

LEXSTAT NOCODE 14-306.1A

GENERAL STATUTES OF NORTH CAROLINA
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*** This document is current through the 2008 Regular Session ***
*** Annotations are current through September 19, 2008 ***

CHAPTER 14. CRIMINAL LAW
SUBCHAPTER 11. GENERAL POLICE REGULATIONS
ARTICLE 37. LOTTERIES, GAMING, BINGO AND RAFFLES
PART 1. LOTTERIES AND GAMING

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N.C. Gen. Stat. § 14-306.3 (2008)

§ 14-306.3. Certain game promotions unlawful

- (a) It is unlawful to promote, operate, or conduct a server-based electronic game promotion.
- (b) It is unlawful for any person to possess any game terminal with a display that simulates a game ordinarily played on a slot machine regulated under G.S. 14-306 or a video gaming machine regulated under G.S. 14-306.1A for the purpose of promoting, operating, or conducting a server-based electronic game promotion.
- (c) As used in this section, "server-based electronic game promotion" means a system that meets all of the following criteria:
- (1) A database contains a pool of entries with each entry associated with a prize value.
 - (2) Participants purchase, or otherwise obtain by any means, a prepaid card.
 - (3) With each prepaid card purchased or obtained, the participant also obtains one or more entries.
 - (4) Entries may be revealed in any of the following ways:
 - a. At a point-of-sale terminal at the time of purchase or later.
 - b. At a game terminal with a display that simulates a game ordinarily played on a slot machine regulated under G.S. 14-306 or a video gaming machine regulated under G.S. 14-306.1A.
- (d) Upon conviction or plea of guilty, all of the following held by the person shall be automatically revoked:
- (1) A permit issued under Chapter 18B of the General Statutes.
 - (2) A contract to sell tickets or shares under Article 5 of Chapter 18C of the General Statutes.
- (e) Nothing in this section shall apply to the form of Class III gaming legally conducted on Indian lands which are held in trust by the United States government for and on behalf of federally recognized Indian tribes if conducted in accordance with an approved Class III Tribal-State Gaming Compact applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8.

HISTORY: 2008-122, s. 1.

NOTES:

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N.C. Gen. Stat. § 14-306 (2008)

§ 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

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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.

HISTORY: 1937, c. 196, s. 3; 1967, b. 1219; 1977, c. 837; 1985, c. 644; 1989, c. 406, s. 1; 1993, c. 366, s. 1; 2000-151, s. 4.

CASE NOTES

CONSTITUTIONALITY. --The definition of "slot machine" as set forth in this section is not unconstitutionally vague. *State v. Crabtree*, 126 N.C. App. 729, 487 S.E.2d 575 (1997).

SECTIONS 14-301 TO 14-303 AND §§ 14-304 TO 14-309 ARE COMPLEMENTARY. --Sections 14-301, 14-302 and 14-303, proscribing the operation and possession of slot machines of the type therein defined, are not repealed by this section and G.S. 14-305 through 14-309, proscribing ownership, sale, lease and transportation of such slot machines, since the two statutes are not repugnant, but are complementary. *State v. Calcutt*, 219 N.C. 545, 15 S.E.2d 9 (1941).

TEST OF CHARACTER OF GAME. --In *State v. Stroupe*, 238 N.C. 34, 76 S.E.2d 313 (1953), the N.C. Supreme Court determined that the test of the character of a game is whether it is a game of chance or a game of skill, not whether it contains an element of chance or skill, but which is the dominating element that determines the result of the game; or, whether or not the element of chance is present in such a manner as to thwart the exercise of skill or judgment. *Collins Coin Music Co. v. North Carolina ABC Comm'n*, 117 N.C. App. 405, 451 S.E.2d 306 (1994).

SUFFICIENCY OF INDICTMENT. --An indictment charging the ownership and distribution of slot machines adapted for use in such a way that as a result of the insertion of a coin the machine may be operated in such a manner that the user may secure additional chances or rights to use such machine and upon which the user has a chance to make various scores upon the outcome of which wagers may be made follows the language of this section and is sufficient to charge the offense therein defined. *State v. Abbott*, 218 N.C. 470, 11 S.E.2d 539 (1940).

VALUATION OF GAMING MACHINES --Defendant could not use the time period in G.S. 105-312(3), dealing with valuation of gaming machines, to defeat his conviction for possessing illegal gambling machines under G.S. 14-306.1(a)(1); the trial court did not err in instructing the jury on the illegal gaming machine charge and in refusing defendant's requested charge where there was sufficient evidence that defendant's warrantless arrest was proper. *State v. Childers*, 154 N.C. App. 375, 572 S.E.2d 207 (2002), cert. denied, 356 N.C. 682, 577 S.E.2d 899 (2003).

