CHAPTER 11

Gambling Cruise Act

**SECTION 3‑11‑100.** Definitions.

 For purposes of this chapter:

 (1) “Gambling vessel” means a boat, ship, casino boat, watercraft, or barge kept, operated, or maintained for the purpose of gambling, with one or more gaming establishments aboard, that carries or operates gambling devices for the use of its passengers or otherwise provides facilities for the purpose of gambling, whether within or without the jurisdiction of this State, and whether it is anchored, berthed, lying to, or navigating, and the sailing, voyaging, or cruising, or any segment of the sailing, voyaging, or cruising begins and ends within this State.

 (2) “Gambling” or “gambling device” means any game of chance and includes, but is not limited to, slot machines, punchboards, video poker or blackjack machines, keeno, roulette, craps, or any other gaming table type gambling or poker, blackjack, or any other card gambling game.

 (3) “Intervening stop” occurs when a vessel departs the territorial waters of this State and sails into United States or international waters, and between the time the vessel departs the territorial waters of this State and the time it returns to the territorial waters of this State, the vessel docks at a port of call in another state, possession of the United States, or foreign country.

 (4) “Destination cruise” means a cruise in which a vessel makes one or more intervening stops.

 (5) “Passenger cruise liner” means a vessel that:

 (a) has a draft that is equal to or larger than the controlled depth of the intercoastal waterway as determined by the United States Army Corps of Engineers;

 (b) provides separate passenger cabins, including bathroom or head facilities, in a size reasonably suitable to accommodate living and sleeping space in a ratio of at least one cabin for every four passengers;

 (c) contains kitchen or galley facilities and dining facilities reasonably suitable to offer and accommodate all of the vessel’s passengers at seated meals in no more than two sittings for each of the meals at breakfast, lunch, and dinner times;

 (d) offers other support facilities and services including, but not limited to, exercise facilities, gift shops, medical services, and musical programs;

 (e) is principally engaged in entertaining and transporting passengers on destination cruises; and

 (f) is certified or authorized by the United States Coast Guard or equivalent foreign authority to carry passengers for hire upon the open ocean without navigational limitations.

 (6) “Per passenger” means the number of passengers allowed on a vessel pursuant to its United States Coast Guard certificate of documentation or equivalent foreign documentation.

HISTORY: 2005 Act No. 104, Section 2, eff June 1, 2005.

Editor’s Note

2005 Act No. 104, Section 1, provides as follows:

“This act may be cited as the ‘Gambling Cruise Act’. It is the intent of the General Assembly to delegate to counties and municipalities of this State the authority to prohibit or regulate the operation of gambling vessels that are engaged in voyages that depart from the territorial waters of the State, sail into United States or international waters, and return to the territorial waters of the State without an intervening stop, but to exempt from county or municipal regulation passenger cruise liners, as defined in Section 3‑11‑100(5), as contained in SECTION 2 of this act, because passenger cruise liners are vessels principally engaged in destination cruises and are not vessels used primarily for the operation of gambling. Furthermore, passenger cruise liners do not burden the public health or safety of the county or municipality because their voyages are infrequent, their cruises are not principally operated for the purpose of gambling, and their itineraries predominantly involve voyages that include one or more intervening stops.”

2005 Act No. 104, Section 3, provides as follows:

“The exceptions for passenger cruise lines and Section 3‑11‑400(D) in this act are so connected with the other sections of the act that they are mutually dependent on each other as conditions and considerations for each other, so that the General Assembly would not have adopted this act without them; therefore, should these exceptions be found unconstitutional or invalid, it is the intent of the General Assembly that the entire act be found invalid.”

Attorney General’s Opinions

South Carolina’s “territorial waters” are those waters in the Atlantic Ocean out to three geographic miles extending from the mean low‑water mark of South Carolina’s naturally‑occurring coastline. S.C. Op.Atty.Gen. (August 3, 2012) 2012 WL 3540453.

Notes of Decisions

In general 1

1. In general

Indian tribe’s declaratory judgment action seeking determination on effect of Gambling Cruise Act on tribe’s gambling rights was not precluded by doctrine of res judicata, since issue as to effect of Act on tribe’s rights was not actually decided in prior action regarding tribe’s gambling rights, even if contention was one that could have been raised; ruling that was entitled to res judicata effect was determination made in prior action that tribe’s video poker rights were affected by future changes in state law. Catawba Indian Nation v. State (S.C. 2014) 407 S.C. 526, 756 S.E.2d 900. Judgment 550; Judgment 588; Judgment 713(2)

