

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 6

Short Title: Ban Video Poker/All But Reservations. (Public)

Sponsors: Senators Albertson; Apodaca, Bingham, Brock, Clodfelter, Dalton, Dannelly, Dorsett, Forrester, Garrou, Garwood, Goodall, Horton, Hunt, Jacumin, Jenkins, Lucas, Malone, Pittenger, Presnell, Purcell, Rand, Smith, and Stevens.

Referred to: Judiciary I.

January 27, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROHIBIT THE POSSESSION OR OPERATION OF VIDEO GAMING
2 MACHINES EXCEPT BY A FEDERALLY RECOGNIZED INDIAN TRIBE AS
3 AUTHORIZED BY THE INDIAN GAMING REGULATORY ACT AND A
4 VALID TRIBAL-STATE COMPACT.
5

6 Whereas, the State of North Carolina desires to clearly set forth its policy
7 against commercial forms of gaming; and

8 Whereas, the State of North Carolina desires to recognize the unique
9 relationship between it and the federally recognized Indian tribe within the State; and

10 Whereas, the State of North Carolina desires to make it clear that it does not
11 consider the activities of the Eastern Band of Cherokee Indians conducted pursuant to
12 the Compact between it and the Eastern Band of Cherokee Indians to be commercial
13 gaming because the Federal Indian Gaming Regulatory Act restricts the use of proceeds
14 from gaming operations conducted by federally recognized Indian tribes to
15 governmental services and activities that further the self-determination of the tribe; and

16 Whereas, the State of North Carolina desires to reaffirm that all activities
17 conducted pursuant to such Compact or any amendment thereto are not commercial
18 gaming and that same are lawful and not against the public policy of the State of North
19 Carolina; and

20 Whereas, the State of North Carolina recognizes the tribe's substantial capital
21 investment in reliance on the Compact, the payments made by the tribe pursuant to the
22 Compact, and the creation of jobs and other positive impacts the tribe's activities have
23 brought to the entire economy of Western North Carolina; and

24 Whereas, the State, through this legislation, intends to make it clear that the
25 State will honor its commitments under the Compact and amendments, to further
26 express its legislative intent to fully recognize the rights of the tribe in its special

1 sovereign governmental authority to conduct gaming on tribal lands, and to express the
2 intent of the State to recognize as lawful, on tribal lands, all gaming activities conducted
3 by the tribe pursuant to the approved Tribal-State Compact as the same may from time
4 to time be amended by the tribe and the State; Now, therefore,
5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 14-306.1 is repealed.

7 **SECTION 2.** Part 1 of Article 37 of Chapter 14 of the General Statutes is
8 amended by adding a new section to read:

9 **"§ 14-306.1A. Types of machines and devices prohibited by law; penalties.**

10 (a) Ban on Machines. – It shall be unlawful for any person to operate, allow to be
11 operated, place into operation, or keep in that person's possession for the purpose of
12 operation any video gaming machine as defined in subsection (b) of this section, except
13 for the exemption for a federally recognized Indian tribe under subsection (e) of this
14 section for whom it shall be lawful to operate and possess machines as listed in
15 subsection (b) of this section if conducted in accordance with an approved Class III
16 Tribal-State Compact applicable to that tribe, as provided in G.S. 147-12(14) and
17 G.S. 71A-8.

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

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

22 (2) A video bingo game.

23 (3) A video craps game.

24 (4) A video keno game.

25 (5) A video lotto game.

26 (6) Eight liner.

27 (7) Pot-of-gold.

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

31 For the purpose of this section, a video gaming machine is a video machine which
32 requires deposit of any coin or token, or use of any credit card, debit card, or any other
33 method that requires payment to activate play of any of the games listed in this
34 subsection. The enumeration of games in the list in this subsection does not authorize
35 the possession or operation of such game if it is otherwise prohibited by law.

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

42 (c) Exemption for Certain Machines. – This section shall not apply to
43 assemblers, repairers, manufacturers, and transporters of video gaming machines who
44 assemble, repair, manufacture, and transport them for sale in another state as long as the

1 machines, while located in this State, cannot be used to play the prohibited games and
2 does not apply to those who assemble, repair, manufacture, and sell such machines for
3 use only by a federally recognized Indian tribe if such machines may be lawfully used
4 on Indian land under the Indian Gaming Regulatory Act.

