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HOUSE DRH80173-RBx-12A (02/01)

Short Title: Tax & Regulate Video Sweepstakes. (Public)

Sponsors: Representatives Wray and Collins (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE AND IMPOSE AN EXCISE TAX ON ELECTRONIC
3 SWEEPSTAKES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 14-306.4 is repealed.

6 SECTION 2. Chapter 143 of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 80.

9 "Regulation of Electronic Sweepstakes.

10 "§ 143-750. Citation.

11 This Chapter shall be known and may be cited as the North Carolina Electronic
12 Sweepstakes Act.

13 "§ 143-751. Purpose and intent.

14 The General Assembly declares that the purpose of this Chapter is to regulate any electronic
15 sweepstakes that are not otherwise unlawful under applicable State law. Nothing in this Chapter
16 shall be construed to make any conduct lawful that is declared to be unlawful under Article 37
17 of Chapter 14 of the General Statutes or any other provision of law.

18 "§ 143-752. Definitions.

19 The following definitions apply in this Article:

20 (1) Department. – The North Carolina Department of Commerce.

21 (2) Electronic sweepstakes device. – A mechanically, electrically, or
22 electronically operated device that is connected to a server through a local
23 network and that is owned, leased, or otherwise possessed by a sweepstakes
24 sponsor or promoter, or any of the sweepstakes sponsor's or promoter's
25 partners, affiliates, subsidiaries, or contractors, that is intended to be used by
26 a sweepstakes entrant, that uses energy, and that is capable of displaying
27 sweepstakes results on a screen or other mechanism.

28 (3) Electronic sweepstakes establishment. – A place of business in which an
29 electronic sweepstakes device is operated.

30 (4) Electronic sweepstakes device operator. – A person licensed under this
31 Article to operate or conduct a sweepstakes.

32 (5) Electronic sweepstakes device vendor. – A person licensed under this Article
33 to supply sweepstakes software to a sweepstakes gaming device operator.

34 (6) Enter or entry. – The act or process by which a person becomes eligible to
35 receive any prize offered in a sweepstakes.



- 1 (7) Prize. – Any gift, award, gratuity, good, service, credit, or anything else of
2 value that may be transferred to a person, whether possession of the prize is
3 actually transferred, or placed on an account or other record as evidence of
4 the intent to transfer the prize.
- 5 (8) Secretary. – The Secretary of the Department of Commerce or the
6 Secretary's designee.
- 7 (9) Sweepstakes. – Any game, advertising scheme or plan, or other promotion
8 that, with or without the purchase of any good or service and without
9 separate consideration, a person may enter to win or become eligible to
10 receive any prize, the determination of which is based upon chance and in
11 which there is a finite pool of entries.
- 12 (10) Sweepstakes software. – A computer program used by a sweepstakes device
13 operator to conduct a sweepstakes.

14 **"§ 143-753. Powers and duties.**

15 The Department shall have the following powers and duties:

- 16 (1) To administer and enforce the provisions of this Article related to the
17 licensure of electronic sweepstakes devices and electronic sweepstakes
18 establishments.
- 19 (2) To engage or contract with any independent firm or agency to act as its agent
20 in fulfilling the duties and responsibilities under this Article.
- 21 (3) To enter into an agreement with the ALE Division to conduct an in-depth
22 background investigation of criminal convictions of applicants and licensees
23 as necessary to ensure compliance with this Article.

24 **"§ 143-754. Licensure to operate an establishment.**

25 (a) License Required. – It shall be unlawful for any person to operate an electronic
26 sweepstakes device or establishment without the license required by this Chapter. A license
27 granted under this Chapter may not be transferred or assigned. The license must be displayed
28 conspicuously in the electronic sweepstakes establishment where the devices are operated, must
29 state the number of devices located at the establishment and any further information required
30 by the Department.

31 (b) Application for License. – To obtain a license required by this Article, an applicant
32 must:

- 33 (1) File an application with the Department on a form provided by the
34 Department and pay an application fee of two hundred fifty dollars
35 (\$250.00). An application must include the applicant's name, address, federal
36 employer identification number, and any other identifying information
37 required by the Department.
- 38 (2) State the number of electronic sweepstakes devices to be placed into
39 operation at the electronic sweepstakes establishment. A licensee may apply
40 to amend the license to add additional devices on a form to be provided by
41 the Department.
- 42 (3) Provide a certificate or report from an authorized independent testing
43 laboratory named in a list maintained by the Department in accordance with
44 G.S. 143-755 that contains the information required by that section.

