

The Senate Finance and Public Utilities Committee offered the following substitute to SB 204:

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 any person who
10 gives to any other person money for any noncash merchandise, prize, toy, gift certificate, or
11 novelty received for playing a bona fide coin operated amusement machine; to provide
12 penalties for the receipt of money for such free replays, for such noncash prizes, and for such
13 successful play; to provide that giving or receiving any money for a gift certificate or reusing
14 a gift certificate awarded for successful play is unlawful and to provide for penalties; to
15 provide for seizure of such amusement machines in certain circumstances; to provide for a
16 civil action for forfeiture and for venue, procedures, parties, notice, and disposition of such
17 action; to require certain notice to be printed on gift certificates awarded for successful play;
18 to amend Chapter 17 of Title 48 of the Official Code of Georgia Annotated, relating to
19 taxation of bona fide coin operated amusement machines, so as to provide for notice of
20 certain criminal provisions on master licenses and permit stickers issued for bona fide coin
21 operated amusement machines; to change the provisions relating to master licenses; to
22 provide that hearings relating to licensing of bona fide coin operated amusement machines
23 are not subject to provisions relating to the Office of State Administrative Hearings; to
24 provide for verified monthly reports of gross retail receipts from bona fide coin operated
25 amusement machines and total gross retail receipts from a business location in certain
26 circumstances; to authorize audits; to provide penalties for violations by business owners or
27 business operators who are not licensees or applicants for licenses; to provide for definitions;
28 to prohibit local governments from prohibiting licensed bona fide coin operated amusement

1 machines or limiting the number of such machines; to provide for exceptions; to authorize
 2 certain regulation of amusement machines by local governments, specified penalties for
 3 violations, and civil actions for injunctions in certain circumstances; to provide for related
 4 matters; to provide for effective dates; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Part 1 of Article 2 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated,
 8 relating to gambling, is amended by striking in its entirety subsection (a) of Code Section
 9 16-12-30, relating to seizure and destruction of gambling devices, and inserting in lieu
 10 thereof the following:

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

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

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

22 **SECTION 2.**

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

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

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

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

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

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

- 1 ~~(3)~~(C) A developed or acquired aptitude or ability;
- 2 ~~(4)~~(D) A coordinated set of actions, including, but not limited to, eye-hand
- 3 coordination;
- 4 ~~(5)~~(E) Dexterity, fluency, or coordination in the execution of learned physical or
- 5 mental tasks or both;
- 6 ~~(6)~~(F) Technical proficiency or expertise;
- 7 ~~(7)~~(G) Development or implementation of strategy or tactics in order to achieve a goal;
- 8 or
- 9 ~~(8)~~(H) Knowledge of the means or methods of accomplishing a task.

10 The term some skill refers to a particular craft, coordinated effort, art, ability, strategy,

11 or tactic employed by the player to affect in some way the outcome of the game played

12 on a bona fide coin operated amusement machine as defined in paragraph (2) of Code

13 Section 48-17-1. If a player can take no action to affect the outcome of the game, the

14 bona fide coin operated amusement machine does not meet the 'some skill' requirement

15 of this Code section."

16 "(c)(1) Nothing in this part shall apply to a crane game machine or device meeting the

17 requirements of paragraph (2) of this subsection.

18 (2) A crane game machine or device acceptable for the purposes of paragraph (1) of this

19 subsection shall meet the following requirements:

- 20 (A) The machine or device must be designed and manufactured only for bona fide
- 21 amusement purposes and must involve at least some skill in its operation;
- 22 (B) The machine or device must reward a winning player exclusively with free replays
- 23 or merchandise contained within the machine itself and such merchandise must be
- 24 limited to noncash merchandise, prizes, toys, gift certificates, or novelties, each of
- 25 which has a wholesale value not exceeding \$5.00 and is not exchangeable or
- 26 redeemable in any manner in this state or in any other state, jurisdiction, or foreign
- 27 country for money, cash, or any equivalent thereof. The machine is prohibited from
- 28 awarding as a reward for successful play any item the sale of which is regulated by
- 29 Title 3, any tobacco products, lottery tickets, or any firearms. A player may be
- 30 rewarded with both free replays and noncash merchandise, prizes, toys, or novelties for
- 31 a single play of the game or device as provided in this Code section;
- 32 (C) The player of the machine or device must be able to control the timing of the use
- 33 of the claw or grasping device to attempt to pick up or grasp a prize, toy, or novelty;
- 34 (D) The player of the machine or device must be made aware of the total time which
- 35 the machine or device allows during a game for the player to maneuver the claw or
- 36 grasping device into a position to attempt to pick up or grasp a prize, toy, or novelty;

