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Restrictions on Video Gaming Machines ----- The Legislation

Senate Bill 1542, S.L. 2000-151, Video Poker Machines, was enacted into law by the 2000 Session of the North Carolina General Assembly and places very tight restrictions on the possession, use and operation of video poker machines. Although the machines are commonly referred to as video “poker” machines, the correct term used by the General Assembly is video “gaming” machines.

Many parts of this new law are clear from reading the legislation, and Sheriffs and other law enforcement officers will be able to enforce these provisions of the law when clear-cut, substantial violations of the law are discovered. However, some questions have been asked about certain parts of the law where the answers are not quite as clear.

Sheriffs and other law enforcement officers that have questions about potential violations of this law that are not clear-cut and substantial are encouraged to obtain legal advice from the Sheriff’s Office Legal Advisor, the local District Attorney’s Office, the Attorney General’s Office or another attorney who is familiar with this legislation.

One of the first issues to consider in deciding if a video gaming machine is lawful in North Carolina is whether or not the machine was listed with the county tax assessor by January 31, 2000 for ad valorem property taxes. Sheriffs and other law enforcement officers who have questions about whether a particular video gaming machine was listed for property taxes by January 31, 2000 should consult with their county tax assessor. Additionally, to be lawful in North Carolina, the video gaming machine must also have been in operation in North Carolina on or before June 30, 2000. These two requirements are discussed in more detail below.

What Is A Video Gaming Machine?—Definitions

1. N.C. Gen. Stat. § 14-306.1(c) defines a video gaming machine to mean:

   (A) a slot machine as defined in N.C. Gen. Stat. § 14-306(a); and

   (B) other forms of electrical, mechanical, or computer games such as:

       (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.

2. For the purpose of this law, a “video gaming machine” is a video machine which requires the deposit of any coin, 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 paragraphs 1(A) or 1(B) above. The inclusion of games listed in paragraphs 1(A) or 1(B) above does not authorize the possession or operation of the game if it is otherwise prohibited by law.

3. For a video gaming machine to be legal, it must meet three (3) requirements. It must be a coin-operated machine, video game, pinball machine, or other computer, electronic or mechanical device that is operated and played for amusement, that involves the use of skill or dexterity to solve problems or tasks or to make varying scores or tallies, and it must limit to eight the number of accumulated credits or replays that may be played at one time, and the machine may award free replays or paper coupons that may be exchanged for prizes or merchandise as long as the value of the prizes or merchandise does not exceed ten dollars ($10.00), and as long as the free replays, paper coupons and prizes or merchandise may not be exchanged or converted to money.

4. Certain machines are not defined as “video gaming machines” and therefore are not regulated by the restrictions that apply to video gaming machines. Machines that are not defined as a “video gaming machine” must meet two (2) requirements, which are that the machines must be: 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 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.

What Video Gaming Machines Are Allowed in North Carolina?

5. Video gaming machines can no longer be brought into North Carolina, but machines already in North Carolina are allowed to stay as long as they:

(a) were lawfully in operation, and available for play, in North Carolina on or before June 30, 2000; and

(b) were listed in North Carolina by January 31, 2000 for ad valorem property taxation for the 2000-2001 tax year.

Unless the video gaming machine was both lawfully in operation and available for play in North Carolina on or before June 30, 2000 and was listed in North Carolina by January 31, 2000 for ad valorem property taxes, it is “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” the video gaming machine.

Machines that are not defined as ‘video gaming machines” (as explained in paragraph 4 above) are lawful and allowed in North Carolina. There is no limit on the number or location of these lawful machines.

6. Was the video gaming machine listed for ad valorem property taxes by January 31, 2000? While this seems like an easy issue to determine, several different fact situations may make it hard to answer this question. EXAMPLES:

A. The video gaming machine was not located in North Carolina on January 1, 2000, but was brought into NC after that date. Therefore, the machine could not have been listed for property taxes by January 31, 2000. A video gaming machine like this is ILLEGAL and should not be registered by the Sheriff.

B. The video gaming machine was located in NC on January 1, 2000, but was not listed for property taxes by January 31,
2000. The new statute [N.C. Gen. Stat. § 14-306.1(a)(1)b] states that the video gaming machine must be “listed” for property taxes in North Carolina “by” January 31, 2000. It was the intent of the General Assembly members who added this provision to the legislation that video gaming machines that were not listed for property taxes by January 31, 2000 would be illegal and should not be registered by the Sheriff.

