

Senate Bill 204

By: Senators Polak of the 42<sup>nd</sup>, Streat of the 19<sup>th</sup> and Thomas of the 10<sup>th</sup>

A BILL TO BE ENTITLED

AN ACT

1 To revise provisions relating to bona fide coin operated amusement machines; to amend Part  
2 1 of Article 2 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating  
3 to gambling, so as to provide that certain bona fide coin operated amusement machines are  
4 not contraband; to provide a definition; to prohibit the award of certain items as prizes; to  
5 provide that evidence of winnings from such machines shall not be exchangeable or  
6 redeemable for money, cash, or its equivalent in this state or any other jurisdiction; to change  
7 penalties for giving money for free replays on certain amusement machines, for giving  
8 money for noncash prizes for playing certain amusement machines, and for giving money  
9 for successful play of certain amusement machines; to provide penalties for the receipt of  
10 money for such free replays, for such noncash prizes, and for such successful play; to provide  
11 that giving or receiving any money for a gift certificate or reusing a gift certificate awarded  
12 for successful play is unlawful and to provide for penalties; to provide for seizure of such  
13 amusement machines in certain circumstances; to provide for a civil action for forfeiture and  
14 for venue, procedures, parties, notice, and disposition of such action; to amend Chapter 17  
15 of Title 48 of the Official Code of Georgia Annotated, relating to taxation of bona fide coin  
16 operated amusement machines, so as to provide for notice of certain criminal provisions on  
17 master licenses and permit stickers issued for bona fide coin operated amusement machines;  
18 to provide that hearings relating to licensing of bona fide coin operated amusement machines  
19 are not subject to provisions relating to the Office of State Administrative Hearings; to  
20 provide for verified monthly reports of gross retail receipts from bona fide coin operated  
21 amusement machines and total gross retail receipts from a business location in certain  
22 circumstances; to authorize audits; to provide penalties for violations by business owners or  
23 business operators who are not licensees or applicants for licenses; to provide for definitions;  
24 to prohibit local governments from prohibiting licensed bona fide coin operated amusement  
25 machines or limiting the number of such machines; to provide for exceptions; to authorize  
26 certain regulation of amusement machines by local governments, specified penalties for  
27 violations, and civil actions for injunctions in certain circumstances; to provide for related  
28 matters; to provide for effective dates; to repeal conflicting laws; and for other purposes.

1 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

2 **SECTION 1.**

3 Part 1 of Article 2 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated,  
4 relating to gambling, is amended by striking in its entirety subsection (a) of Code Section  
5 16-12-30, relating to seizure and destruction of gambling devices, and inserting in lieu  
6 thereof the following:

7 "(a)(1) Except as provided in subsection (b) of Code Section 16-12-24, every gambling  
8 device is declared to be contraband and subject to seizure and confiscation by any state  
9 or local authority within whose jurisdiction the same may be found.

10 (2) Bona fide coin operated amusement machines, as defined in Code Section 48-17-1,  
11 which reward a successful player only with noncash redemption in accordance with  
12 subsection (c) or (d) of Code Section 16-12-35 are not gambling devices and are not  
13 contraband.

14 (3) Bona fide coin operated amusement machines, as defined in Code Section 48-17-1,  
15 which are alleged to have actually been used in a violation of subsection (e), (f), (g), or  
16 (h) of Code Section 16-12-35 are subject to seizure and forfeiture in accordance with the  
17 provisions of subsection (j) of Code Section 16-12-35."

18 **SECTION 2.**

19 Said part is further amended in Code Section 16-12-35, relating to the applicability of the  
20 part prohibiting gambling, by striking in their entirety subsections (a.1), (c), (d), (e), (f), and  
21 (g) and inserting in lieu thereof the following:

22 "(a.1) As used in this Code section, the term:

23 (1) 'Single play' or 'one play' means the completion of a sequence of a game where the  
24 player receives a score and from the score the player can secure free replays,  
25 merchandise, points, tokens, vouchers, tickets, or other evidence of winnings as set forth  
26 in subsection (c) or (d) of this Code section.

