



OFFICE OF THE SHERIFF
BUNCOMBE COUNTY, NORTH CAROLINA
202 Haywood Street Asheville, N.C. 28801
Van Duncan, Sheriff

Dear business owner/operator,

Over the last year there has been much confusion regarding the legality surrounding all areas of video gambling in North Carolina. While the video gaming industry fought the constitutionality of current North Carolina General Statutes outlawing specific types of video gambling, the North Carolina Court of Appeals, in a unanimous decision, ruled in December 2009 that all current North Carolina General Statutes regarding video gaming and gambling were in fact constitutional and did not violate the Indian Gaming Regulatory Act (IGRA). Because the decision was unanimous, the video gaming industry did not have the right of appeal to the North Carolina Supreme Court.

Since then, the North Carolina General Assembly has passed additional legislation regarding video gaming and gambling which became effective December 1, 2010. Again, the video gaming industry has filed lawsuits arguing the constitutionality of this most recent statute. We (law enforcement) have sought specific guidance from the North Carolina Attorney General's Office regarding our ability to legally and fairly enforce this new statute. The Attorney General's Office has replied in an opinion that the new North Carolina General Statute is valid and able to be enforced within the state.

North Carolina General Statutes 14-305, 306.1A and 306.4 (the newest) are the primary statutes that regulate the legality of slot machines and video gambling and gaming. Copies of these statutes are enclosed for your records. Please note that North Carolina General Statute 14-306.4 includes the phrase "by way of illustration and not exclusion." This references games listed in subsection (a)-(h), meaning for example that if someone takes an illegal video Pot of Gold game and makes minor modifications and changes the name to Pot of Silver, the new game will still be illegal under the new statute. Be aware of this as unscrupulous vendors may try to convince you that new games are legal fall within general statutes.

Service ♦ Accountability ♦ Integrity ♦ Professionalism ♦ Dignity

In an effort to be fair to all those who believe they have operated within the law prior to December 1st, the Buncombe County Sheriff's Office will give business owner/operators until January 1, 2011 to remove all illegal machines from their premises before we begin enforcement actions. However, at any time after this date my deputies will be given full enforcement authority to act when illegal machines are discovered.

If you are in question regarding the legality of any machine, you are encouraged to contact our Office at 250-4436 and someone on our staff will speak with you or send a deputy to your business if necessary.

Sincerely,

Van Duncan, Sheriff of Buncombe County

§ 14-305. Agreements with reference to slot machines or devices made unlawful.

It shall be unlawful to make or permit to be made with any person any agreement with reference to any slot machines or device where the user may become entitled to receive any money, credit, allowance, or any thing of value, as defined in G.S. 14-306 pursuant to which the user thereof may become entitled to receive any money, credit, allowance, or anything of value or additional chance or right to use such machines or devices, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value. (1937, c. 196, s. 2; 1989, c. 406, s. 6.)

§ 14-306. Slot machine or device defined.

(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 of any piece of money or coin or other object, 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.

(b) The definition contained in subsection (a) of this section and G.S. 14-296, 14-301, 14-302, and 14-305 does not include coin-operated machines, video games, pinball machines, and other computer, electronic or mechanical devices that are operated and played for amusement, that involve the use of skill or dexterity to solve problems or tasks or to make varying scores or tallies and that:

- (1) Do not emit, issue, display, print out, or otherwise record any receipt, paper, coupon, token, or other form of record which is capable of being redeemed, exchanged, or repurchased for cash, cash equivalent, or prizes, or award free replays; or
- (2) In actual operation, limit to eight the number of accumulated credits or replays that may be played at one time and which may award free replays or paper coupons that may be exchanged for prizes or merchandise with a value not exceeding ten dollars (\$10.00), but may not be exchanged or converted to money.

(c) Any video machine, the operation of which is made lawful by subsection (b)(2) of this section, shall have affixed to it in view of the player a sticker informing that person that it is a criminal offense with the potential of imprisonment to pay more than that which is allowed by law. In addition, if the machine has an attract chip which allows programming, the static display shall contain the same message.

(d) The exception in subsection (b)(2) of this section does not apply to any machine that pays

off in cash. The exemption in subsection (b)(2) of this section does not apply where the prizes, merchandise, credits, or replays are (i) repurchased for cash or rewarded by cash, (ii) exchanged for merchandise of a value of more than ten dollars (\$10.00), or (iii) where there is a cash payout of any kind, by the person operating or managing the machine or the premises, or any agent or employee of that person. It is also a criminal offense, punishable under G.S. 14-309, for the person making the unlawful payout to the player of the machine to violate this section, in addition to any other person whose conduct may be unlawful. (1937, c. 196, s. 3; 1967, c. 1219; 1977, c. 837; 1985, c. 644; 1989, c. 406, s. 1; 1993, c. 366, s. 1; 2000-151, s. 4.)