Since the new law has been enacted, it has been suggested that video gaming machines that were not actually listed for property taxes by January 31, 2000 could be found to be in compliance with this legal requirement if:

(1) an extension of time to file property taxes was properly obtained by the machine owner [under N.C. Gen. Stat. § 105-307] and the machine was listed for taxes within the time allowed by the extension; or

(2) the machine was listed for property taxes after January 31, 2000 as “discovered property” [under N.C. Gen. Stat. § 105-312 (e)]. This “discovered property” statute allows the tax assessor to list property for taxes (that should have already been listed) when the tax assessor “discovers” the unlisted property. Property, such as a video gaming machine, could be “discovered” by the tax assessor and listed for property taxes when the owner of the unlisted property tells the tax assessor about the property.

If owners of video gaming machines who did not list their machines for property taxes “by January 31, 2000” list them after January 31, 2000 pursuant to an “extension of time” or as “discovered property,” and then try to register the machines with a Sheriff, the Sheriff will have to decide whether or not to accept this as satisfactory evidence that the machine was listed in North Carolina “by January 31, 2000” for property ad valorem taxes. If there is a difference of opinion on this issue, it will require a court to decide which of these interpretations of this provision of the new law is correct.
C. The video gaming machine was located in NC on January 1, 2000, was listed for property taxes by January 31, 2000 in the county where the owner was located, but was not listed for property taxes in the county where the machine was actually located on January 1, 2000. A video gaming machine like this meets this particular requirement for registration by the Sheriff and should be registered if it meets all other requirements for registration.

7. It is lawful for businesses to assemble, manufacture and transport video gaming machines for sale in another state or for sale to the Cherokee Indian Reservation casino (or another federally recognized Indian Tribe), as long as the machines, while located in North Carolina, cannot be used to play the games that are prohibited in North Carolina.

This is a very limited exception to this law and was designed to apply to only one or two businesses in NC that manufacture video gaming machines. To qualify for this exception, the business must meet all three (3) requirements: assemble, manufacture and transport.

Rules and Regulations

8. It is unlawful to possess more than three (3) video gaming machines at one location. Possession of five (5) or more machines at one location is a Class G felony.

If more than three (3) machines are in one location, all of the machines (not just the machines in excess of the first three) are unlawful and Sheriffs and other law enforcement officers should seize all of the machines in that location as evidence of a crime.

9. A “location” is defined as “a permanent building having, or being within, a single exterior structure.”

10. Any one location with video gaming machines cannot be located within 300 feet of another location with video gaming machines, unless video gaming machines were lawfully in operation at two places within 300 feet of each other, under separate ownership, prior
11. Video gaming machines can only be operated in permanent buildings. This provision prohibits operation of the machines in tents, trailers, motor vehicles (such as big trucks), outdoors, in temporary buildings or structures, or in other places that are not a permanent building.

12. It is unlawful to “warehouse” video gaming machines. The term “warehouse” is not defined in the new law and therefore the courts will rely on the dictionary definition, or perhaps a definition found in other court cases if the court believes that it would be helpful and appropriate to do so. In this statute, the term “warehouse” is used as a verb, rather than as a noun. In Merriam-Webster’s Collegiate® Dictionary, the word “warehouse,” when used as a verb, is defined as: “to deposit, store, or stock in or as if in a warehouse.”

13. It appears to have been the General Assembly’s intent that video gaming machines can be repaired, and can be brought to a repair shop for the repair. Broken video gaming machines that cannot be operated do not meet the definition of a “video gaming machine.” It is not clear in the law exactly when repairs to a machine are so extensive that it becomes a new (and therefore unlawful) video gaming machine. This issue will have to be resolved by the courts or by a future Session of the General Assembly.

What if the owner (or a repair shop) repairs the machine but, before returning the machine to its original location, has more than three (3) repaired machines at the premises? Or, what if the owner (or a repair shop) has more than three (3) machines at the premises waiting to deliver them to other locations? The possession of more than three (3) video gaming machines at the owner’s (or repair shop’s) premises would be a violation of law if the court found that the machines were in the owner’s “possession for the purpose of operation” or that the machines were being “warehoused.”

Sheriffs and other law enforcement officers who are considering whether to file criminal charges or to seize video gaming machines which are at an owner’s business or repair shop for repairs are encouraged to obtain legal advice from the Sheriff’s Office Legal
Advisor, the local District Attorney’s Office, the Attorney General’s Office or another attorney who is familiar with this legislation prior to taking action.

14. A violation of the new video gaming laws by an ABC permittee is considered a violation of the Alcoholic Beverage Control (ABC) law. In addition to any other penalties, a violation subjects an ABC permittee to action against their ABC permit(s) by the ABC Commission, including fines, suspensions, or revocation of their ABC permit(s).

15. Persons under the age of 18 are not allowed to play video gaming machines. If a person under the age of 18 plays a video gaming machine, it is an infraction by the individual playing the game, and the penalties described in paragraphs # 21 and #22 (below) apply to the operator of the video gaming machines.

16. Video gaming machines cannot be operated between the hours of 2:00 a.m. Sunday morning through 7:00 a.m. Monday morning. The time that applies is the local time, so during part of the year we use Eastern Standard Time and during the remainder of the year we use Daylight Savings Time.