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

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

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

10 (A) Free replays;

11 (B) Merchandise limited to noncash merchandise, prizes, toys, gift certificates, or
 12 novelties, each of which has a wholesale value of not more than \$5.00 received for a
 13 single play of the game or device and is not exchangeable or redeemable in any
 14 manner in this state or in any other state, jurisdiction, or foreign country for money,
 15 cash, or any equivalent thereof. The machine is prohibited from awarding as a reward
 16 for successful play any item the sale of which is regulated by Title 3, any tobacco
 17 products, lottery tickets, or any firearms;

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

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

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

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

35 (e) Any person who gives to any other person money for free replays on coin operated
 36 games or devices described in subsection (b), (c), or (d) of this Code section shall, for a
 37 first offense, be guilty of a misdemeanor; provided, however, that a first offense involving

1 transfer of more than \$100.00 in a single transaction or in the aggregate shall be a felony
2 punishable by imprisonment for not less than one and not more than three years or a fine,
3 or both. Second and subsequent convictions shall be felonies punishable by imprisonment
4 for not less than one and not more than three years or a fine, or both. The fine shall not
5 exceed \$10,000.00 for either the first or the second felony conviction and shall not exceed
6 \$20,000.00 for any subsequent felony conviction.

7 (f) Any person owning or possessing an amusement game or device described in
8 subsection (c) or (d) of this Code section or any person employed by or acting on behalf
9 of any such person who gives to any other person money for any noncash merchandise,
10 prize, toy, gift certificate, or novelty received as a reward in playing any such amusement
11 game or device shall, for a first offense, be guilty of a misdemeanor; provided, however,
12 that a first offense involving transfer of more than \$100.00 in a single transaction or in the
13 aggregate shall be a felony punishable by imprisonment for not less than one and not more
14 than three years or a fine, or both. Second and subsequent convictions shall be felonies
15 punishable by imprisonment for not less than one and not more than three years or a fine,
16 or both. The fine shall not exceed \$10,000.00 for either the first or the second felony
17 conviction and shall not exceed \$20,000.00 for any subsequent felony conviction.

18 (f.1) Any person who gives to any other person money for any noncash merchandise,
19 prize, toy, gift certificate, or novelty received as a reward in playing a bona fide coin
20 operated amusement machine in accordance with subsection (c) or (d) of this Code section
21 shall, for a first offense, be guilty of a misdemeanor; provided, however, that a first offense
22 involving transfer of more than \$100.00 in a single transaction or in the aggregate shall be
23 a felony punishable by imprisonment for not less than one and not more than three years
24 or a fine, or both. Second and subsequent convictions shall be felonies punishable by
25 imprisonment for not less than one and not more than three years or a fine, or both. The
26 fine shall not exceed \$10,000.00 for either the first or the second felony conviction and
27 shall not exceed \$20,000.00 for any subsequent felony conviction.

28 (g) Any person owning or possessing an amusement game or device described in
29 subsection (b), (c), or (d) of this Code section, or any person employed by or acting on
30 behalf of any such person, who gives to any other person money as a reward for the
31 successful play or winning of any such amusement game or device shall, for a first offense,
32 be guilty of a misdemeanor of a high and aggravated nature; provided, however, that a first
33 offense involving transfer of more than \$100.00 in a single transaction or in the aggregate
34 shall be a felony punishable by imprisonment for not less than one and not more than three
35 years or a fine, or both. Second and subsequent convictions shall be felonies punishable
36 by imprisonment for not less than one and not more than three years or a fine, or both. The

1 fine shall not exceed \$10,000.00 for either the first or the second felony conviction and
2 shall not exceed \$20,000.00 for any subsequent felony conviction.

