

House Bill 581

By: Representatives Smith of the 175<sup>th</sup>, Royal of the 164<sup>th</sup>, Buck of the 135<sup>th</sup>, Shanahan of the 10<sup>th</sup> and Irvin of the 45<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and  
2 taxation, so as to prohibit the sale or distribution of any tobacco product through a vending  
3 machine; to provide for legislative findings and purposes; to provide for definitions; to  
4 provide for powers, duties, and authority of the state revenue commissioner and the  
5 Department of Revenue; to provide for a compensation account; to provide for compensation  
6 payments and destruction expense payments to eligible vending machine applicants; to  
7 provide for settlement, waiver, and dismissal of certain claims; to provide for criminal  
8 penalties; to provide for effective dates; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is  
12 amended by adding a new chapter at the end thereof, to be designated Chapter 18, to read as  
13 follows:

14 "CHAPTER 18

15 48-18-1.

16 (a) It is the purpose and intent of the General Assembly in the enactment of this chapter  
17 to reduce underage tobacco use by discouraging such use and to prevent youth access to  
18 tobacco products by eliminating the sale or distribution of cigarettes in Georgia through  
19 tobacco vending machines.

20 (b) The General Assembly finds that:

21 (1) The State of Georgia and tobacco product manufacturers have entered into a Master  
22 Settlement Agreement providing that funds be paid to the State of Georgia by tobacco  
23 product manufacturers with the stated purpose of reducing underage tobacco use by  
24 discouraging such use and preventing youth access to tobacco products;

1 (2) Georgia's tobacco vending machine industry is made up of mostly small, family run  
2 businesses located throughout the State of Georgia; and

3 (3) Tobacco vending machines cannot be adapted to food or soft drink vending because  
4 the shape and size of such products will not fit the machines.

5 48-18-2.

6 As used in this chapter, the term:

7 (1) 'Affiliate' means a person who directly or indirectly owns or controls, is owned or  
8 controlled by, or is under common ownership or control with another person. Solely for  
9 purposes of this definition, the terms 'owns,' 'is owned,' and 'ownership' mean ownership  
10 of an equity interest or the equivalent thereof of 10 percent or more, and the term 'person'  
11 means an individual, partnership, committee, association, corporation, or any other  
12 organization or group of persons.

13 (2) 'Compensation account' means the tobacco vending machine fair compensation  
14 account established by Code Section 48-18-5.

15 (3) 'Date of funding' means the date, as determined by the commissioner pursuant to Code  
16 Section 48-18-5, on which sufficient transfers to the compensation account have been made  
17 to meet the expenditures authorized under this chapter.

18 (4) 'Distributor' means any person who furthers the distribution of tobacco products,  
19 whether domestic or imported, at any point from the original place of manufacture to the  
20 person who sells or distributes the product to individuals for personal consumption.

21 (5) 'Glass front machine' means any vending machine with a glass front that distributes  
22 products by operation of a spiral wire distribution mechanism.

23 (6) 'Master Settlement Agreement' means the settlement agreement and related  
24 documents entered into on November 23, 1998, by the state and leading United States  
25 tobacco product manufacturers. The Master Settlement Agreement has been transmitted  
26 by the Attorney General to the Secretary of State and shall be maintained as a permanent  
27 record in the office of the Secretary of State, together with the enrolled Act by which this  
28 chapter is enacted. The Master Settlement Agreement shall not be published with the  
29 Act, but the Secretary of State shall, upon request and payment of copying costs, make  
30 a copy or certified copy of such document available to any member of the public.

31 (7) 'Maximum number of operating tobacco vending machines' for a single owner shall  
32 mean the highest number of operating tobacco vending machines operated by the owner  
33 at any one time during the calendar year immediately preceding the calendar year in  
34 which this chapter is enacted.

1 (8) 'Operating tobacco vending machine' means any tobacco vending machine that was  
2 owned, serviced, and maintained by a vending machine applicant on a regular basis and  
3 which was stocked with cigarettes for retail sale in the State of Georgia during the calendar  
4 year immediately preceding the calendar year in which this chapter is enacted.

5 (9) 'Qualified escrow fund' means an escrow arrangement with a federally or state  
6 chartered financial institution having no affiliation with any tobacco product  
7 manufacturer and having assets of at least \$1 billion, where such arrangement requires  
8 that such financial institution hold the escrowed funds' principal for the benefit of  
9 releasing parties and prohibits the tobacco product manufacturer placing the funds into  
10 escrow from using, accessing, or directing the use of the funds' principal except as  
11 consistent with subparagraph (B) of paragraph (2) of Code Section 10-13-3.

