

The Senate Committee on Economic Development and Tourism offered the following substitute to HB 353:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 27 of Title 50 of the Official Code of Georgia Annotated, the "Georgia
2 Lottery for Education Act," so as to provide that administrative procedures and actions
3 regarding bona fide coin operated amusement machines shall be subject to Chapter 13 of
4 Title 50; to provide definitions; to provide for a limitation on the permitted noncash
5 redemption award for Class A and Class B machines; to provide for redemption for
6 successful play of bona fide coin operated amusement machines by automated kiosks under
7 certain conditions; to provide for the qualifications of location owners and location operators;
8 to authorize certain billiards and darts tournaments and the prizes therefor; to provide for the
9 auction of certain licenses and the timing therefor; to provide for exceptions to provisions of
10 law regarding the amount of funds that may come from the play of bona fide coin operated
11 amusement machines for certain historical fraternal benefit associations and veterans
12 organizations; to provide that certain provisions to location owners or location operators by
13 master licensees shall not constitute an unfair method of competition or an unfair or
14 deceptive act; to provide for the resolution of certain disputes between master licensees and
15 location owners or location operators; to provide for an effective date; to provide for related
16 matters; to repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18

SECTION 1.

19 Chapter 27 of Title 50 of the Official Code of Georgia Annotated, the "Georgia Lottery for
20 Education Act," is amended by revising paragraph (19) of subsection (a) of Code
21 Section 50-27-9, relating to general powers of the Georgia Lottery Corporation, as follows:

22 "(19) To adopt and amend such regulations, policies, and procedures as necessary to
23 carry out and implement its powers and duties, organize and operate the corporation,
24 regulate the conduct of lottery games in general, and any other matters necessary or
25 desirable for the efficient and effective operation of the lottery or the convenience of the
26 public. The promulgation of any such regulations, policies, and procedures pursuant to
27 Articles 1 and 2 of this chapter shall be exempt from the requirements of Chapter 13 of
28 this title, the 'Georgia Administrative Procedure Act.' Notwithstanding any other
29 provision of law to the contrary, the promulgation of any form of licensure, rules,
30 regulations, policies, procedures, and administrative hearings regarding violations of
31 Article 3 of this chapter shall be subject to the provisions of Chapter 13 of this title.
32 Hearings under Code Section 50-27-102 shall be held in accordance with the provisions
33 of Part 1 of Article 1 of Chapter 9 of Title 9, the 'Georgia Arbitration Code.'"

34

SECTION 2.

35 Said chapter is further amended by revising paragraph (3) of subsection (b) of Code Section
36 50-27-70, relating to legislative findings and definitions, and adding a new paragraph to read
37 as follows:

38 "(3) 'Class A machine' means a bona fide coin operated amusement machine that is not
39 a Class B machine, does not allow a successful player to carry over points won on one
40 play to a subsequent play or plays, and:

41 (A) Provides no reward to a successful player;

42 (B) Rewards a successful player only with free replays or additional time to play;

43 (C) Rewards a successful player with noncash merchandise, prizes, toys, gift
44 certificates, or novelties in compliance with the provisions of subsection (c) or
45 paragraph (1) of subsection (d) of Code Section 16-12-35, and does not reward a
46 successful player with any item prohibited as a reward in subsection (i) of Code
47 Section 16-12-35 or any reward redeemable as an item prohibited as a reward in
48 subsection (i) of Code Section 16-12-35;

49 (D) Rewards a successful player with points, tokens, tickets, or other evidence of
50 winnings that may be exchanged only for items listed in subparagraph (C) of this
51 paragraph; or

52 (E) Rewards a successful player with any combination of items listed in
53 subparagraphs (B), (C), and (D) of this paragraph.

54 Notwithstanding the provisions of Code Section 16-12-35 or any other Code section to
55 the contrary, the permitted noncash redemption award per play for a Class A machine
56 shall not exceed a wholesale value of \$50.00."