HOUSE BILL 80: Ban Electronic Sweepstakes

2009-2010 General Assembly

Committee: Senate Judiciary I Rep.
Introduced by: Goodwin Second
Analysis of: Edition
H80-PCS30528-ST-91

Date: June 16, 2010
Prepared by: Susan Sitze
Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 80 would ban the use of electronic machines and devices for sweepstakes purposes.*

[As introduced, this bill was identical to S38, as introduced by Sen. Clodfelter, which is currently in Unknown.]

BILL ANALYSIS:

Section 1 of the proposed committee substitute creates a new G.S. 14-306.4 to prohibit electronic machines and devices for sweepstakes.

Subsection (a) defines the terms "electronic machine or device", "enter or entry", "prize", and "sweepstakes".

Subsection (b) makes it unlawful for an electronic machine or device to be owned, leased, or possessed and operated or allowed to be operated to conduct a sweepstakes or to engage in any process or activity associated with a sweepstakes, unless is specifically authorized in subsection (c).

Subsection (c) provides that is shall **not** be unlawful to use an electronic machine or device:

- That are video games, pinball machines, etc. that do not provide any kind of prize, as defined in G.S. **14-306(b)(1)**.
- If it is being used only by the person conducting a sweepstakes and is used for accepting entry information, creating an informational website, maintaining sweepstakes records, or operational software for a sweepstakes that meets all the criteria provided in sub-subdivisions (4)b. through (4)h. (see below)
- If it is used to notify an entrant that the entrant has won a prize in a sweepstakes that meets all the criteria provided in sub-subdivisions (4)b. through (4)h. (see below)
- To conduct a sweepstakes that satisfies all of the following criteria:
 - o (4)a. The entry is conducted by either:
 - Using a customer reward card
 - Electronically transmitting identifying information
 - o (4)b. There is no entertaining display or reveal of a prize
 - o (4)c. Entrants are not allowed to subdivide an entry or substitute or subdivide a prize
 - o (4)d. Notification of a prize is by mail, email, text, or phone on a date later than the date of entry
 - o (4)e. Entrants are not notified of any prize awarded at the time or place of entry

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- o (4)f. The sweepstakes is open for a minimum of 7 calendar days and prizes are determined by a random drawing conducted after this time.
- o (4)g. A list of all sweepstakes prizes and prize winners from the previous 12 months is available upon request.
- o (4)h. There is a free method of entry into the sweepstakes.

Subsection (d) states that it is the intent of G.S. 14-306.4 to prohibit any electronic machine or device or other mechanism that seeks to avoid application of this section through the use of any subterfuge or pretense. It is also the intent to allow a person to provide identifying information to enter a sweepstakes and to allow a person conducting a sweepstakes to notify an entrant of the status or outcome.

Subsection (e) provides that G.S. 14-306.4 does not make any of the following illegal:

- « Any activity lawfully conducted on Indian lands pursuant to a Tribal-State Gaming Compact.
- » Any lottery game allowed by Chapter 18C.
- « Any raffle or bingo game allowed by Part 2 of Chapter 14.

Subsection (f) provides that each violation of this section shall be considered a separate offense.

Subsection (g) provides the following penalties for violation:

- First offense - Class 1 misdemeanor
- Second offense - Class H felony
- Third or subsequent offense - Class G felony

Subsection (h) authorizes the seizure and disposal, pursuant to G.S. 15-11.1, of electronic machines or devices used in violation of the statute.

Section 2 amends the definition of slot machine in G.S. 14-306(a) to include a token, credit card, debit card, prepaid card, or any other method that requires payment to activate play as forms of payment in the definition.

Section 3 amends the definition of video gaming machine in G.S. 14-306.1A(b) to include a prepaid card as a form of payment.

EFFECTIVE DATE: This act becomes effective December 1, 2010, and applies to offenses committed on or after that date.

BACKGROUND: In *American Treasures v. State*, 173 N.C. App. 170 (2005), the North Carolina Court of Appeals addressed whether a free promotional game piece attached to a prepaid phone card with which a consumer could win a prize constituted an illegal lottery or form of gambling. Customers could also participate in the game without purchasing a phone card by sending a written request to the Plaintiff, Treasured Arts, Inc. Applying Article 37 of Chapter 14, the Court of Appeals found that "where, in order to secure a chance to something of greater value, [a person] purchases a token for small consideration or a trivial piece or pays more than the value of the item, the transaction is prohibited." The Court of Appeals upheld the trial court's entry of declaratory judgment in favor of the Plaintiff. According to the Court, the phone card had sufficient value to support the conclusion that the consumer was purchasing the card to obtain lower long distance rates, not to enter and win prizes in the promotional game. Moreover, consumers could enter the game free of charge upon request.