

COMMITTEE OF CONFERENCE SUBSTITUTE TO SB 454

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 17 of Title 48 of the Official Code of Georgia Annotated, relating to coin operated amusement machines, so as to revise definitions; to provide for classes of machines, location licenses, fees, procedures for collection and refunds, display of certificates, contents of certificates and stickers, duplicate permits, and late fees; to provide for the terms and conditions of location licenses and annual fees for additional machines; to provide that applications for licenses and permits are open to public inspection; to provide for issuance, renewal, denial, suspension, and revocation of such licenses and permits; to provide for the continued validity of prior existing obligations to the state; to provide that this Act shall not affect offenses committed or prosecutions begun under preexisting law; to change provisions relating to the maximum percentage of income derived from bona fide coin operated amusement machines; to provide for penalties for violations by business owners or operators; to amend Code Section 50-13-2 of the Official Code of Georgia Annotated, relating to definitions relative to administrative procedure, so as to revise a definition; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 17 of Title 48 of the Official Code of Georgia Annotated, relating to taxation of bona fide coin operated amusement machines, is amended by adding new paragraphs to Code Section 48-17-1, relating to definitions, to read as follows:

"(2.2) 'Class A machine' means a bona fide coin operated amusement machine that is not a Class B machine and:

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

(B) Rewards a successful player with free replays or additional time to play.

(2.3) 'Class B machine' means a bona fide coin operated amusement machine that rewards a successful player with any combination of items listed in subparagraphs (d)(1)(B) and (d)(1)(C) of Code Section 16-12-35."

"(3.1) 'Location license' means the initial and annually renewed license which every business owner or business operator must purchase and display in the location where one or more bona fide coin operated amusement machines are available for commercial use by the public for play in order to operate legally any such machine in this state.

(3.2) 'Location license fee' means the fee paid to obtain the location license."

"(7.1) 'Single play' or 'one play' means the completion of a sequence of a game, or replay of a game, where the player receives a score and from the score the player can secure free replays, merchandise, points, tokens, vouchers, tickets, or other evidence of winnings as set forth in subsection (c) or (d) of Code Section 16-12-35. A player may, but is not required to, exchange a score for rewards permitted by subparagraphs (A), (B), (C), and (D) of paragraph (d)(1) of Code Section 16-12-35 after each play."

"(9) 'Slot machine or any simulation or variation thereof' means any contrivance which, for a consideration, affords the player an opportunity to obtain money or other thing of value, the award of which is determined solely by chance, whether or not a prize is automatically paid by the contrivance.

(10) 'Successful player' means an individual who wins on one or more plays of a bona fide coin operated amusement machine.

(11) 'Temporary location permit' means the permit which every business owner or business operator must purchase and display in the location where one or more bona fide coin operated amusement machines are available for commercial use by the public for play in order to operate legally the machine or machines in this state for seven days or less. Such temporary location permits shall be subject to the same regulations and conditions as location licenses."

SECTION 2.

Said chapter is further amended by revising Code Section 48-17-2, relating to license fees, as follows:

"48-17-2.

(a) Every owner, except an owner holding a bona fide coin operated amusement machine solely for personal use or resale, who offers others the opportunity to play for a charge, whether directly or indirectly, any bona fide coin operated amusement machine shall pay annual master license fees as follows:

(1) ~~Level one license.~~ For Class A machines:

(A) For five or fewer machines, the owner shall pay a master license fee of ~~\$250.00~~ \$500.00.

~~(B)~~ In the event such owner acquires a sixth or greater number of machines during a calendar year which require a certificate for lawful operation under this chapter so that the total number of machines owned does not exceed 60 machines or more, such owner shall pay an additional master license fee of ~~\$1,250.00~~ \$1,500.00;

~~(2) Level two license. (A) For six or more machines but not more than 60 machines, the owner shall pay a master license fee of \$1,500.00.~~

(B) For six or more machines but not more than 60 machines, the owner shall pay a master license fee of \$2,000.00. In the event such owner acquires a sixty-first or greater number of machines during a calendar year which require a certificate for lawful operation under this chapter, such owner shall pay an additional master license fee of ~~\$1,000.00~~ \$1,500.00; or

~~(3)(C) Level three license.~~ For 61 or more machines, the owner shall pay a master license fee of ~~\$2,500.00~~ \$3,500.00; and

(2) For any number of Class B machines, the owner shall pay a master license fee of \$5,000.00.

The cost of the license shall be paid to the commissioner by company check, cash, cashier's check, or money order. Upon said payment, the commissioner shall issue a master license certificate to the owner. The master license fee levied by this ~~chapter~~ Code section shall be collected by the commissioner on an annual basis; ~~provided that an owner may purchase a six-month master license during the calendar year for \$175.00 for a level one license, \$1,050.00 for a level two license, or \$1,750.00 for a level three license for the period from July 1 to June 30.~~ The commissioner may establish procedures for master license collection and set due dates for these license payments. No refund or credit of the master license charge levied by this ~~chapter~~ Code section may be allowed to any owner who ceases the operation of bona fide coin operated amusement machines prior to the end of any ~~calendar year~~ license or permit period.