5 (d) Ban on Warehousing. – It is unlawful to warehouse any video gaming
6 machine except in conjunction with the permitted assembly, repair, manufacture, and
7 transportation of such machines under subsection (c) of this section.

8 (e) Exemption for Activities Under IGRA. – Notwithstanding any other
9 prohibitions in State law, the form of Class III gaming otherwise prohibited by
10 subsections (a) through (d) of this section may be legally conducted on Indian lands
11 which are held in trust by the United States Government for and on behalf of federally
12 recognized Indian tribes if conducted in accordance with an approved Class III
13 Tribal-State Gaming Compact applicable to that tribe as provided in G.S. 147-12(14)
14 and G.S. 71A-8."

15 **SECTION 3.** G.S. 14-306.2 reads as rewritten:

16 "**§ 14-306.2. Violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A a violation of the ABC laws.**

17 A violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A is a violation of the gambling statutes
18 for the purposes of G.S. 18B-1005(a)(3)."

19 **SECTION 4.** G.S. 147-12(14) reads as rewritten:

20 "(14) ~~To~~ Notwithstanding subsections (a) through (d) of G.S. 14-306.1A, to
21 negotiate and enter into Class III Tribal-State gaming compacts, and
22 amendments thereto, on behalf of the ~~State~~ State, consistent with State
23 law (G.S. 14-306.1A(e) and G.S. 71A-8) and the Indian Gaming
24 Regulatory Act, Public Law 100-497, as necessary to allow a federally
25 recognized Indian tribe to operate gaming ~~activities~~ activities,
26 including those games allowed pursuant to G.S. 14-306.1A(e), in this
27 State as permitted under federal law."

28 **SECTION 5.** G.S. 71A-8 reads as rewritten:

29 "**§ 71A-8. Authorization for federally recognized Indian tribes.**

30 In recognition of the governmental relationship between the State, federally
31 recognized Indian tribes and the United States, a federally recognized Indian tribe may
32 conduct games consistent with the Indian Gaming Regulatory Act, Public Law 100-497,
33 that are in accordance with a valid Tribal-State compact executed by the Governor
34 pursuant to G.S. 147-12(14) and approved by the U.S. Department of Interior under the
35 Indian Gaming Regulatory Act, and such ~~games~~ games, including those permitted under
36 G.S. 14-306.1A(e), shall not be unlawful or be lawful and not against the public policy
37 of the State if the State permits such gaming for any purpose by any person,
38 organization, or entity. if conducted by a federally recognized Indian tribe on federal
39 Indian Trust Lands within the State in accordance with a Tribal-State Gaming Compact
40 applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8."

41 **SECTION 6.** G.S. 14-298 reads as rewritten:

42 "**§ 14-298. ~~Gaming tables, illegal punchboards, slot machines, and prohibited~~**
43 **~~video game machines to be destroyed by police officers.~~Seizure of**
44 **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, 14-306.1A,~~ that is in the
7 possession or use of any person within the limits of their ~~jurisdiction,~~ jurisdiction when
8 probable cause exists as to the unlawful possession or use, to destroy the same by every
9 means in their power; and they shall call to their aid all the good citizens of the county,
10 if necessary, to effect 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 (d) This section does not prohibit any activities which are legally conducted by a
27 federally recognized Indian tribe pursuant to G.S. 14-306.1A(e), 147-12(14), and
28 71A-8."

29 **SECTION 7.** Effective with respect to offenses committed on or after
30 December 1, 2005, G.S. 14-309(b) is repealed.

31 **SECTION 8.** G.S. 105-256(d)(1) is repealed, but that repeal does not affect
32 reports for activities prior to December 1, 2005.

33 **SECTION 9.** This act becomes effective December 1, 2005, and applies to
34 offenses committed on or after that date but also applies to compacts and amendments
35 thereto executed before that date. If a court of competent jurisdiction in this State issues
36 a stay to prohibit possession or operation of video gaming machines by a federally
37 recognized Indian tribe, as authorized by a valid Tribal-State Compact, because that
38 activity is not allowed on non-Indian lands pursuant to this act, this act is suspended and
39 shall not have the force of law until such time as the stay is dissolved or a final order is
40 entered. If a court of competent jurisdiction in this State issues a final order that
41 prohibits the possession or operation of video gaming machines by a federally
42 recognized Indian tribe, as authorized by a valid Tribal-State Compact, because that
43 activity is not allowed on non-Indian lands, this act is void.