17. All video gaming machines available for operation shall be in “plain view of persons visiting the premises.”

18. It is unlawful to advertise the operation of video gaming machines by using on-premise or off-premise signs. This also means that no signs are allowed inside the building that tell customers that video gaming machines are located in the business, or are located in a certain part of the business. It does appear to be lawful for a business to have a sign designating a portion of the premises as a “Game Room,” if the sign does not contain any mention of video gaming machines.

19. All video gaming machines allowed to be operated in North Carolina must have a sticker affixed to the machine in view of the player stating that “it is a criminal offense with the potential of imprisonment to pay more than that which is allowed by law.” If the video gaming machine has an “attract chip” which allows programming, the static display shall contain the same message.
20. This law does not prohibit cities or counties from adopting zoning ordinances that more strictly regulate video gaming machines. For example, a local zoning ordinance could ban video gaming machines at any location within a certain distance (i.e. 1000 feet) of a church or school. It is not clear whether or not a local zoning ordinance could lawfully be enacted to completely outlaw video gaming machines in the local zoning jurisdiction.

Penalties

21. Violations of the new video gaming laws are a Class 1 misdemeanor for the first violation, a Class I felony for the second violation and a Class H felony for a third or subsequent violation. However, as stated above, possessing five (5) or more machines at one location is a Class G felony for the first and all subsequent offenses.

In determining whether a criminal offense is punished as a first, second, third or subsequent offense, offenses committed prior to (and after) October 1, 2000 are included.

22. Persons convicted of violating the video gaming law cannot possess any video gaming machines, as follows:

   A. First offense, cannot possess a video gaming machine for one year;
   B. Second offense, cannot possess a video gaming machine for two years; and
   C. Third or subsequent offense, cannot possess a video gaming machine ever again (i.e. permanent).

The prohibitions on possessing video gaming machines begin on the date when the person is actually convicted in court. For purposes of this section, video gaming machine offenses occurring before October 1, 2000 cannot be used as prior offenses.

23. Video gaming machines involved in violations of the video gaming machine or gambling laws may be seized by the Sheriff or other law enforcement officer and shall be destroyed pursuant to N. C. Gen. Stat. § 14-298. This statute does not include any specific procedures that must be followed prior to the destruction of the unlawful video
gaming machines.

Unlawful video gaming machines should be seized by a Sheriff or other law enforcement officer pursuant to a properly issued search warrant, or pursuant to a recognized exception to the search warrant requirement, such as when the unlawful machines are in the officer’s presence in plain view or if lawful machines are used in an unlawful manner in the officer’s presence in plain view.

Before destroying a video gaming machine under N.C. Gen. Stat. § 14-298, prior notice of a judicial hearing, and the right to appear and be heard at the hearing, should be provided to the owner of the machine, pursuant to the Due Process Clause of the United States and North Carolina Constitutions.

Therefore, if a Sheriff or other law enforcement officer has possession of video gaming machines to be used as evidence in a criminal court case or proceeding, at the end of the court case the Sheriff should apply to the court for an appropriate Order authorizing the Sheriff to destroy the video gaming machines.

If the unlawful video gaming machines were seized but no criminal charges were filed related to the seizure, the Sheriff should file an independent action in either District or Superior Court and request that the court issue an appropriate Order authorizing the Sheriff to destroy the video gaming machines. For the court to authorize the Sheriff or other law enforcement officer to destroy the machines under the provisions of N.C. Gen. Stat. § 14-298, the Sheriff or other officer would need to have information, received under oath, that the machines to be destroyed were unlawful.

A copy of a form is included at the back of this publication that can be used by the Sheriff to request a court order that will authorize the Sheriff to destroy the unlawful gaming machines pursuant to N.C. Gen. Stat. § 14-298.

Registration of Video Gaming Machines

24. By October 1, 2000, the owner of each video gaming machine must register the machine with the Sheriff of the county in which the
machine is located, and provide certain information, to include the location of each machine.

25. The law requires that each video gaming machine must be registered using a “standardized registration form supplied by the Sheriff.” The standardized registration form, for use by all Sheriffs, has been designed by the North Carolina Sheriffs’ Association, and a copy is attached. It was the intent of the General Assembly that all video gaming machines be registered using this standardized registration form.

26. The burden is on the owner of the video gaming machine to demonstrate to the Sheriff that the machine the owner is attempting to register is eligible to be registered in North Carolina. The Sheriff must require the machine owner to present reasonable evidence that the machine meets the requirements to be lawful in North Carolina. The standardized registration form requires that this evidence be attached to the registration form at the time it is submitted for registration.

