The full amount of a
6 license tax applies to a person who, during a calendar year, begins to operate a video
7 sweepstakes establishment for which a license is required under this Article. The tax for each
8 license is one thousand dollars (\$1,000).

9 (c) Excise Tax. – A county or city may impose an annual excise tax on each video
10 sweepstakes machine or device at the rate of five hundred dollars (\$500.00) per machine. The
11 tax is due by January 1 of each year. The full amount of tax applies to a video sweepstakes
12 machine or device that is put into operation during the calendar year.

13 (d) Administration. – Upon adoption of a resolution or ordinance levying the taxes
14 allowed under this section, the governing body of the county or city must immediately deliver a
15 certified copy of the resolution or ordinance to the Secretary. Upon receipt of the document, the
16 Secretary shall collect and administer the tax. The Secretary must distribute the local taxes
17 collected to the county or city for which the taxes are collected on a quarterly basis.

18 (e) Penalty and Collection. – The penalty and collection provisions allowed under
19 Article 9 of this Chapter apply to taxes levied under the authority of this section in the same
20 manner and to the same extent as they apply to taxes levied by the State under this Article.

21 (f) Nature. – The General Assembly finds that the revenue distributed under this
22 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of
23 the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the
24 distribution.

25 **"§ 105-113.129. Applicability; illegal activity.**

26 (a) Applicability. – This Article is applicable to any video sweepstakes machine or
27 device without regard to any of the following:

28 (1) How the machine or device is activated.

29 (2) How the machine or device is programmed for operation.

30 (3) How the machine or device determines and associates the prize with an entry
31 or entries at the time the sweepstakes is entered.

32 (b) Prohibition. – Nothing in this Article may be construed to authorize or make lawful
33 any activity prohibited by Part 1 of Article 37 of Chapter 14 of the General Statutes, or any
34 other provision of law. This Article only authorizes the operation of video sweepstakes
35 machines or devices that associate the prize with an entry or entries at the time the sweepstakes
36 is entered and one or both of the following circumstances apply:

37 (1) A person may enter or is eligible to win a sweepstakes prize without
38 purchasing or payment of any consideration for (i) any item, product,
39 service, or (ii) the right to possess, use, or otherwise obtain value from any
40 item, product, or service.

41 (2) The person may enter or is eligible to win a sweepstakes prize as the result
42 of the purchase of, or payment of any consideration for (i) any item, product,
43 service, or (ii) the right to possess, use, or otherwise obtain value from any
44 item, product, or service, and the purchase price or the consideration paid by
45 the person is the fair market value of item, product, or service."

46 **SECTION 2.** G.S. 14-306.4 is repealed.

47 **SECTION 3.** G.S. 160A-211 is amended by adding a new subsection to read:

48 "(b1) Video Sweepstakes Restriction. – A city may not impose a license, franchise, or
49 privilege tax on a person operating a video sweepstakes establishment except as provided in
50 G.S. 105-113.128."

1 **SECTION 4.** This act is effective when it becomes law and applies to video
2 sweepstakes establishments operated in this State on or after January 1, 2013.