12 (10) 'Retailer' means any person who is licensed in this state to sell tobacco products to  
13 individuals for personal consumption during the calendar year immediately preceding the  
14 calendar year in which this chapter is enacted.

15 (11) 'Tobacco product manufacturer' means an entity that after the date of enactment of  
16 this chapter directly and not exclusively through any affiliate:

17 (A) Manufactures cigarettes anywhere that such manufacturer intends such cigarettes  
18 to be sold in the United States, including cigarettes intended to be sold in the United  
19 States through an importer, except where such importer is an original participating  
20 manufacturer as that term is defined in the Master Settlement Agreement, that will be  
21 responsible for the payments under the Master Settlement Agreement with respect to  
22 such cigarettes as a result of the provisions of subsection II(mm) of the Master  
23 Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master  
24 Settlement Agreement, provided that the manufacturer of such cigarettes does not  
25 market or advertise such cigarettes in the United States;

26 (B) Is the first purchaser anywhere for resale in the United States of cigarettes  
27 manufactured anywhere that the manufacturer does not intend such cigarettes to be sold  
28 in the United States; or

29 (C) Becomes a successor of an entity described in subparagraph (A) or (B) of this  
30 paragraph.

31 The term 'tobacco product manufacturer' shall not include an affiliate of a tobacco  
32 product manufacturer unless such affiliate itself falls within subparagraphs (A) through  
33 (C) of this paragraph.

34 (12) 'Tobacco vending machine' means any vending machine equipped for the  
35 distribution of cigarette packages that was located in this state at any time during the  
36 calendar year immediately preceding the calendar year in which this chapter is enacted.

1 (13) 'Vending machine applicant' means any tobacco vending machine owner and  
2 operator that applies to the commissioner under Code Section 48-18-6 for compensation  
3 for banned operating tobacco vending machines.

4 48-18-3.

5 (a) On or after July 1, 2001, no owner or operator of vending machines in this state shall  
6 operate a number of tobacco vending machines that exceeds the maximum number of  
7 operating tobacco vending machines, as defined in this chapter. A purchaser of a tobacco  
8 vending machine business may operate the maximum number of operating tobacco vending  
9 machines permitted under this chapter to be operated by the seller.

10 (b) Any person who violates subsection (a) of this Code section shall be guilty of a  
11 misdemeanor.

12 48-18-4.

13 Effective 30 days after the date of funding determined by the commissioner under  
14 subsection (b) of Code Section 48-18-5, no manufacturer, distributor, or retailer shall  
15 distribute or cause to be distributed any tobacco product through a vending machine.

16 48-18-5.

17 (a) There is established in the department a compensation account consisting of such  
18 amounts as may be appropriated or credited to such account. The compensation account  
19 shall be administered by the department.

20 (b) The commissioner shall determine the date of funding which shall be the date on which  
21 sufficient transfers have been made to the compensation account to meet the expenditures  
22 authorized under this chapter. Within ten days of determination of the date of funding, the  
23 department shall give written notice of the date of funding and the application procedures  
24 to Georgia licensed tobacco retailers and distributors.

25 (c) On or before November 1, 2001, the commissioner shall promulgate rules and  
26 regulations specifying procedures for vending machine applicants to submit compensation  
27 claims pursuant to this chapter.

28 48-18-6.

29 (a) Beginning on a date 30 days following the date of funding and ending on a date six  
30 months thereafter, the commissioner shall make payments from the compensation account  
31 to eligible vending machine applicants to compensate them for operating tobacco vending  
32 machines that are prohibited by this chapter.

1 (b) To be eligible to receive payments under this Code section, the vending machine  
2 applicant shall satisfy the application procedures determined by the commissioner. Such  
3 procedures shall require the vending machine applicant to submit, under oath, information  
4 sufficient to:

5 (1) Allow the commissioner to determine:

6 (A) The number of compensable operating tobacco vending machines for which each  
7 vending machine applicant seeks compensation;

8 (B) Each operating tobacco vending machine's location and approximate dates of  
9 operation at that location; and

10 (C) Each vending machine's serial number;

11 (2) Demonstrate to the satisfaction of the commissioner that the vending machine  
12 applicant is the owner in interest and did not sell, assign, or otherwise transfer such  
13 owner's ownership interest in any vending machine for which such owner seeks  
14 compensation under this Code section; and

15 (3) Demonstrate to the satisfaction of the commissioner:

16 (A) The amount of gross revenues earned by the vending machine applicant from  
17 operating tobacco vending machines during the calendar year immediately preceding  
18 the calendar year in which this chapter is enacted and reported on federal income tax  
19 returns of that calendar year; or

20 (B) That the gross revenues earned by the vending machine applicant from operating  
21 tobacco vending machines during the calendar year immediately preceding the calendar  
22 year in which this chapter is enacted cannot be demonstrated because the accounting  
23 for tobacco vending revenues during that period is mixed with the accounting for  
24 revenues from other types of vending or food services.