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N.C. Gen. Stat. § 14-306.1A (2008)

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

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

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

- (1) A video poker game or any other kind of video playing card game.
- (2) A video bingo game.
- (3) A video craps game.
- (4) A video keno game.
- (5) A video lotto game.
- (6) Eight liner.
- (7) Pot-of-gold.

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

For the purpose of this section, a video gaming machine is a video machine which requires deposit of any coin or

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token, or use of any credit card, debit card, or any other method that requires payment to activate play of any of the games listed in this subsection.

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

(c) Exemption for Certain Machines. -- This section shall not apply to:

(1) Assemblers, repairers, manufacturers, sellers, lessors, or transporters of video gaming machines who assemble, repair, manufacture, sell, lease, or transport them for use out-of-state, or

(2) Assemblers, repairers, manufacturers, sellers, lessors, or transporters of video gaming machines who assemble, repair, manufacture, sell, or lease video gaming machines for use only by a federally recognized Indian tribe if such machines may be lawfully used on Indian land under the Indian Gaming Regulatory Act.

To qualify for an exemption under this subsection, the machines must be disabled and not operable, unless the machines are located on Indian land where they may be lawfully operated under a Tribal-State Compact.

(d) Ban on Warehousing. -- It is unlawful to warehouse any video gaming machine except in conjunction with the activities permitted under subsection (c) of this section.

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

(f) Machines described in G.S. 14-306(b)(1) are excluded from this section.

HISTORY: 2006-6, s. 4; 2006-259, s. 6.

NOTES:

EDITOR'S NOTE. --Session Laws 2006-6, s. 12, makes this section effective July 1, 2007, and applicable to offenses committed on or after that date.

Session Laws 2006-6, s. 12, provides, in part: "Prosecutions for offenses committed before the effective dates in this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions. If a final Order by a court of competent jurisdiction prohibits possession or operation of video gaming machines by a federally recognized Indian tribe because that activity is not allowed elsewhere in this State, this act is void."

EFFECT OF AMENDMENTS. --Session Laws 2006-259, s. 6, effective August 23, 2006, added subsection (f).

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EVIDENCE. --Where it was admitted that the machines in question were owned by one defendant and rented by him to the other defendants, testimony of an officer, who had examined and studied the machines, that from his observation they could be converted, or reconverted, to coin slot operated machines by simple mechanical changes was evidence sufficient to overrule defendants' demurrer, and the fact that the witness failed to complete a demonstration of the conversion of such a machine because of lack of soldering tools did not amount to a failure of the State's evidence upon the critical issue. *State v. Davis*, 229 N.C. 552, 50 S.E.2d 668 (1948).

VIDEO CARD GAME HELD ILLEGAL. --Where the operation of video card game depended upon chance rather than a player's skill or dexterity, and a player could win, from a single hand, coupons worth more than ten dollars (\$10.00), plaintiffs' machines did not fall within the exception in this section and were illegal slot machines. *Collins Coin Music Co. v. North Carolina ABC Comm'n*, 117 N.C. App. 405, 451 S.E.2d 306 (1994).

EXCEPTION FOR GAMING BY A FEDERALLY RECOGNIZED INDIAN TRIBE. Prohibition by the State of North Carolina against the operation of video gaming machines does not apply to gaming activities undertaken by a federally recognized Indian Tribe under the Indian Gaming Regulatory Act, 25 U.S.C.S. § 2710 et seq. *Hatcher v. Herrab's NC Casino Co., LLC*, 169 N.C. App. 151, 610 S.E.2d 210 (2005).

APPLIED in *State v. Campbell*, 79 N.C. App. 468, 339 S.E.2d 674 (1986).

CITED in *Ford v. State, Dep't of Crime Control & Pub. Safety*, 115 N.C. App. 556, 445 S.E.2d 425 (1994); *Helton v. Good*, 208 F. Supp. 2d 597 (W.D.N.C. 2002).

OPINIONS OF THE ATTORNEY GENERAL

LEGAL VIDEO POKER MACHINES. --*Collins Coin Music Co. v. N.C. Alcoholic Beverage Control Comm.*, 117 N.C. App. 405, cert. denied, 340 N.C. 110 (1995), is no longer controlling when determining whether a video poker machine is a legal machine as defined in this section. In order to be exempt under present law from the definition of an illegal slot machine, the video poker machine must satisfy each of the following statutory criteria: 1. the machine must be "used for amusement;" 2. the players ability to make varying scores and receive coupons must "involve the use of skill or dexterity;" 3. in actual operation, 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 is limited to eight; and 4. the coupons or credits that a player can accumulate in a single hand may not be exchanged for cash and may not be exchanged for merchandise having a value greater than \$10.00. See opinion of Attorney General to The Honorable Billy J. Crook N.C. House of Representatives, 1997 N.C.A.G. 66 (11/5/97).