27 (2) 'Some 'some skill' means any presence of the following factors, alone or in  
28 combination with one another:

29 ~~(1)~~(A) A learned power of doing a thing competently;

30 ~~(2)~~(B) A particular craft, art, ability, strategy, or tactic;

31 ~~(3)~~(C) A developed or acquired aptitude or ability;

32 ~~(4)~~(D) A coordinated set of actions, including, but not limited to, eye-hand  
33 coordination;

34 ~~(5)~~(E) Dexterity, fluency, or coordination in the execution of learned physical or  
35 mental tasks or both;

1       ~~(6)~~(F) Technical proficiency or expertise;

2       ~~(7)~~(G) Development or implementation of strategy or tactics in order to achieve a goal;

3       or

4       ~~(8)~~(H) Knowledge of the means or methods of accomplishing a task.

5       The term some skill refers to a particular craft, coordinated effort, art, ability, strategy,  
6       or tactic employed by the player to affect in some way the outcome of the game played  
7       on a bona fide coin operated amusement machine as defined in paragraph (2) of Code  
8       Section 48-17-1. If a player can take no action to affect the outcome of the game, the  
9       bona fide coin operated amusement machine does not meet the 'some skill' requirement  
10      of this Code section."

11      "(c)(1) Nothing in this part shall apply to a crane game machine or device meeting the  
12      requirements of paragraph (2) of this subsection.

13      (2) A crane game machine or device acceptable for the purposes of paragraph (1) of this  
14      subsection shall meet the following requirements:

15      (A) The machine or device must be designed and manufactured only for bona fide  
16      amusement purposes and must involve at least some skill in its operation;

17      (B) The machine or device must reward a winning player exclusively with free replays  
18      or merchandise contained within the machine itself and such merchandise must be  
19      limited to noncash merchandise, prizes, toys, gift certificates, or novelties, each of  
20      which has a wholesale value not exceeding \$5.00 and is not exchangeable or  
21      redeemable in any manner in this state or in any other state, jurisdiction, or foreign  
22      country for money, cash, or any equivalent thereof. The machine is prohibited from  
23      awarding as a reward for successful play any item the sale of which is regulated by

24      Title 3. A player may be rewarded with both free replays and noncash merchandise,  
25      prizes, toys, or novelties for a single play of the game or device as provided in this  
26      Code section;

27      (C) The player of the machine or device must be able to control the timing of the use  
28      of the claw or grasping device to attempt to pick up or grasp a prize, toy, or novelty;

29      (D) The player of the machine or device must be made aware of the total time which  
30      the machine or device allows during a game for the player to maneuver the claw or  
31      grasping device into a position to attempt to pick up or grasp a prize, toy, or novelty;

32      (E) The claw or grasping device must not be of a size, design, or shape that prohibits  
33      picking up or grasping a prize, toy, or novelty contained within the machine or device;  
34      and

35      (F) The machine or device must not be classified by the United States government as  
36      requiring a federal gaming stamp under applicable provisions of the Internal Revenue  
37      Code.

1 (d)(1) Nothing in this part shall apply to a coin operated game or device designed and  
2 manufactured only for bona fide amusement purposes which involves some skill in its  
3 operation if it rewards the player exclusively with:

4 (A) Free replays;

5 (B) Merchandise limited to noncash merchandise, prizes, toys, gift certificates, or  
6 novelties, each of which has a wholesale value of not more than \$5.00 received for a  
7 single play of the game or device and is not exchangeable or redeemable in any manner  
8 in this state or in any other state, jurisdiction, or foreign country for money, cash, or any  
9 equivalent thereof. The machine is prohibited from awarding as a reward for successful  
10 play any item the sale of which is regulated by Title 3;

11 (C) Points, tokens, vouchers, tickets, or other evidence of winnings which may be  
12 exchanged only for rewards set out in subparagraph (A) of this paragraph or  
13 subparagraph (B) of this paragraph or a combination of rewards set out in subparagraph  
14 (A) and subparagraph (B) of this paragraph; or

15 (D) Any combination of rewards set out in two or more of subparagraph (A), (B), or  
16 (C) of this paragraph.

17 This subsection shall not apply, however, to any game or device classified by the United  
18 States government as requiring a federal gaming stamp under applicable provisions of the  
19 Internal Revenue Code.

20 (2) A player of bona fide coin operated amusement games or devices described in  
21 paragraph (1) of this subsection may accumulate winnings for the successful play of such  
22 bona fide coin operated amusement games or devices through tokens, vouchers, points,  
23 or tickets. Points may be accrued on the machine or device. A player may carry over  
24 points on one play to subsequent plays. A player may redeem accumulated tokens,  
25 vouchers, or tickets for noncash merchandise, prizes, toys, gift certificates, or novelties  
26 so long as the amount of tokens, vouchers, or tickets received does not exceed \$5.00 for  
27 a single play.