45 (c) Requirements. – An applicant for a license must meet the following requirements:

- 46 (1) If the applicant is a corporation, the applicant must either be incorporated in
47 this State or be authorized to transact business in this State.
- 48 (2) If the applicant for a license is a limited liability company, the applicant
49 must either be organized in this State or be authorized to transact business in
50 this State.

1 (3) If the applicant for a license is a limited partnership, the applicant must
2 either be formed in this State or be authorized to transact business in this
3 State.

4 (4) If the applicant for a license is an individual or a general partnership, the
5 applicant must designate an agent for service of process and give the agent's
6 name and address.

7 (d) Denial. – The Department may investigate an applicant for a license required under
8 this Article to determine whether the information the applicant submits with the application is
9 accurate and whether the applicant is eligible to be licensed under this Article. The Department
10 may refuse to issue a license to an applicant that has done any of the following:

11 (1) Submitted false or misleading information on its application.

12 (2) Had a license issued under this Article cancelled by the Department for
13 cause.

14 (3) Been convicted of a violation of federal gambling laws, or the gambling
15 laws of any state, within five years of the date of the application.

16 (e) Annual Renewal. – An application issued under this section must be renewed on or
17 before July 1 of each year. A renewal application must contain all of the information required
18 for an initial application under subsections (b) and (c) of this section.

19 **"§ 143-755. Authorized independent testing laboratories.**

20 (a) List of Laboratories. – The Department must publish and continuously maintain a
21 list of authorized independent testing laboratories.

22 (b) Verification Required. – An application to operate an electronic sweepstakes device
23 or establishment must have attached to it a certificate or report from an authorized independent
24 testing laboratory that does all of the following for each electronic sweepstakes device listed in
25 the application to be placed into operation at the electronic sweepstakes establishment:

26 (1) Identifies the components of the electronic sweepstakes devices and related
27 systems.

28 (2) Identifies the operational characteristics of the electronic sweepstakes
29 devices and related systems.

30 (3) Verifies that each sweepstakes proposed to be conducted on each device
31 meets all of the following conditions:

32 a. Selects prizes from a pool of entries where the total number of
33 entries, the number of winning and losing entries, and the number
34 and nature of prizes are finite, predetermined, and established prior to
35 the start of the sweepstakes.

36 b. Predetermines all winning and losing entries prior to the start of the
37 sweepstakes.

38 c. Provides free sweepstakes entries to customers upon purchase of a
39 good or service for which a consideration is paid.

40 d. Provides a method of free entry upon request.

41 e. Does not vary the chance of winning between free entries and entries
42 received as a result of a purchase of a good or service.

43 f. Contains no element of skill so that customer has no ability to alter or
44 affect the outcome or results.

45 (4) Verifies that all electronic sweepstakes devices identified in the application
46 as being operational in the electronic sweepstakes establishment use the
47 same entries for each sweepstakes from a pool of entries hosted on a local
48 server in the electronic sweepstakes establishment.

49 **"§ 143-756. Licensure to supply software.**

50 No person, personally or through the person's agent, shall supply sweepstakes software to a
51 sweepstakes gaming device operator without first obtaining a license from the Department. The

1 application for a sweepstakes gaming device vendor license shall be on forms prescribed by the
2 Department and shall contain at least the following information:

3 (1) The full legal name of the sweepstakes gaming device vendor and required
4 contact information, including address, telephone number, federal tax
5 identification number, and contact person.

6 (2) A certificate or report that meets the requirements of G.S. 143-755.

7 **"§ 143-757. Regulation of electronic sweepstakes establishments.**

8 (a) Scope. – This Article authorizes only the operation of server-based electronic
9 sweepstakes devices that associate a prize with an entry or entries from a predetermined finite
10 pool of winning and losing entries at the time the sweepstakes is entered.

11 (b) Prohibitions. – A person may not do any the following:

12 (1) Intentionally design, promote, or conduct a sweepstakes in which a specific
13 individual, location, or electronic sweepstakes device may be predetermined
14 as a winner or the sweepstakes software may be manipulated or rigged so as
15 to do either of the following:

16 a. Allocate a winning sweepstakes or any portion thereof to certain
17 lessees, agents, or franchisees.

18 b. Allocate a winning sweepstakes or part thereof to a particular period
19 of the sweepstakes or to a particular geographic area.

20 (2) Willfully remove, disqualify, disallow, modify, or reject any entry other than
21 for failure by the entrant to comply with the rules of the sweepstakes.

22 (3) Willfully fail to award prizes offered other than for failure by the entrant to
23 comply with the rules of the sweepstakes or award or advertise prizes other
24 than those which have been properly announced under this section.