57 "(5.1) 'Gift card' or 'gift certificate' means an electronic payment device or system issued
58 for a specific amount of noncash redemption which was earned by a successful player of
59 a bona fide coin operated amusement machine which:

60 (A) May or may not be increased in value or reloaded;

61 (B) Is provided or loaded on a prepaid basis for the future purchase or delivery of any
62 merchandise or service permitted by law from a single merchant or service provider or
63 multiple merchants or service providers, whether affiliated or not;

64 (C) Is honored upon presentation but cannot be exchanged for cash, change, or
65 currency; and

66 (D) May be used off the premises of the location licensee, but is loaded or reloaded or
67 caused to be loaded or reloaded only:

68 (i) On the location licensee's premises; or

69 (ii) By the location licensee or its employees on the location licensee's premises."

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SECTION 3.

71 Said chapter is further amended by revising subsection (a.1) of Code Section 50-27-71,
72 relating to license fees, issuance of license, display of license, control number, duplicate
73 certificates, application for license or renewal, and penalty for noncompliance, and adding
74 new subsections to read as follows:

75 "(a.1) Every location owner or location operator shall pay an annual location license fee
76 for each bona fide coin operated amusement machine offered to the public for play. To be
77 eligible to apply for and to maintain a location owner or location operator license, the
78 applicant for such license shall provide documentary proof satisfactory to the corporation
79 that the applicant owns or leases the location for which the license is sought. The annual
80 location license fee shall be \$25.00 for each Class A machine and \$125.00 for each Class B
81 machine. The annual location license fee levied by this Code section shall be collected by
82 the corporation, and the board may establish procedures for location license fee collection
83 and set due dates for payment of such fees. The location license fee shall be paid to the
84 corporation by company check, cash, cashier's check, money order, or any other method
85 approved by the chief executive officer. Upon payment, the corporation shall issue a
86 location license certificate that shall state the number of bona fide coin operated
87 amusement machines permitted for each class without further description or identification
88 of specific machines. No refund or credit of the location license fee shall be allowed to any
89 location owner or location operator who ceases to offer bona fide coin operated amusement
90 machines to the public for commercial use prior the end of any license period."

91 "(a.3)(1) A location owner or location operator may offer gift cards for noncash
92 redemption for successful play of a Class A or Class B machine at such location in the
93 same manner as other merchandise for sale at such location. The acceptance of a gift
94 card offered by the location owner or location operator shall constitute the act of in-store
95 redemption by a successful player. No value shall be placed on such gift card unless such

96 value has been won by the player for the successful play of a game on such bona fide coin
97 operated amusement machine.

98 (2) Notwithstanding any provision of law to the contrary, the merchandise, prizes, toys,
99 gift cards, gift certificates, novelties, or rewards which may be awarded to a successful
100 player shall include or be redeemable or exchangeable for any goods or services which
101 such player is entitled or permitted by law to purchase.

102 (3) Notwithstanding the provisions of Code Section 16-12-35 or any other Code section
103 to the contrary, a location owner or location operator shall be permitted to allow a player
104 of a bona fide coin operated amusement machine to redeem winnings for a gift card or
105 gift certificate, and the award of such gift card or gift certificate shall be a lawful act of
106 in-store redemption and shall be permitted to be fully redeemed off the premises.

107 (4) Subject to the requirements of this subsection, successful players may redeem their
108 winnings on a gift card or gift certificate from a self-service gift card or gift certificate
109 redemption device. The device and the cost of such device may be provided by the
110 location owner or location operator, the master licensee, or both."

111 "(o)(1) As used in this subsection, the term:

112 (A) 'Billiards' shall have the same meaning as provided in paragraph (3) of Code
113 Section 43-8-1.

114 (B) 'Darts' means any one of the games played with two or more players who, using
115 their bare hands, throw small sharp-pointed missiles known as darts at a target known
116 as a dartboard to accumulate points.