28 (e) Any person who gives to any other person money for free replays on coin operated  
29 games or devices described in subsection (b), (c), or (d) of this Code section shall, for a  
30 first offense, be guilty of a misdemeanor; provided, however, that a first offense involving  
31 transfer of more than \$300.00 in a single transaction or in the aggregate shall be a felony  
32 punishable by imprisonment for not less than one and not more than three years or a fine,  
33 or both. Second and subsequent convictions shall be felonies punishable by imprisonment  
34 for not less than one and not more than three years or a fine, or both. The fine shall not  
35 exceed \$10,000.00 for either the first or the second felony conviction and shall not exceed  
36 \$20,000.00 for any subsequent felony conviction.

1 (f) Any person owning or possessing an amusement game or device described in  
2 subsection (c) or (d) of this Code section or any person employed by or acting on behalf  
3 of any such person who gives to any other person money for any noncash merchandise,  
4 prize, toy, gift certificate, or novelty received as a reward in playing any such amusement  
5 game or device shall, for a first offense, be guilty of a misdemeanor; provided, however,  
6 that a first offense involving transfer of more than \$300.00 in a single transaction or in the  
7 aggregate shall be a felony punishable by imprisonment for not less than one and not more  
8 than three years or a fine, or both. Second and subsequent convictions shall be felonies  
9 punishable by imprisonment for not less than one and not more than three years or a fine,  
10 or both. The fine shall not exceed \$10,000.00 for either the first or the second felony  
11 conviction and shall not exceed \$20,000.00 for any subsequent felony conviction.

12 (g) Any person owning or possessing an amusement game or device described in  
13 subsection (b), (c), or (d) of this Code section, or any person employed by or acting on  
14 behalf of any such person, who gives to any other person money as a reward for the  
15 successful play or winning of any such amusement game or device shall, for a first offense,  
16 be guilty of a misdemeanor of a high and aggravated nature; provided, however, that a first  
17 offense involving transfer of more than \$300.00 in a single transaction or in the aggregate  
18 shall be a felony punishable by imprisonment for not less than one and not more than three  
19 years or a fine, or both. Second and subsequent convictions shall be felonies punishable by  
20 imprisonment for not less than one and not more than three years or a fine, or both. The  
21 fine shall not exceed \$10,000.00 for either the first or the second felony conviction and  
22 shall not exceed \$20,000.00 for any subsequent felony conviction.

23 (h)(1) It shall be unlawful for any person to receive money from another person for free  
24 replays on a bona fide coin operated amusement machine as defined in Code Section  
25 48-17-1.

26 (2) It shall be unlawful for any person to receive money from a person owning or  
27 possessing a bona fide coin operated amusement machine as defined in Code Section  
28 48-17-1 or any person employed by or acting on behalf of any such person for any  
29 noncash merchandise, prize, toy, gift certificate, or novelty received as a reward in  
30 playing any such bona fide coin operated amusement machine. It shall be unlawful for  
31 any person to receive any money for a gift certificate received as a reward in playing any  
32 bona fide coin operated amusement machine.

33 (3) It shall be unlawful for any person to receive money as a reward for the successful  
34 play or winning of any bona fide coin operated amusement machine, as defined in Code  
35 Section 48-17-1, from any person owning or possessing such bona fide coin operated  
36 amusement machine or any person employed by or acting on behalf of such a person.

1 (4) Violation of paragraph (1), (2), or (3) of this subsection shall, for a first offense, be  
 2 a misdemeanor of a high and aggravated nature; provided, however, that a first conviction  
 3 involving receipt of more than \$300.00 in a single transaction or in the aggregate shall  
 4 be a felony offense punishable by imprisonment for not less than one nor more than three  
 5 years or a fine, or both. Second and subsequent convictions shall be felonies punishable  
 6 with imprisonment for not less than one nor more than three years or a fine, or both. The  
 7 fine shall not exceed \$10,000.00 for either the first or the second felony conviction and  
 8 shall not exceed \$20,000.00 for any subsequent felony conviction.

9 (i) Upon the arrest of any person charged with a violation of subsection (e), (f), (g), or (h)  
 10 of this Code section or subsequent to such a violation, any peace officer may seize one or  
 11 more machines or games which are alleged to have been actually used in such violation.  
 12 Such seizure shall be reported to the district attorney of the county where the machine or  
 13 game was seized within ten days of such seizure. Within 30 days after receipt of notice of  
 14 such a seizure, the district attorney shall cause to be filed in the superior court of the county  
 15 in which the machine or game was seized an action against the property so seized and  
 16 provide notice of such action to all persons having an interest in or right affected by the  
 17 seizure or sale of such property. Otherwise, the civil action and disposition of the machine  
 18 or game shall be governed by the provisions of subsections (e), (f), (g), and (h) of Code  
 19 Section 16-12-32."