25 (4) Willfully print, publish, or circulate literature or advertisements for a
26 sweepstakes that is false, intentionally deceptive, or intentionally
27 misleading.

28 (5) Knowingly require the participant in a sweepstakes to pay more than fair
29 market value for the item, product, or service which entitles a participant to
30 enter a sweepstakes.

31 (6) Operate a sweepstakes game which does not have a finite number of entries.

32 (7) Fail to offer and provide a free method of entry for any sweepstakes for
33 which the chance of winning is the same as other entries received with the
34 purchase of a product or service.

35 (8) Fail to display the license required under this Article and the sweepstakes
36 software certification in a public and conspicuous place at the location in
37 which the sweepstakes takes place.

38 (c) Signage Requirements. – A licensee must comply with the following signage
39 requirements:

40 (1) Exterior of premises. - Exterior signage shall be limited to the advertisement
41 of the consumer product and/or service sold on the premises and that a
42 sweepstakes promotion is offered. No signs shall be posted on the exterior of
43 the premises that suggest gambling takes place on the premises or display
44 any image commonly associated with slot machines.

45 (2) Interior premises. - The operator shall conspicuously post in the interior of
46 the premises the following:

47 a. All consumer products or services offered for sale shall be identified
48 by the description and price by conspicuous posting.

49 b. Complete rules for all sweepstakes promotions shall be posted at the
50 premises' front or main counter, and a complete copy of the rules,

prize tables, and odds of winning shall be made available on request without cost.

(3) Before a consumer may reveal an entry with the use of a sweepstakes gaming device, a sweepstakes gaming device operator shall cause to be displayed on the sweepstakes gaming device in at least a font size of 14 the following which shall be affirmatively acknowledged by the consumer: "YOU HAVE ENTERED A SWEEPSTAKES GAME THAT IS PREDETERMINED. YOU CANNOT CHANGE THE OUTCOME BY PLAYING THE GAMES. THIS IS NOT GAMBLING. SWEEPSTAKES ENTRIES CAN BE OPENED IN ANY OF THE GAMES."

(d) Limitations. – A sweepstakes gaming device operator may not do any of the following:

- (1) Be issued an ABC permit that authorizes the retail sale of alcoholic beverages for consumption on the premises of any location in which a sweepstakes licensed under this Article takes place.
- (2) Permit an individual under 18 years of age to enter or be employed at a facility operated by the sweepstakes gaming device operator for sweepstakes.
- (3) Offer or pay out anyone a single prize with a value of more than ten thousand dollars (\$10,000).
- (4) Cause the sweepstakes results to be located other than on a server that is at the location in which the sweepstakes takes place.

(e) Supply List of Winners. – Within 60 days after the winners have been determined, an electronic sweepstakes gaming device operator shall provide the Department of Revenue with a certified list of the names and addresses of all persons who have won prizes with a value of more than one thousand dollars (\$1,000), the value of the prizes, and the dates when the prizes were won.

"§ 143-758. Reasons why Secretary may cancel a license.

(a) Reasons. – The Secretary may cancel a license issued under this Article upon a written request of the person who holds the license. In addition, the Secretary may cancel the license of a person that commits one or more of the following acts after holding a hearing on whether the license should be cancelled:

- (1) Fails to obtain a license required by this Article.
- (2) Makes a false statement in an application required by this Article.
- (3) Willfully fails to file a tax return required by Article 2E of Chapter 105 of the General Statutes.
- (4) Willfully fails to pay a tax when due under Article 2E of Chapter 105 of the General Statutes.
- (5) Willfully violates G.S. 143-757.

(b) Procedure. – The Secretary must give a person whose license may be cancelled under subsection (a) of this section at least 90 days written notice of the date, time, and place of the hearing. The notice of a hearing on a proposed license cancellation must be sent by registered mail to the last known address of the license holder. The Secretary must dismiss the notice of proposed cancellation and the hearing upon evidence that the person has cured the act that was the basis for the notice of cancellation.

All hearings held under this Article are open to the public. Parties to a hearing may be represented by legal counsel and must be given an opportunity to cross-examine witnesses and to submit rebuttal evidence. If the Secretary finds that the person did not commit the act that was the basis for the notice of cancellation, the Secretary must dismiss the notice of proposed cancellation. If the Secretary finds that the person did commit the act that was the basis for the notice of cancellation, the Secretary must cancel the person's license. The Secretary must

1 cancel the license of a person who fails to attend a scheduled hearing without prior notice to the
2 Secretary. The Secretary must either dismiss the notice of cancellation or cancel the license
3 within 10 days after the hearing.