117 (2) A master licensee, a location owner, a location operator, or a combination of such
118 licensees shall be authorized to conduct billiards or darts tournaments on the premises for
119 which such licensees have a contract for the installation of bona fide coin operated
120 amusement machines. Such tournaments may be conducted on bona fide coin operated
121 amusement machines or noncoin operated devices. The licensee or licensees may award
122 prizes to the winners of such tournaments, but such prizes shall be limited to gift cards

123 or other forms of noncash redemption. If such tournaments are jointly sponsored, such
124 licensees shall share equally in the cost of such prizes.

125 (p) At any time following a proposed revocation or a proposed nonrenewal of a master
126 license by the corporation, any settlement of such proposed revocation or proposed
127 nonrenewal involving the sale of the master license and associated assets, including, but
128 not limited to, location licenses, master license contracts, and bona fide coin operated
129 amusement machines, shall require a public auction."

130

SECTION 4.

131 Said chapter is further amended by revising subsection (e) of Code Section 50-27-73, relating
132 to refusal to issue or renew license, revocation or suspension, hearing, and limitation on
133 issuance of licenses, as follows:

134 "(e) Effective July 1, ~~2015~~ 2023, the corporation may issue up to 220 Class B master
135 licenses through a process of competitive auction to be established by the corporation and
136 ~~such a~~ competitive auction for one license shall occur ~~at least~~ once every three years
137 effective July 1, ~~2015~~ 2023; provided, however, that any person or entity holding a Class
138 B master license on the effective date of this subsection shall not be subject to the
139 competitive auction process provided for in this Code section but shall be subject to all
140 other requirements of this article; provided, further, that the corporation shall be permitted
141 to renew Class B master licenses at any time."

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SECTION 5.

143 Said chapter is further amended by revising Code Section 50-27-84, relating to limitation on
144 percent of monthly gross retail receipts derived from machines, monthly verified reports,
145 issuance of fine or revocation or suspension of license for violations, and submission of
146 electronic reports, as follows:

147 "50-27-84.

148 (a) As used in this Code section, the term:

149 (1) 'Amusement or recreational establishment' means an open-air establishment
150 frequented by the public for amusement or recreation. Such an establishment shall be in
151 a licensed fixed location located in this state and which has been in operation for at least
152 35 years.

153 (2) 'Business location' means any structure, vehicle, or establishment where a business
154 is conducted.

155 (3) 'Gross retail receipts' means the total revenue derived by a business at any one
156 business location from the sale of goods and services and the commission earned at any
157 one business location on the sale of goods and services but shall not include revenue from
158 the sale of goods or services for which the business will receive only a commission. The
159 sale of goods or services for which the business will receive only a commission shall not
160 include the sale of any item which the business has purchased for resale. Revenue shall
161 not include the sale of goods and services at wholesale.

162 (b)(1) No location owner or location operator shall derive more than 50 percent of such
163 location owner's or location operator's ~~monthly~~ quarterly gross retail receipts for the
164 business location in which the Class B machine or machines are situated from such Class
165 B machines; provided, however, that revenues that are due to a master licensee or the
166 corporation or noncash redemption that is earned by the player shall not be deemed
167 revenue derived from Class B machines. This paragraph shall not apply to historical
168 fraternal benefit associations or veterans organizations which are exempt from taxes and
169 are described in Code Section 48-5-41 or Code Section 48-5-478.4.

170 (2) No location owner or location operator shall offer more than nine Class B machines
171 to the public for play in the same business location; provided, however, that this
172 limitation shall not apply to an amusement or recreational establishment.

173 (c) For each business location which offers to the public one or more Class B machines,
174 the location owner or location operator shall prepare a ~~monthly~~ quarterly verified report
175 setting out separately by location in Georgia:

- 176 (1) The gross receipts from the Class B machines;
177 (2) The gross retail receipts for the business location; and
178 (3) The net receipts of the Class B machines.

