

## Current Laws Relating to Video Sweepstakes

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### **GENERAL LAW RELATING TO SWEEPSTAKES:**

- Games of chance are considered to include any games where the winners are selected by a random process (and not by skill), including via a random drawing, seeded winning game cards, or pre-selected winning numbers.
- Games of chance that are considered gambling or lotteries are prohibited in North Carolina (with the exception of the Cherokee casino games, the state-run lottery and certain bingo and raffle games).
- Prohibited games of chance have three basic components: chance, consideration (paying or risking something of value to play), and a prize (anything of value that goes beyond that which is offered to every player).
- For a game of chance to be legal, one of the three elements must be removed. A true legal “sweepstakes” is a game of chance or promotion where the element of consideration is eliminated, generally by offering a free alternate method of entry into the random game.

### **APPELLATE COURT DECISIONS:**

- North Carolina appellate courts have not yet addressed the question of whether Video Sweepstakes and Sweepstakes Machines are legal.
- Appellate courts in other states have consistently ruled that that Video Sweepstakes games are not legal sweepstakes and instead are illegal games of chance.
- These states include Alabama and South Carolina, and the rulings in these various states were based on traditional, long existing, gambling and lottery laws, rather than special statutes aimed at Video Sweepstakes in particular.

### **NORTH CAROLINA BANS ON VIDEO SWEEPSTAKES:**

#### **I. 2007 Ban on “Video Gaming Machines.”**

- After South Carolina banned video poker in 1999, the General Assembly responded by enacting former N.C. GEN. STAT. § 14-306.1. This law banned new “video gaming machines,” but permitted those already in operation to remain.
- The General Assembly repealed that statute and enacted N.C. GEN. STAT. §14-306.1A, which went into effect in July 2007 and banned *all* video gaming machines.
- In order to deal with the ban on video gaming machines, the gambling industry simply reprogrammed their video poker machines to operate as “sweepstakes machines,” by offering a supposed method of free play.

- In April 2008, Guilford County Superior Court Judge John Craig ruled in the *Hest Technologies* case that the Sweepstakes Machines at issue were not illegal under the slot machine and video gaming machine bans.

## II. 2008 Ban on “Server-Based Electronic Game Promotions.”

- The legislature responded by banning “server-based electronic game promotions” through new legislation that became effective on December 1, 2008, and was codified at N.C. GEN. STAT. §**14-306.3**.
- The video gambling industry managed to get around the statute by modifying their machines again by eliminating the use of prepaid cards in their sweepstakes systems and substituting the use of an id number.
- In a second round of the *Hest Technologies* case, Judge Craig said Sweepstakes Machines did not violate the new statute banning “electronic game promotions.”
- In the *Sandhill Amusements* case in June 2009, Wake County Superior Court Judge Paul Ridgeway also ruled that the Sweepstakes Machines at issue were not “server-based electronic game promotions.”

## III. 2010 Ban on Sweepstakes Machines.

- The defeats in the Superior Court cases of *Hest Technologies* and *Sandhill Amusements* prompted legislators last year to enact a new statute, N.C. GEN. STAT. **14-306.4**, which makes it a misdemeanor “for any person to operate . . . **an electronic machine or device to . . . [c]onduct a sweepstakes through the use of an entertaining display.**”
- The new statute *defines* “**entertaining display**” as “visual information, capable of being seen by a sweepstakes entrant, that takes the form of actual game play, or simulated game play,” and provides several examples of such games “by way of illustration and not exclusion.” N.C. GEN. STAT. **14-306.4(a)(3)**.
- The definition includes nine examples of “entertaining displays” in subparts (a)-(i), eight of which cover traditional gambling games, such as video poker, video bingo, video craps, keno, lotto, eight liner, Pot of Gold games, and “video games 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.”
- The ninth example, found in subpart (i) of the definition, is a “catch all” definition, and defines “entertaining displays” to include “*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.*”

## IV. Recent Litigation.

- In both the *Sandhill Amusements* case and the *Hest Technologies* case, the plaintiff Video Sweepstakes companies mounted challenges to the new law, alleging that the law violates the right to free speech guaranteed under the First Amendment.
- On November 29, 2010, Judge Ridgeway, with little comment, found no constitutional defects in the new law and ruled against the plaintiffs in the *Sandhill Amusements* case by

dismissing their case and dissolving the court's injunction that had allowed the plaintiffs to continue operating their Sweepstakes Machines.

- A day later, Judge Craig in the *Hest Technologies* case ruled that the new statute was constitutional, and serves as a permissible exercise of the State's police powers to regulate gambling, except with respect to the "catch-all" definition of the phrase "entertaining display" found in subpart (i) of the statutory definition.
- Through an Advisory Letter, on December 2, 2010, the Attorney General's Office took the position that law enforcement officers are free to enforce all of the provisions of N.C. Gen. Stat **14-306.4**, other than with respect to the "catch-all" video games described in subpart (i) that Judge Craig found unconstitutional. The letter pointed out that law enforcement agencies should not attempt to enforce subpart (i) until the appellate courts had ruled on the case.
- On January 11, 2011, the North Carolina Court of Appeals denied the Attorney General's request for a stay of the portion of Judge Craig's decision relating to the unconstitutionality of the "catch-all" video games provision. So for the time being, that portion of his decision remains in effect. It is expected that the Court of Appeals will hear the case later this year.

***ACTION:* Please **OPPOSE** any efforts to legalize video gambling in North Carolina.**