Doctrine of collateral estoppel did not preclude indian tribe’s declaratory judgment action to determine effect of Gambling Cruise Act on tribe’s gambling rights, since issue decided in prior action regarding tribe’s gambling rights was not the same issue asserted in later declaratory judgment action; in later action, tribe sought declaratory judgment as to interpretation and import of Act on its gambling rights, Act was never raised by parties or addressed by court in prior action, and review of Act was not necessary in reaching determination in prior action. Catawba Indian Nation v. State (S.C. 2014) 407 S.C. 526, 756 S.E.2d 900. Judgment 715(3)

**SECTION 3‑11‑200.** Delegation of power to regulate gambling vessels to counties and municipalities; exception.

 (A) Except as provided for in subsection (B), the General Assembly delegates to a county for the unincorporated areas of a county, and to a municipality for the municipality, the authority conferred to this State by the United States Congress pursuant to the Johnson Act, as amended, 15 U.S.C. Sections 1171 through 1177. The authority delegated herein includes the power to regulate or prohibit gambling aboard gambling vessels while such vessels are outside the territorial waters of the State, when such vessels embark or disembark passengers within their respective jurisdictions for voyages that depart from the territorial waters of the State, sail into United States or international waters, and return to the territorial waters of the State without an intervening stop.

 (B) The General Assembly specifically retains and does not delegate to a county or municipality the authority to regulate or prohibit gambling on passenger cruise liners, as defined in this chapter, which is conferred to this State by the United States Congress pursuant to the Johnson Act, as amended, 15 U.S.C. Sections 1171 through 1177.

 (C) The authority delegated to a county or municipality under subsection (A) is delegated pursuant to Chapter 9 of Title 4 and Chapter 7 of Title 5, Code of Laws of South Carolina.

HISTORY: 2005 Act No. 104, Section 2, eff June 1, 2005.

**SECTION 3‑11‑210.** Penalties under ordinances adopted pursuant to Section 3‑11‑200.

 A county or municipality adopting an ordinance regulating or prohibiting gambling vessels pursuant to Section 3‑11‑200 may assess only a civil penalty of not more than one hundred dollars per passenger for each violation, with an aggregate total in penalties not to exceed fifty thousand dollars per vessel for a twenty‑four hour period. Additionally, a county or municipality may obtain injunctive relief against a person for violation of an ordinance regulating or prohibiting gambling vessels pursuant to Section 3‑11‑200.

HISTORY: 2005 Act No. 104, Section 2, eff June 1, 2005.

**SECTION 3‑11‑300.** Grant of additional authority; vessels outside territorial waters of state; passenger cruise liner exception.

 (A) The authority delegated to a county or municipality pursuant to this section is granted pursuant to Chapter 9 of Title 4 and Chapter 7 of Title 5 of the Code of Laws of South Carolina. This authority is separate from and in addition to the authority granted to a county or municipality pursuant to Sections 3‑11‑200 through 3‑11‑210, which authorize exercise of this state’s Johnson Act authority pursuant to 15 U.S.C. Sections 1171 through 1177, except for passenger cruise liners.

 (B) Except as provided for in subsection (C), the General Assembly delegates to a county for the unincorporated areas of a county, and to a municipality for the municipality, the authority to regulate or prohibit gambling aboard gambling vessels while such vessels are outside the territorial waters of the State, when such vessels embark or disembark passengers within their respective jurisdictions for voyages that depart from the territorial waters of the State, sail into United States or international waters, and return to the territorial waters of the State without an intervening stop.

 (C) A county or municipality is prohibited from regulating or prohibiting gambling on passenger cruise liners, as defined in this chapter.

HISTORY: 2005 Act No. 104, Section 2, eff June 1, 2005.

**SECTION 3‑11‑310.** Penalties under ordinances adopted pursuant to Section 3‑11‑300.

 A county or municipality adopting an ordinance regulating or prohibiting gambling vessels pursuant to Section 3‑11‑300 may assess only a civil penalty of not more than one hundred dollars per passenger for each violation, with an aggregate total in penalties not to exceed fifty thousand dollars per gambling vessel for a twenty‑four hour period. Additionally, a county or municipality may obtain injunctive relief against a person for violation of an ordinance regulating or prohibiting gambling vessels pursuant to Section 3‑11‑300.

HISTORY: 2005 Act No. 104, Section 2, eff June 1, 2005.

**SECTION 3‑11‑320.** Cruise liners.

 Any county or municipal ordinance prohibiting or regulating gambling or gambling vessels pursuant to Sections 3‑11‑200 or 3‑11‑300 must not be construed to prohibit or regulate a passenger cruise liner from having gambling devices on board so long as there is no gambling allowed while the passenger cruise liner is within the territorial waters of the State.