179 (c.1) Each person holding a Class B master license shall prepare a ~~monthly~~ quarterly
180 verified report setting out separately by location in Georgia:

- 181 (1) The gross receipts from the Class B machines which the master licensee maintains;
182 and
183 (2) The net receipts of the Class B machines.

184 (d) In accordance with the provisions of Code Section 50-27-73 and the procedures set out
185 in Code Sections 50-27-74 and 50-27-75, the corporation may fine an applicant or holder
186 of a license, refuse to issue or renew a location license or master license, or revoke or
187 suspend a location license or master license for single or repeated violations of
188 subsection (b) of this Code section.

189 (e) A location owner or location operator shall report the information prescribed in this
190 Code section in the form required by the corporation. Such report shall be submitted in an
191 electronic format approved by the corporation.

192 (f) Beginning on ~~August 20, 2013~~ July 20, 2023, and on the twentieth day of ~~each month~~
193 January, April, July, and October of each year thereafter, for the previous ~~month~~ calendar
194 quarter, the reports required by subsections (c) and (c.1) of this Code section shall be
195 supplied to the corporation on forms provided by the corporation, including electronic
196 means. The corporation shall be authorized to audit any records for any such business
197 location or master licensee subject to this Code section. The corporation may contract with
198 any state agencies to perform the audits authorized by this Code section, and it may

199 contract or enter into a memorandum of understanding with the Department of Revenue
200 to enforce the provisions of this Code section."

201 **SECTION 6.**

202 Said chapter is further amended by designating the existing text of Code Section 50-27-87.1,
203 relating to unfair methods of competition and unfair and deceptive acts, as subsection (a),
204 revising paragraphs (3) and (4) of said subsection (a), and adding new subsections to read as
205 follows:

206 "(3) A ~~location owner or~~ location operator asking, demanding, or accepting anything of
207 value, including but not limited to a loan or financing arrangement, gift, procurement fee,
208 lease payments, revenue sharing, or payment of license fees or permit fees from a
209 manufacturer, distributor, or master licensee, as an incentive, inducement, or any other
210 consideration to locate bona fide coin operated amusement machines in that
211 establishment. A location ~~owner~~ operator that violates this ~~subsection~~ paragraph shall
212 have all of the location ~~owner's~~ operator's state business licenses revoked for a period of
213 one to five years per incident. The location ~~owner~~ operator also shall be fined up to
214 \$50,000.00 per incident and required to repay any incentive fees or other payments
215 received ~~from the operator~~; and

216 (4) A manufacturer, distributor, ~~operator~~, master licensee, or individual providing
217 anything of value, including but not limited to a loan or financing arrangement, gift,
218 procurement fee, lease payments, revenue sharing, or payment of license fees or permit
219 fees to a ~~location owner or~~ location operator, as an incentive, inducement, or any other
220 consideration to locate bona fide coin operated amusement machines in that
221 establishment. A manufacturer, distributor, ~~operator~~, master licensee, or individual who
222 violates this ~~subsection~~ paragraph shall have all of his or her state business licenses
223 revoked for a period of one to five years per incident. The individual, manufacturer,
224 distributor, ~~owner~~, or master licensee also shall be fined up to \$50,000.00 per incident.

225 (b) The provision by the master licensee of non-fixtures on or within a building in which
226 there is a licensed location at which bona fide coin operated amusement machines are
227 located, including, but not limited to, branded posters; signage, including, but not limited
228 to, digital video signage; rugs; seating; removable partition walls; or wall coverings to a
229 location owner or location operator with whom the master licensee has a contract for the
230 placement of Class B machines shall not be deemed to be unfair methods of competition
231 or unfair or deceptive acts under this article. Such non-fixtures shall be exclusively for the
232 facilitation and promotion of the play of such Class B machines and the redemption of
233 approved gift cards. Such non-fixtures shall remain the property of the master licensee and
234 shall be removed not later than when the Class B machines are removed from the location.
235 (c) Location owners may freely negotiate with any master licensee for the placement of
236 bona fide coin operated amusement machines without limitations as to incentives and
237 considerations which apply to location operators that do not own the premises where they
238 propose to locate such machines. It is the intent of this subsection to allow prospective or
239 current location owners to contract for the placement of such machines as to the terms upon
240 one or more locations; provided, however, that each location is subject to only one contract
241 with only one master licensee."