For example, to prove that the machine was listed for ad valorem property taxes in January 2000, the machine owner could provide:

(A) records from the county tax assessor’s office showing that the machine was properly listed for taxes by January 31, 2000;

(B) a signed statement from the county tax assessor that the machine was properly listed for taxes by January 31, 2000;

(C) a sworn statement from a certified public accountant (CPA) who prepared the property tax filing information for the machine owner that verifies that the video gaming machine was included in the items listed for property taxes by January 31, 2000; or

(D) a sworn statement from a professional bookkeeper who prepared the property tax filing information for the machine owner that verifies that the video gaming machine was included in the items listed for property taxes by January 31, 2000.
Each Sheriff must decide what type of “evidence” must be provided by the machine owner to prove to the Sheriff’s satisfaction that the machine meets the legal requirement that the machine was “listed in this State by January 31, 2000 for ad valorem taxation for the 2000-20001 tax year.”

For example, to prove that the machine was in lawful operation in North Carolina on or before June 30, 2000, the machine owner could provide:

(A) a valid lease or contract between the machine owner and the owner of the premises where the machine was located on or before June 30, 2000;

(B) a city or county privilege license for the machine (in the cities and counties that require a privilege license);

(C) a state privilege license for any machine in operation prior to 1997 (when the State stopped requiring privilege licenses);

(D) a sworn affidavit from the property owner where the machine was located; or

(E) a sworn affidavit from the owner of the machine.

Each Sheriff must decide what type of “evidence” must be provided by the machine owner to prove to the Sheriff’s satisfaction that the machine meets the legal requirement that the machine was “lawfully in operation, and available for play, within this State on or before June 30, 2000.”

27. Each time a video gaming machine is moved to another location, the owner must re-register it with the Sheriff BEFORE it is placed into operation at the new location. This requirement applies both: (1) when the machine is moved to a new location within the same county where it was located before; and (2) when it is moved to another county.

28. A material false statement in the registration form for a video gaming machine is grounds for the Sheriff to destroy the machine (pursuant to court order) under N.C. Gen. Stat. § 14-298.
29. If a video gaming machine was eligible to be registered, but was not registered by October 1, 2000, the owner is guilty of a crime and the machine can be seized as evidence of that crime. If the owner is charged with and convicted of the crime, the owner could not possess a video gaming machine for one year for a first offense, or longer for subsequent offenses; and the unregistered machine could be destroyed (pursuant to court order) under N.C. Gen. Stat. § 14-298. However, if the owner was not charged with and convicted of a crime, the owner could still register the video gaming machine with the Sheriff after October 1, 2000.

Reports to be Filed—Studies to be Conducted

30. Each Sheriff is required to submit a report to the General Assembly by November 1, 2000 that explains how many machines are registered in that Sheriff’s county, and how many locations have one, two or three machines.

In mid-September 2000, the North Carolina Sheriffs’ Association will send a notice reminding each Sheriff of this requirement, and will send each Sheriff a form to be filled out to list the required information. The form should be returned to the NC Sheriffs’ Association and the Association will compile all of the individual Sheriffs’ reports into one master report and submit it to the General Assembly as required.

31. The North Carolina Sheriffs’ Association, after consultation with the Division of Alcohol Law Enforcement (ALE) and the Conference of District Attorneys, is required to report to the General Assembly by January 1, 2001 its estimate of the cost of the registration process and the cost of enforcement, along with suggested fees to make the registration and enforcement self-supporting.

Leaders in the General Assembly said they intend for the 2001 General Assembly to enact a registration fee that must be paid by the owner of the registered machine, with all or most of that money going to the Office of the Sheriff (in the county where the machine is located and registered) to be used by the Sheriff to enforce the video gaming laws and other criminal laws. It is expected that the fee will
be an annual fee, and that video gaming machines will be required to be registered annually as well.

32. The owner of each video gaming machine must report, under oath, each calendar quarter to the Department of Revenue the total amount of gross receipts itemized by each machine, the number of machines at that location, and the total value of the prizes and merchandise awarded to players of each machine at that location. These reports must be submitted on a form to be provided by the Department of Revenue.

The reports begin with the first quarter of calendar year 2001, which are due April 15, 2001. The Sheriff may seize video gaming machines if the owner fails to file these reports or if the owner files a report containing a material false statement. The Department of Revenue, upon request of the Sheriff, shall send a copy of this report to the Sheriff of the county where the machine is located.

These reports to be filed by the video gaming machine owners with the Department of Revenue are “informational reports” and are not tax returns. Therefore, they are not confidential, and are a public record that is available upon request to any member of the public (for a reasonable fee to cover copying costs.) The copy to be provided to the Sheriff by the Department of Revenue must be provided to the Sheriff at no charge.

33. The General Assembly’s Legislative Research Commission is directed to study the effects of this new law, and to recommend any changes that they deem necessary to strengthen this law to the General Assembly by April 1, 2001.