HISTORY: 2005 Act No. 104, Section 2, eff June 1, 2005.

**SECTION 3‑11‑400.** Applicability to United States and foreign‑flagged vessels; imposition and collection of surcharges on gambling vessel ticket sales; phasing out of gambling business following enactment of prohibiting ordinance.

 (A) This chapter does not apply to any gambling activity conducted on United States‑flagged or foreign‑flagged vessels during travel from a foreign nation or another state or possession of the United States up to the point of first entry into South Carolina waters or during travel to a foreign nation or another state or possession of the United States from the point of departure from South Carolina waters, provided that such vessels make intervening stops as defined in this chapter. Nothing herein precludes prosecution for any other offense that is unlawful.

 (B) The provisions of this chapter must not be construed to:

 (1) repeal or modify any other provision of law relating to gambling, or any existing county or municipal ordinance regulating or prohibiting gambling or gambling vessels;

 (2) repeal or modify any law with regard to bingo or the operation of a device or machine pursuant to Section 12‑21‑2720(A)(3);

 (3) allow or permit gambling aboard any vessel, gambling vessel, or passenger cruise liner within the territorial waters of the State;

 (4) preclude prosecution for any other applicable gambling offense under state law; or

 (5) preclude prosecution for violations of 15 U.S.C. Sections 1172, 1173, 1174, or 1175, to the extent not otherwise prohibited by provisions of the South Carolina Constitution.

 (C)(1) For purposes of this section, “gross proceeds” means the total amount wagered or otherwise paid, in cash or credit, by a passenger or user of a gambling device aboard a gambling vessel.

 (2) If a county or municipality does not adopt an ordinance prohibiting a gambling vessel from operating, or if a gambling vessel other than a passenger cruise liner is permitted to operate because that gambling vessel, on each cruise, makes an intervening stop in another State, possession of the United States, or foreign country, the county or municipality may assess a surcharge of up to ten percent of each ticket sold per gambling cruise, and a surcharge of up to five percent of the gross proceeds of each gambling vessel.

 (3)(a) If a county or municipality assesses the surcharges set forth in item (2), then the proceeds of the surcharges are to be paid to the county or municipality from which the gambling vessel originates its cruise. The county or municipality is responsible for setting forth the procedures by which the proceeds are paid to the county or the municipality.

 (b)(i) Each gambling vessel must report to the Department of Revenue, on a monthly basis, the average daily percentage of winnings to losses for each gambling device used on a gambling vessel. The report must be delivered to the Department of Revenue on the twentieth day of the month for the preceding month, in a form and format determined by the department. If no gambling devices are used, the gambling vessel must report to the department that no gambling devices were used. The department must perform an annual audit to verify the accuracy of the reports.

 (ii) A gambling vessel that fails to deliver the report of winnings and losses to the department may be assessed a civil penalty up to the amount of one hundred dollars per day per gambling device for each day that the report is late.

 (iii) The department must make this information available, on a quarterly basis, to the governing body of the county or municipality from which the gambling vessel originates and to the general public. In addition, quarterly reports must be submitted to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

 (iv) The department is authorized to promulgate regulations to implement the provisions of this subsection.

 (D) When a county or municipality enacts an ordinance pursuant to Sections 3‑11‑200 or 3‑11‑300 prohibiting gambling vessels, and a gambling vessel business operating as of January 1, 2005, would cease operation because of enforcement of this ordinance, then the county or municipality must allow the continued operation of the gambling vessel business for a period of five years from the effective date of the county or municipal ordinance. If, after the enactment of an ordinance pursuant to Sections 3‑11‑200 or 3‑11‑300 prohibiting gambling vessels, a county or municipality subsequently enacts an ordinance allowing gambling vessels and then enacts a later ordinance prohibiting gambling vessels and a gambling vessel business, the county or municipality must allow the continued operation of the gambling vessel business for a period of five years from the effective date of the county or municipal ordinance. The gambling vessel business must only operate in the same location with no more than the number of vessels that were operating as of January 1, 2005. The provisions of this subsection are also applicable to a county or municipal ordinance substantially described in Section 3‑11‑500(A).

HISTORY: 2005 Act No. 104, Section 2, eff June 1, 2005.

Editor’s Note

2005 Act No. 104, Section 3, provides as follows:

“The exceptions for passenger cruise lines and Section 3‑11‑400(D) in this act are so connected with the other sections of the act that they are mutually dependent on each other as conditions and considerations for each other, so that the General Assembly would not have adopted this act without them; therefore, should these exceptions be found unconstitutional or invalid, it is the intent of the General Assembly that the entire act be found invalid.”