### 20 SECTION 3.

21 Chapter 17 of Title 48 of the Official Code of Georgia Annotated, relating to taxation of bona  
 22 fide coin operated amusement machines, is amended in Code Section 48-17-2, relating to  
 23 master licenses, by inserting a new subsection to be designated subsection (d.1) to read as  
 24 follows:

25 "(d.1) Each master license issued for bona fide coin operated amusement machines shall  
 26 include the following:

27 'GEORGIA LAW PROHIBITS GIVING OR RECEIPT OF ANY MONEY FOR  
 28 WINNING A GAME OR GAMES ON THIS AMUSEMENT MACHINE; GIVING OR  
 29 RECEIPT OF MONEY FOR FREE REPLAYS WON ON THIS AMUSEMENT  
 30 MACHINE; GIVING OR RECEIPT OF MONEY FOR ANY MERCHANDISE, PRIZE,  
 31 TOY, GIFT CERTIFICATE, OR NOVELTY WON ON THIS AMUSEMENT  
 32 MACHINE; OR AWARDED ANY MERCHANDISE, PRIZE, TOY, GIFT  
 33 CERTIFICATE, OR NOVELTY OF A VALUE EXCEEDING \$5.00 FOR A SINGLE  
 34 PLAY OF THIS MACHINE."



1 machines are situated from bona fide coin operated amusement machines that provide for  
2 noncash redemption as described in subsection (c) or (d) of Code Section 16-12-35.

3 (c) For each business location which offers to the public one or more bona fide coin  
4 operated amusement machines, as defined in Code Section 48-17-1, the business owner or  
5 business operator shall prepare a monthly verified report setting out separately the gross  
6 retail receipts from the bona fide coin operated amusement machines and the gross retail  
7 receipts from the business location. Upon request, the business owner or business operator  
8 shall supply such monthly reports to the commissioner. The department is authorized to  
9 audit any records for any such business location.

10 ~~(b)~~(d) In accordance with the provisions of Code Section 48-17-4 and the procedures set  
11 out in Code Sections 48-17-5 and 48-17-6, the commissioner may fine an applicant or  
12 licensee, refuse to issue or renew a master license, or ~~may~~ revoke or suspend a master  
13 license for single or repeated violations of subsection ~~(a)~~(b) of this Code section.

14 (e) As a penalty for violation of the provisions of subsection (b) or (c) of this Code section,  
15 the commissioner may:

16 (1) Fine:

17 (A) A business owner who is not an applicant for a license or a licensee; and

18 (B) A business operator who is not an applicant for a license or a licensee; or

19 (2) Issue an order barring a person described in paragraph (1) of this subsection from  
20 offering any bona fide coin operated amusement machine to the public for commercial  
21 use at the business location which was the site or subject of the violation for a period not  
22 to exceed six months; or

23 (3) Fine as provided in paragraph (1) of this subsection and issue an order as provided  
24 in paragraph (2) of this subsection.

25 Before a penalty is imposed in accordance with this subsection, a business owner or  
26 business operator is entitled to at least 30 days' written notice and, if requested, a hearing.  
27 Such written notice may be served in the manner provided for written notices to applicants  
28 for licenses and licensees in subsection (b) of Code Section 48-17-5, and an order imposing  
29 a penalty may be delivered in the manner provided for delivery of the commissioner's  
30 orders to applicants for licenses or licensees in Code Section 48-17-6."

31 **SECTION 7.**

32 Said chapter is further amended by inserting a new Code section to be designated Code  
33 Section 48-17-16 to read as follows:

34 "48-17-16.

35 (a) Providing that the owner and possessor of a bona fide coin operated amusement  
36 machine, as defined in Code Section 48-17-1, have complied with the provisions of this

1 chapter, the governing authority of the county or municipal corporation where such a bona  
2 fide coin operated amusement machine is located is not authorized to:

3 (1) Prohibit the possession, use, or offering to the public of such a bona fide coin  
4 operated amusement machine in any lawful business; or

5 (2) Restrict the number of bona fide coin operated amusement machines in any lawful  
6 business, except as otherwise provided in paragraphs (1) and (6) of subsection (b) of this  
7 Code section.