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SECTION 7.

243 Said chapter is further amended by revising paragraph (1) of subsection (d) of Code
244 Section 50-27-102, relating to role of corporation, implementation and certification,
245 separation of funds and accounting, and disputes, and adding a new paragraph to read as
246 follows:

247 "(d)(1) As a condition of the license issued pursuant to this article, no master licensee or
248 location owner or location operator shall replace or remove a Class A or Class B ~~bona~~
249 ~~fide coin operated amusement~~ machine from a location until the master licensee and
250 location owner or location operator certify to the corporation that there are no disputes

251 regarding any agreement, distribution of funds, or other claim between the master
252 licensee and location owner or location operator; provided, however, that this
253 certification shall not be required if a master licensee is replacing its own Class A or
254 Class B ~~bona fide coin-operated amusement~~ machine at a location. If either the master
255 licensee or location owner or location operator is unable to make the certification
256 required by this Code section, the corporation shall refer the dispute to a hearing officer
257 as set forth in this subsection. If a master licensee certifies that there is a dispute with a
258 location owner or location operator, which certification causes the continued generation
259 of revenue from the master licensee's Class A or Class B machine subject to the alleged
260 dispute pending a decision on the dispute, and, after the hearing officer's or court's
261 determination, the location owner or location operator is the prevailing party and the
262 hearing officer or court finds by clear and convincing evidence that the action was
263 brought by the master licensee without substantial justification or was brought for delay
264 or harassment, the hearing officer or court shall, in addition to any other remedy provided
265 for in this article, order that any revenues received by or due to the master licensee as a
266 result of the master licensee's certification of the dispute shall not be kept by the master
267 licensee but shall be awarded to the prevailing location owner or location operator and
268 the hearing officer or court shall also award the costs of the proceeding and attorney fees
269 to the location owner or location operator and against the master licensee. However, if,
270 after the hearing officer's or court's determination, the master licensee is the prevailing
271 party and the hearing officer or court finds by clear and convincing evidence that the
272 action was defended by the location owner or location operator without substantial
273 justification or was defended for delay or harassment, the hearing officer or court shall,
274 in addition to any other remedy provided for in this article, order that any revenues
275 received by or due to the location owner or location operator as a result of the master
276 licensee's certification of the dispute shall not be kept by the location owner or location
277 operator but shall be awarded to the master licensee and the hearing officer or court shall

278 also award the costs of the proceeding and attorney fees to the master licensee and against
279 the location owner or location operator. As used in this Code section, "without
280 substantial justification" means substantially frivolous, substantially groundless, or
281 substantially vexatious. Applicants for licenses shall submit all disputes against existing
282 or previous licensees under this article, including master licensees, location owners,
283 location operators, manufacturers, and distributors, to a hearing officer under this
284 paragraph."

285 "(6) In the event that a violation of paragraph (3) of Code Section 50-27-87.1 by a
286 location operator is proven in a proceeding under this Code section, the current contract
287 with the master licensee shall not be terminated and any change in master licensees shall
288 be denied. In the event that a violation of paragraph (4) of subsection (a) of Code
289 Section 50-27-87.1 by a master licensee who is not a party to the current contract for such
290 location is proven in a proceeding under this Code section, no change in master licensees
291 shall be authorized at such location and the hearing officer or court shall award the master
292 licensee the right to continue to provide bona fide coin operated amusement machines at
293 such location for a period of two years or a period of time equal to the term of the
294 previous contract, whichever is greater."

295 **SECTION 8.**

296 This Act shall become effective upon its approval by the Governor or upon its becoming law
297 without such approval.

298 **SECTION 9.**

299 All laws and parts of laws in conflict with this Act are repealed.