25 (c)(1) On or before the termination date under subsection (a) of this Code section and  
26 subject to the availability of sufficient funds in the compensation account, the  
27 commissioner shall make payments to vending machine applicants that satisfy the  
28 eligibility requirements of subsection (b) of this Code section in the amount:

29 (A) Of one and one-half times the gross revenues earned from legally operating  
30 tobacco vending machines for the calendar year immediately preceding the calendar  
31 year in which this chapter is enacted and reported on federal income tax returns for that  
32 calendar year; or

33 (B) Of \$3,600.00 per legally operating tobacco vending machine that was operated in  
34 this state for a period of not less than 270 days during the calendar year immediately  
35 preceding the calendar year in which this chapter is enacted if the vending machine  
36 applicant demonstrates to the commissioner that gross revenues earned by the vending  
37 machine applicant from operating tobacco vending machines during the calendar year

1 immediately preceding the calendar year in which this chapter is enacted cannot be  
2 demonstrated because the accounting for the applicant's tobacco vending revenues during  
3 that period is mixed with the accounting for revenues from other types of vending or food  
4 services.

5 (2) Such payments shall be made by the commissioner to a vending machine applicant  
6 pursuant to either subparagraph (A) or (B) of paragraph (1) of this subsection, but not  
7 both.

8 (d) Nothing in this Code section shall authorize compensation for glass front vending  
9 machines.

10 48-18-7.

11 (a) On or before a date which is 30 days following the date of funding, the commissioner  
12 shall determine procedures for:

13 (1) The destruction or permanent disabling of tobacco vending machines, as required by  
14 subsection (b) of this Code section; and

15 (2) Certification to the commissioner that each vending machine applicant has destroyed  
16 or permanently disabled all tobacco vending machines owned or operated by the vending  
17 machine applicant pursuant to the requirements of subsection (b) of this Code section.

18 (b) On or before a date which is six months following the date of funding, each vending  
19 machine applicant shall destroy or permanently disable all of its owned tobacco vending  
20 machines and shall certify to the commissioner that such destruction or permanent  
21 disablement has occurred. No compensation shall be paid under this chapter with respect  
22 to any tobacco vending machine which has not been actually destroyed or permanently  
23 disabled but which has been relocated to another state.

24 (c) Within 45 days of receipt of certification of tobacco vending machine destruction or  
25 permanent disablement, the commissioner shall pay from the compensation fund, subject  
26 to availability of sufficient funds, \$100.00 to the vending machine applicant for each  
27 certified destroyed or permanently disabled tobacco vending machine to reimburse the  
28 vending machine applicant for the expense of destruction, disablement, and disposal of  
29 each tobacco vending machine.

30 48-18-8.

31 (a) Acceptance of compensation under Code Section 48-18-7 by a vending machine  
32 applicant shall operate as a settlement and waiver of all present or future claims relating  
33 to this chapter, including any and all claims arising under the Georgia Constitution or the  
34 United States Constitution or the laws of Georgia or the United States against the State of

1 Georgia or any agency or instrumentality thereof or any manufacturer, distributor, or  
2 retailer of tobacco products that is a signatory to the Master Settlement Agreement.

3 (b) All actions relating to this chapter commenced by a tobacco vending machine applicant  
4 against the State of Georgia or any agency or instrumentality thereof or any manufacturer,  
5 distributor, or retailer of tobacco products that is a signatory to the Master Settlement  
6 Agreement shall be dismissed with prejudice as a precondition to payment of compensation  
7 to such vending machine applicant under Code Section 48-18-7.

8 48-18-9.

9 Any person who makes any false statement or false certification under this chapter commits  
10 the offense of false swearing and, upon conviction thereof, shall be punished as provided  
11 in Code Section 16-10-71.

12 48-18-10.

13 (a) It shall be the duty of the commissioner and the department to enforce this chapter.

14 (b) The commissioner shall be authorized to promulgate any rules and regulations  
15 necessary to implement and administer this chapter."

16 **SECTION 2.**

17 This Act shall become effective July 1, 2001; provided, however, that, for purposes of  
18 establishing a compensation account and making payments from such account, this Act shall  
19 become effective only if funds are specifically appropriated for purposes of this Act in an  
20 appropriations Act making specific reference to this Act and shall become effective when  
21 funds so appropriated become available for expenditure.

22 **SECTION 3.**

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