8 (b) The governing authority of any county or municipal corporation is authorized to enact  
9 and enforce an ordinance which includes but is not limited to any or a combination of the  
10 following provisions:

11 (1) Prohibiting the commercial offering to the public of more than six bona fide coin  
12 operated amusement machine which rewards the player exclusively as described in  
13 subsection (d) of Code Section 16-12-35 at any business location which sells alcoholic  
14 beverages by the package;

15 (2) Requiring the owner or operator of a business location which offers to the public any  
16 bona fide coin operated amusement machine which rewards the player exclusively as  
17 described in subsection (d) of Code Section 16-12-35 to inform all employees of the  
18 prohibitions and penalties set out in subsections (e), (f), (g), and (h) of Code Section  
19 16-12-35;

20 (3) Requiring the owner or possessor of any bona fide coin operated amusement machine  
21 which rewards the player exclusively as described in subsection (d) of Code Section  
22 16-12-35 to inform each business owner or business operator of the business location  
23 where such machine is located of the prohibitions and penalties set out in subsections (e),  
24 (f), (g), and (h) of Code Section 16-12-35;

25 (4) Providing for fines and the suspension or revocation of a license granted by such  
26 local governing authority to manufacture, distribute, or sell alcoholic beverages or for the  
27 suspension or revocation of any other license granted by such local governing authority  
28 as a penalty for conviction of the owner or operator of a business location of a violation  
29 of subsection (e), (f), or (g) of Code Section 16-12-35, or both; provided, however, that  
30 a municipal corporation is not authorized to impose any penalty greater than the  
31 maximum penalty authorized by such municipal corporation's charter. An ordinance  
32 providing for the suspension or revocation of a license shall conform to the due process  
33 guidelines for granting, refusal, suspension, or revocation of a license for the  
34 manufacture, distribution, or sale of alcoholic beverages set out in subsection (b) of Code  
35 Section 3-3-2;

36 (5) Providing that, after the arrest and after the conviction of the owner or operator of a  
37 business location or an employee or agent of such an owner or operator for a violation of

1 subsection (e), (f), or (g) of Code Section 16-12-35, the prosecuting attorney of the  
 2 county or municipal corporation, as the case may be, is authorized to seek an order of the  
 3 superior court enjoining the owner and operator of the business location from offering to  
 4 the public any bona fide coin operated amusement machine at the business location where  
 5 the violation occurred for up to 90 days;

6 (6) Requiring any business owner or business operator subject to Code Section 48-17-15  
 7 to provide to the local governing authority a copy of each verified monthly report  
 8 prepared in accordance with such Code section and incorporating the provisions of such  
 9 Code section in the ordinance;

10 (7) Requiring that the business owner or business operator of any business location  
 11 which offers to the public one or more bona fide coin operated amusement machines  
 12 posts prominently a notice including the words set forth in subsection (d.1) of Code  
 13 Section 48-17-2 for inclusion on a master license for bona fide coin operated amusement  
 14 machines or words which are substantially similar;

15 (8) Providing for restrictions relating to distance from specified structures or uses, so  
 16 long as those distance requirements are no more restrictive than such requirements  
 17 applicable to the sale of alcoholic beverages;

18 (9) Requiring, as a condition for doing business in the jurisdiction, disclosure by the  
 19 business owner or business operator of the name and address of the owner of the bona  
 20 fide coin operated amusement machine or machines;

21 (10) Providing for penalties, including fines or suspension or revocation of a license as  
 22 provided in paragraph (4) of this subsection, or both, for a violation of any ordinance  
 23 enacted pursuant to this subsection; provided, however, that a municipal corporation is  
 24 not authorized to impose any penalty greater than the maximum penalty authorized by  
 25 such municipal corporation's charter;

26 (11) Providing for any or all of the penalties authorized by paragraph (8) of this  
 27 subsection for violation of Code Section 48-17-15; and

28 (12) Imposing other reasonable restrictions, not in actual conflict with this chapter or  
 29 Code Section 16-12-35, concerning the commercial offering to the public of bona fide  
 30 coin operated amusement machines."

### 31 **SECTION 8.**

32 (a) Except as otherwise provided in subsection (b) of this section, this Act shall become  
 33 effective on July 1, 2001.

34 (b) Sections 3 and 5 of this Act shall become effective January 1, 2002.

1 **SECTION 9.**

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