3 (h)(1) It shall be unlawful for any person to receive money from another person for free
4 replays on a bona fide coin operated amusement machine as defined in Code Section
5 48-17-1.

6 (2) It shall be unlawful for any person to receive money from a person owning or
7 possessing a bona fide coin operated amusement machine as defined in Code Section
8 48-17-1 or any person employed by or acting on behalf of any such person for any
9 noncash merchandise, prize, toy, gift certificate, or novelty received as a reward in
10 playing any such bona fide coin operated amusement machine. It shall be unlawful for
11 any person to receive any money for a gift certificate received as a reward in playing any
12 bona fide coin operated amusement machine.

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

17 (4) Violation of paragraph (1), (2), or (3) of this subsection shall, for a first offense, be
18 a misdemeanor of a high and aggravated nature; provided, however, that a first
19 conviction involving receipt of more than \$100.00 in a single transaction or in the
20 aggregate shall be a felony offense punishable by imprisonment for not less than one nor
21 more than three years or a fine, or both. Second and subsequent convictions shall be
22 felonies punishable with imprisonment for not less than one nor more than three years
23 or a fine, or both. The fine shall not exceed \$10,000.00 for either the first or the second
24 felony conviction and shall not exceed \$20,000.00 for any subsequent felony conviction.

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

1 (j) Each gift certificate awarded for successful play on a bona fide coin operated
 2 amusement machine in accordance with subsection (c) or (d) of this Code section shall
 3 have printed on it the following:

4 'GEORGIA LAW PROHIBITS EXCHANGING OR REDEEMING THIS
 5 CERTIFICATE FOR MONEY, CASH, OR ANY EQUIVALENT, INCLUDING
 6 CHANGE IN MONEY OR CASH AS PART OF AN EXCHANGE FOR
 7 MERCHANDISE. CRIMINAL PENALTIES MAY INCLUDE A \$1,000.00 FINE OR
 8 ONE YEAR IN PRISON, OR BOTH, FOR THE FIRST OFFENSE AND ARE MORE
 9 SEVERE FOR ADDITIONAL OFFENSES.'"

10 SECTION 3.

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

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

17 'GEORGIA LAW PROHIBITS GIVING OR RECEIPT OF ANY MONEY FOR
 18 WINNING A GAME OR GAMES ON THIS AMUSEMENT MACHINE; GIVING OR
 19 RECEIPT OF MONEY FOR FREE REPLAYS WON ON THIS AMUSEMENT
 20 MACHINE; GIVING OR RECEIPT OF MONEY FOR ANY MERCHANDISE, PRIZE,
 21 TOY, GIFT CERTIFICATE, OR NOVELTY WON ON THIS AMUSEMENT
 22 MACHINE; OR AWARDING ANY MERCHANDISE, PRIZE, TOY, GIFT
 23 CERTIFICATE, OR NOVELTY OF A VALUE EXCEEDING \$5.00 FOR A SINGLE
 24 PLAY OF THIS MACHINE."

25 SECTION 3.1.

26 Said chapter is further amended by striking subsection (c) of Code Section 48-17-2, relating
 27 to master licenses, in its entirety and inserting in lieu thereof the following:

28 "(c) Each master license shall ~~not~~ list the name, address of the owner ~~but shall have~~ and
 29 a control number which corresponds with the control number issued on the permit sticker
 30 to allow for effective monitoring of the licensing and permit system."

31 SECTION 3.2.

32 Said chapter is further amended by striking subsection (j) of Code Section 48-17-2, relating
 33 to master licenses, in its entirety and inserting in lieu thereof the following:

1 sale of goods or services for which the business will receive only a commission. Revenue
 2 from the sale of goods or services at wholesale is not included.