4 (c) Appeal. – A person whose license is cancelled under this section may obtain judicial
5 review of the hearing decision. A petition for review must be filed in the superior court of the
6 county holding jurisdiction over the license holder within 30 days after the license is cancelled
7 in accordance with this section. A person who fails to file a petition within the required time
8 waives the right to judicial review. For good cause shown, however, the superior court may
9 accept an untimely petition.

10 **"§ 143-759. Enforcement; penalties.**

11 (a) Enforcement. – The Department or any law enforcement agency may investigate
12 and inspect sweepstakes operations in this State and take any other necessary and reasonable
13 action to determine if a violation of any provision of this Article has occurred.

14 (b) Penalty. – Unless a greater penalty is otherwise provided by law for conduct that is
15 also a violation of this Article, the following penalties apply:

16 (1) A person operating an electronic sweepstakes without a license is guilty of a
17 Class 2 misdemeanor is subject to a minimum fine of twenty-five thousand
18 dollars (\$25,000) and a maximum fine of one hundred thousand dollars
19 (\$100,000) and is barred from obtaining a license under this Article.

20 (2) A person who willfully violates any other provision of this Article is subject
21 to a civil penalty with a minimum fine of five hundred dollars (\$500.00) and
22 a maximum fine of ten thousand dollars (\$10,000)."

23 **SECTION 3.(a)** Chapter 105 of the General Statutes is amended by adding a new
24 article to read:

25 "Article 2E.

26 "Electronic Sweepstakes.

27 **"§ 105-113.120. Purpose; administration; definitions.**

28 (a) Purpose. – The taxes imposed in this Article are to provide revenue for the use of
29 the State government.

30 (b) Administration. – Article 9 of this Chapter applies to this Article.

31 (c) Definitions. – The following definitions apply in this Article:

32 (1) Enter or entry. – Defined in G.S. 143-752.

33 (2) Electronic sweepstakes device. – Defined in G.S. 143-752.

34 (3) Electronic sweepstakes establishment. – Defined in G.S. 143-752.

35 (4) Prize. – Defined in G.S. 143-752.

36 (5) Sweepstakes. – Defined in G.S. 143-752.

37 **"§ 105-113.121. Excise tax on electronic sweepstakes establishments and devices.**

38 (a) Excise Tax. – An excise tax is levied on each electronic sweepstakes establishment
39 operating in this State as follows:

40 (1) A rate per electronic sweepstakes establishment.

41 (2) A rate per electronic sweepstakes device.

42 (3) A rate on gross receipts.

43 (b) Rate per Establishment. – An annual excise tax at the rate of two thousand dollars
44 (\$2,000) is levied on an electronic sweepstakes establishment. The amount due is payable by
45 January 1 of each year. The full amount of the tax applies to an establishment that operates
46 during any portion of a calendar year.

47 (c) Rate per Device. – An annual excise tax at the rate of one thousand dollars (\$1,000)
48 is levied on each electronic sweepstakes device operated in an electronic sweepstakes
49 establishment. The amount due is payable by January 1 of each year. The full amount of tax
50 applies to an electronic sweepstakes device that operates during any portion of a calendar year.
51 The Secretary must issue stamps to affix to each electronic sweepstakes device to indicate

1 payment as required by this Article. The stamp must be displayed conspicuously on the
2 electronic sweepstakes device, and it must clearly indicate the year for which the tax is paid.
3 Upon payment of the tax, the Secretary shall issue a stamp for each electronic sweepstakes
4 device for which payment is received.

5 (d) Gross Receipts. – An annual excise tax of four percent (4%) of the taxable gross
6 receipts from operating an electronic sweepstakes device is levied on each electronic
7 sweepstakes establishment. The amount due is payable quarterly or monthly in accordance with
8 the schedule and requirements that apply to payments of sales and use tax under
9 G.S. 105-164.16. A return is due quarterly. A quarterly return covers a calendar quarter and is
10 due by the last day of the month that follows the quarter covered by the return. For purposes of
11 this subsection, taxable gross receipts are the gross receipts derived by the establishment that
12 result in a person's eligibility to operate a sweepstakes device at the establishment to determine
13 whether the person has won a sweepstakes prize, less the amount of any prizes transferred to a
14 sweepstakes entrant. The return must include the taxpayer's gross receipts from operating one
15 or more electronic sweepstakes or devices during the reporting period and the prizes awarded
16 during this period to a sweepstakes entrant.