NOTES OF DECISIONS

In general 1

1. In general

Gambling Cruise Act did not authorize indian tribe to offer video poker on its reservation; Act did not alter statewide ban on video poker or authorize utilization of video poker devices anywhere in state’s territorial limits, and tribe specifically agreed that it was allowed to offer gambling on its reservation to same extent allowed by state law. Catawba Indian Nation v. State (S.C. 2014) 407 S.C. 526, 756 S.E.2d 900. Indians 337(2)

Department of Revenue was not authorized to require gambling cruise ship to provide monthly reports of gross proceeds per machine in addition to its monthly reports of percentage of winnings to losses; although Department was required to conduct an annual audit to verify the percentages and counties were allowed to tax gross proceeds and impose a surcharge per ticket sold, statute requiring monthly reporting of percentages clearly did not require reports of gross proceeds, and Department had promulgated no regulations requiring monthly reports of gross proceeds. Ventures South Carolina, LLC v. South Carolina Dept. of Revenue (S.C. 2008) 378 S.C. 5, 661 S.E.2d 339. Gaming And Lotteries 319(1)

**SECTION 3‑11‑500.** Prior ordinances; text of ordinance prohibiting gambling vessels.

 (A) A county or municipal ordinance prohibiting gambling vessels enacted before the effective date of this chapter, to the extent that it is consistent with the provisions of this chapter, remains in full force and effect after the effective date of this chapter, and is considered as promulgated pursuant to the powers and authority delegated to counties and municipalities by this chapter.

 (B) A county or municipality, in order to prohibit gambling vessels in accordance with the provisions of this chapter, may, after the effective date of this chapter, enact an ordinance that substantially reads as follows:

 (1) The governing body of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in accordance with Section 3‑11‑200 of the Code of Laws of South Carolina, 1976, as amended, exercises the authority conferred to the State of South Carolina by the United States Congress pursuant to the Johnson Act, as amended, 15 U.S.C. Sections 1171 through 1177, and hereby prohibits within its jurisdiction the docking and embarkation or disembarkation of passengers aboard gambling vessels, as defined in Section 3‑11‑100(1) of the 1976 Code, that provide gambling aboard voyages that depart from the jurisdiction of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, leave the territorial waters of the State of South Carolina, sail into United States or international waters, and return to the territorial waters of the State of South Carolina, without making an intervening stop, as defined in Section 3‑11‑100(3) of the 1976 Code. Nothing herein shall be construed to prohibit, regulate, or otherwise apply to passenger cruise liners, as defined by Section 3‑11‑100(5) of the 1976 Code, nor does this ordinance apply to vessels described in Section 3‑11‑400(A) of the 1976 Code.

 (2) The governing body of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in accordance with the authority delegated by Section 3‑11‑300 of the Code of Laws of South Carolina, 1976, as amended, hereby prohibits within its jurisdiction the docking and embarkation or disembarkation of passengers aboard gambling vessels, as defined in Section 3‑11‑100(1) of the 1976 Code, that provide gambling aboard voyages that depart from the jurisdiction of \_\_\_\_\_\_\_\_\_\_, leave the territorial waters of the State of South Carolina, sail into United States or international waters, and return to the territorial waters of the State of South Carolina without making an intervening stop, as defined in Section 3‑11‑100(3) of the 1976 Code. Nothing herein shall be construed to prohibit, regulate, or otherwise apply to passenger cruise liners, as defined by Section 3‑11‑100(5) of the 1976 Code, nor shall this ordinance apply to vessels described in Section 3‑11‑400(A) of the 1976 Code.

 (3) Anyone violating this ordinance must be assessed a civil penalty of not more than one hundred dollars per passenger for each violation, with an aggregate total in penalties not to exceed fifty thousand dollars per gambling vessel for a twenty‑four hour period. For the purposes of this ordinance, “per passenger” is defined as the total number of passengers allowed on a vessel pursuant to its United States Coast Guard certificate of documentation or equivalent foreign documentation. In addition, violations of this ordinance are subject to injunctive relief.

 (4) The exceptions for passenger cruise liners and Section 3‑11‑400(D) in this ordinance are so connected with the other sections of the ordinance that they are mutually dependent on each other as conditions and considerations for each other, so that the council would not have adopted this ordinance without them; therefore, should these exceptions be found unconstitutional or invalid, it is the intent of the council that the entire ordinance be found invalid.

 (5) Except as provided for in subitem (4), if any other section, subsection, paragraph, item, subitem, subparagraph, sentence, clause, phrase, or word of this ordinance is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the chapter, the council hereby declaring that it would have passed each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

HISTORY: 2005 Act No. 104, Section 2, eff June 1, 2005.