

January 9, 2013

As you are probably aware, the Supreme Court of North Carolina in *Hest v State of North Carolina* upheld a state law that made it illegal to conduct sweepstakes through the use of an entertaining display. CMPD is also aware that several companies that own the software used in various sweepstakes have provided software updates to their clients that is supposed to bring a sweepstakes operation into compliance with the law.

Now is a good time for you to take a look at any sweepstakes operation, entertainment display or simulation of gaming devices along with the software in your possession to determine whether or not it is in compliance with state law. We recommend that if you have any questions concerning the legality of the device or the software program utilized by a device that you contact legal counsel immediately. Copies of the pertinent statutes can also be found on the CMPD website under "Video Sweepstakes."

This notice is by no means to be construed as a moratorium on CMPD enforcement options or approval of any particular sweepstakes operation. CMPD will continue to enforce the laws related to these devices on a case by case basis.

Charlotte-Mecklenburg Police Department

§ 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 payment of any piece of money or coin or token or any credit card, debit card, prepaid card, or any other method that requires payment to activate play, whether directly into the slot machine or device or resulting in remote activation, 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.

§ 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\(a\)](#) and other forms of electrical, mechanical, or computer games such as, by way of illustration and not exclusion:

- (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.

(9) Any other video game not dependent on skill or dexterity that is played while revealing a prize as the result of an entry into a sweepstakes.

For the purpose of this section, a video gaming machine is a video machine which requires deposit of any coin or token, or use of any credit card, debit card, prepaid card, or any other method that requires payment, whether directly into the video gaming machine or resulting in remote activation, 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.

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

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

§ 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](#).

§ 14-306.4. Electronic machines and devices for sweepstakes prohibited

(a) Definitions. -- For the purposes of this section, the following definitions apply:

(1) "Electronic machine or device" means a mechanically, electrically or electronically operated machine or device, that is owned, leased or otherwise possessed by a sweepstakes sponsor or promoter, or any of the sweepstakes sponsor's or promoter's partners, affiliates, subsidiaries or contractors, that is intended to be used by a sweepstakes entrant, that uses energy, and that is capable of displaying information on a screen or other mechanism. This section is applicable to an electronic machine or device whether or not:

- a. It is server-based.
- b. It uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries.
- c. It utilizes software such that the simulated game influences or determines the winning or value of the prize.
- d. It selects prizes from a predetermined finite pool of entries.
- e. It utilizes a mechanism that reveals the content of a predetermined sweepstakes entry.
- f. It predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed.
- g. It utilizes software to create a game result.
- h. It requires deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of payment to activate the electronic machine or device.
- i. It requires direct payment into the electronic machine or device, or remote activation of the electronic machine or device.
- j. It requires purchase of a related product.
- k. The related product, if any, has legitimate value.
- l. It reveals the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded.
- m. It determines and associates the prize with an entry or entries at the time the sweepstakes is entered.

n. It is a slot machine or other form of electrical, mechanical, or computer game.

(2) "Enter" or "entry" means the act or process by which a person becomes eligible to receive any prize offered in a sweepstakes.

(3) "Entertaining display" means visual information, capable of being seen by a sweepstakes entrant, that takes the form of actual game play, or simulated game play, such as, by way of illustration and not exclusion:

a. A video poker game or any other kind of video playing card game.

b. A video bingo game.

c. A video craps game.

d. A video keno game.

e. A video lotto game.

f. Eight liner.

g. Pot-of-gold.

h. 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.

i. Any other video game not dependent on skill or dexterity that is played while revealing a prize as the result of an entry into a sweepstakes.

(4) "Prize" means any gift, award, gratuity, good, service, credit, or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

(5) "Sweepstakes" means any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, the determination of which is based upon chance.

(b) Notwithstanding any other provision of this Part, it shall be unlawful for any person to operate, or place into operation, an electronic machine or device to do either of the following:

(1) Conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize.

(2) Promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize.

(c) It is the intent of this section to prohibit any mechanism that seeks to avoid application of this section through the use of any subterfuge or pretense whatsoever.

(d) Nothing in this section shall be construed to make illegal any activity which is lawfully conducted on Indian lands pursuant to, and in accordance with, an approved Tribal-State Gaming Compact applicable to that Tribe as provided in [G.S. 147-12\(14\)](#) and [G.S. 71A-8](#).

(e) Each violation of this section shall be considered a separate offense.

(f) Any person who violates this section is guilty of a Class 1 misdemeanor for the first offense and is guilty of a Class H felony for a second offense and a Class G felony for a third or subsequent offense.

§ 14-308. Declared a public nuisance

An article or apparatus maintained or kept in violation of [G.S. 14-304](#) through 14-309 is a public nuisance.