17 (e) Report and Payment. – A person who operates an electronic sweepstakes
18 establishment must report the taxes payable under this section in the form required by the
19 Secretary. The return must include the address where the electronic sweepstakes or devices are
20 located and whether the location is within the corporate limits of a municipality.
21 Notwithstanding any other provision of law, the person is not required to give identifying
22 information on the return, and the return is not required to be verified by oath or affirmation.
23 The tax is due when the return is filed. Taxes may be paid and stamps may be issued either by
24 mail or in person.

25 **"§ 105-113.122. Local tax.**

26 (a) Authorization. – A county or city may, by resolution or ordinance respectively,
27 impose an excise tax as allowed under this section on each electronic sweepstakes
28 establishment located in that county or city. A county or city may not impose an excise tax or a
29 license, franchise, or privilege tax on a person operating an electronic sweepstakes
30 establishment except as provided in this section. This taxing authority replaces any prior
31 authority that cities may have asserted to tax electronic sweepstakes establishments under
32 G.S. 160A-211.

33 (b) Rate per Establishment. – A county or city may impose an annual excise tax at the
34 rate of one thousand dollars (\$1,000) on each electronic sweepstakes establishment located in
35 that jurisdiction. The amount due is payable by January 1 of each year. The full amount of tax
36 applies to an establishment that operates during any portion of a calendar year.

37 (c) Rate per Device. – A county or city may impose an annual excise tax at the rate of
38 five hundred dollars (\$500.00) on each electronic sweepstakes device operated in an electronic
39 sweepstakes establishment located in that jurisdiction. The amount due is payable by January 1
40 of each year. The full amount of tax applies to an electronic sweepstakes device operated
41 during any portion of the calendar year.

42 (d) Administration. – Upon adoption of a resolution or ordinance levying the taxes
43 allowed under this section, the governing body of the county or city must immediately deliver a
44 certified copy of the resolution or ordinance to the Secretary. Upon receipt of the document, the
45 Secretary shall collect and administer the tax in the same manner as the taxes imposed under
46 G.S. 105-113.121. The Secretary must distribute the local revenues collected to the county or
47 city for which the taxes are collected by March 31 of each year.

48 (e) Use of Funds. – Funds distributed by the Secretary to a city under this section may
49 be used for any public purpose.

1 (f) Penalty and Collection. – The penalty and collection provisions allowed under
2 Article 9 of this Chapter apply to taxes levied under the authority of this section in the same
3 manner and to the same extent as they apply to taxes levied by the State under this Article.

4 (g) Nature. – The General Assembly finds that the revenue distributed under this
5 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of
6 the North Carolina Constitution and may not be reduced or withheld by the Governor.

7 **"§ 105-113.123. Applicability; illegal activity.**

8 Applicability. – This Article is applicable to any electronic sweepstakes device without
9 regard to any of the following:

10 (1) How the device is activated.

11 (2) How the device is programmed for operation.

12 (3) How the device determines and associates the prize with an entry or entries
13 at the time the sweepstakes is entered."

14 **SECTION 3.(b)** G.S. 160A-211 is amended by adding a new subsection to read:

15 "**(b1) Electronic Sweepstakes Restriction.** – A city may not impose an excise tax or a
16 license, franchise, or privilege tax on a person operating an electronic sweepstakes
17 establishment except as provided in G.S. 105-113.124."

18 **SECTION 4.(a)** The Secretary of Commerce must publish a list of authorized
19 independent testing laboratories, as required under G.S. 143-755, as enacted by this act, within
20 14 days after this act becomes law.

21 **SECTION 4.(b)** A person may submit an application for licensure under
22 G.S. 143-754, as enacted by this act, before September 1, 2013, without the certificate or report
23 required under G.S. 143-754(b)(3). The Secretary may grant a temporary license to an applicant
24 who submitted an application on or before September 1, 2013, without the certificate or report.
25 The temporary license issued pursuant to this subsection is valid through September 30, 2013.
26 To obtain a permanent license, a licensee must submit the required certificate or report to the
27 Secretary on or before September 30, 2013. All applications for a license submitted on or after
28 September 1, 2013, must include the required certificate or report.

29 **SECTION 5.** G.S. 105-113.125, as enacted by Section 3(a) of this act and Section
30 3(b) of this act, becomes effective January 1, 2014, and applies to an electronic sweepstakes
31 establishment and to an electronic sweepstakes device operated in this State on or after that
32 date. The remainder of this act is effective when it becomes law and applies to an electronic
33 sweepstakes establishment and to an electronic sweepstakes device operated in this State on or
34 after that date.