3 ~~(a)~~(b) No business owner or business operator shall derive more than 50 percent of such
 4 business owner's or business operator's ~~annual income from~~ monthly gross retail receipts
 5 for the business location in which the bona fide coin operated amusement machine or
 6 machines are situated from bona fide coin operated amusement machines that provide for
 7 noncash redemption as described in subsection (c) or (d) of Code Section 16-12-35.

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

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

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

21 (1) Fine:

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

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

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

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

30 Before a penalty is imposed in accordance with this subsection, a business owner or
 31 business operator is entitled to at least 30 days' written notice and, if requested, a hearing.

32 Such written notice may be served in the manner provided for written notices to
 33 applicants for licenses and licensees in subsection (b) of Code Section 48-17-5, and an
 34 order imposing a penalty may be delivered in the manner provided for delivery of the
 35 commissioner's orders to applicants for licenses or licensees in Code Section 48-17-6."

SECTION 7.

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

"48-17-16.

(a) Providing that the owner and possessor of a bona fide coin operated amusement machine, as defined in Code Section 48-17-1, have complied with the provisions of this chapter, the governing authority of the county or municipal corporation where such a bona fide coin operated amusement machine is located is not authorized to:

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

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

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

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

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

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

(4) Providing for fines and the suspension or revocation of a license granted by such local governing authority to manufacture, distribute, or sell alcoholic beverages or for the suspension or revocation of any other license granted by such local governing authority as a penalty for conviction of the owner or operator of a business location of a violation of subsection (e), (f), or (g) of Code Section 16-12-35, or both; provided, however, that a municipal corporation is not authorized to impose any penalty greater than the maximum penalty authorized by such municipal corporation's charter. An ordinance

1 providing for the suspension or revocation of a license shall conform to the due process
2 guidelines for granting, refusal, suspension, or revocation of a license for the manufacture,
3 distribution, or sale of alcoholic beverages set out in subsection (b) of Code Section 3-3-2;
4 (5) Providing that, after the arrest and after the conviction of the owner or operator of a
5 business location or an employee or agent of such an owner or operator for a violation of
6 subsection (e), (f), or (g) of Code Section 16-12-35, the prosecuting attorney of the county
7 or municipal corporation, as the case may be, is authorized to seek an order of the superior
8 court enjoining the owner and operator of the business location from offering to the public
9 any bona fide coin operated amusement machine at the business location where the
10 violation occurred for up to 90 days;
11 (6) Requiring any business owner or business operator subject to Code Section 48-17-15
12 to provide to the local governing authority a copy of each verified monthly report
13 prepared in accordance with such Code section and incorporating the provisions of such
14 Code section in the ordinance;
15 (7) Requiring that the business owner or business operator of any business location which
16 offers to the public one or more bona fide coin operated amusement machines posts
17 prominently a notice including the words set forth in subsection (d.1) of Code Section
18 48-17-2 for inclusion on a master license for bona fide coin operated amusement
19 machines or words which are substantially similar;
20 (8) Providing for restrictions relating to distance from specified structures or uses, so
21 long as those distance requirements are no more restrictive than such requirements
22 applicable to the sale of alcoholic beverages;
23 (9) Requiring, as a condition for doing business in the jurisdiction, disclosure by the
24 business owner or business operator of the name and address of the owner of the bona
25 fide coin operated amusement machine or machines;
26 (10) Prohibiting the award for successful play of bona fide coin operated amusement
27 machines of gift certificates redeemable at any business location other than the location
28 where the prize was won;
29 (11) Providing for penalties, including fines or suspension or revocation of a license as
30 provided in paragraph (4) of this subsection, or both, for a violation of any ordinance
31 enacted pursuant to this subsection; provided, however, that a municipal corporation is
32 not authorized to impose any penalty greater than the maximum penalty authorized by
33 such municipal corporation's charter;
34 (12) Providing for any or all of the penalties authorized by paragraph (8) of this
35 subsection for violation of Code Section 48-17-15; and

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

4 **SECTION 8.**

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

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

8 **SECTION 9.**

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