(a.1) Every business owner or business operator shall pay an annual location license fee for each bona fide coin operated amusement machine offered to the public for play. The annual location license fee shall be \$25.00 for each Class A machine and \$125.00 for each Class B machine. The annual location license fee levied by this Code section shall be collected by the commissioner on an annual basis from July 1 to June 30. The location license fee shall be paid to the commissioner by company check, cash, cashier's check, or money order. Upon payment, the commissioner shall issue a location license certificate that shall state the number of bona fide coin operated amusement machines permitted for each class without further description or identification of specific machines. The

commissioner may establish procedures for location license fee collection and set due dates for payment of such fees. No refund or credit of the location license fee shall be allowed to any business owner or business operator who ceases to offer bona fide coin operated amusement machines to the public for commercial use prior the end of any license period.

(b) A copy of an owner's master license and the business owner's or business operator's location license shall be prominently displayed at all locations where the owner ~~has~~ and business owner or business operator have bona fide coin operated amusement machines available for commercial use and for play by the public to evidence the payment of the ~~fee~~ fees levied under this Code section.

(c) Each master license and each location license shall ~~not~~ list the name and address of the owner ~~but shall have a control number which corresponds with the control number issued on the permit sticker to allow for effective monitoring of the licensing and permit system or business owner or business operator, as applicable.~~

(d) The commissioner may provide a duplicate original master license certificate or location license certificate if the original ~~master license~~ certificate has been lost, stolen, or destroyed. The fee for a duplicate original ~~master license~~ certificate is \$100.00. If the original ~~master license~~ certificate is lost, stolen, or destroyed, a sworn, written statement must be submitted explaining the circumstances by which the ~~master license~~ certificate was lost, stolen, or destroyed and including the number of the lost, stolen, or destroyed ~~master license~~ certificate, if applicable, before a duplicate original ~~master license~~ certificate can be issued. A ~~master license~~ certificate for which a duplicate ~~master license~~ certificate has been issued is void.

(e) A ~~master~~ license or permit issued under this ~~chapter~~ Code section:

(1) Is effective for a single business entity;

(2) Vests no property or right in the ~~licensee~~ holder of the license or permit except to conduct the licensed or permitted business during the period the license or permit is in effect;

(3) Is nontransferable, nonassignable by and between owners or business owners and business operators, and not subject to execution; and

(4) Expires upon the death of an individual ~~licensee~~ holder of a license or permit or upon the dissolution of any other ~~licensee~~ holder of a license or permit.

(f) An application for the renewal of a license or permit must be made to the commissioner by ~~December~~ June 1 of each year.

(g) Acceptance of a ~~master~~ license or permit issued under this ~~chapter~~ Code section constitutes consent by the licensee and the business owner or business operator of the business where bona fide coin operated amusement machines are available for commercial use and for play by the public that the commissioner or ~~his~~ the commissioner's agents may

freely enter the ~~licensed~~ business premises where the licensed and permitted machines are located during normal business hours for the purpose of ensuring compliance with this chapter.

(h) An application for a ~~master~~ license or permit to do business under this chapter shall contain a complete statement regarding the ownership of the business to be licensed or the business where the permitted machines are to be located. This statement of ownership shall specify the same information that is required ~~of~~ by the application to secure a sales tax number for the State of Georgia.

(i) ~~The~~ An application for a master license shall be accompanied by either the annual or semiannual fee plus the required permit fee due for each machine. Additional per machine permits can be purchased during the year if needed by the owner. An application for a location license shall be accompanied by the appropriate fee.

(j) ~~The statement of ownership information which is contained in the application will be treated in the same manner as sales tax information records maintained by the department~~
An application is subject to public inspection.

(k) A renewal application filed on or after ~~January~~ July 1, but before the ~~master~~ license expires, shall be accompanied by a late fee of \$125.00. ~~If an owner's master license has been expired for more than 90 days, the owner may not renew the master license.~~ A master license or location license that has been expired for more than 90 days may not be renewed.

In such a case, the owner shall obtain a new master license or the business owner or business operator shall obtain a new location license, as applicable, by complying with the requirements and procedures for obtaining an original master license or location license.

(l) ~~An owner~~ A holder of a license who properly completes the application and remits all fees with it by the due date may continue to operate bona fide coin operated amusement machines after the expiration date if its license or permit renewal has not been issued, unless the ~~licensee~~ holder of the license is notified by the commissioner prior to the ~~license~~ expiration date of a problem with the ~~license~~ renewal.

(m) Holders of location licenses and temporary location permits shall be subject to the same provisions of this chapter with regard to refunds, license renewals, license suspensions, and license revocations as are holders of master licenses."

SECTION 3.

Said chapter is further amended by revising Code Section 48-17-9, relating to payment and collection of annual permit fee, as follows:

"48-17-9.

(a) Every owner, except an owner holding a coin operated amusement machine solely for personal use or resale, who offers others the opportunity to play for a charge, whether

direct or indirect, any bona fide coin operated amusement machine shall pay ~~a uniform~~ an annual permit fee ~~of \$25.00 per for each~~ for each bona fide coin operated amusement machine in the amount of \$25.00 for each Class A machine and \$125.00 for each Class B machine.

The fee shall be paid to the commissioner by company check, cash, cashier's check, or money order. Upon payment, the commissioner shall issue a sticker for each ~~\$25.00~~ payment for each bona fide coin operated amusement machine. The annual fees levied by this chapter ~~will~~ shall be collected by the commissioner on an annual basis for the period from July 1 to June 30. The commissioner may establish procedures for annual collection and set due dates for the fee payments. No refund or credit of the annual fee levied by this chapter shall be allowed to any owner who ceases the exhibition or display of any bona fide coin operated amusement machine prior to the end of any ~~calendar year~~ license or permit period.

(b) The sticker issued by the commissioner to evidence the payment of the fee under this Code section shall be securely attached to the machine. Owners may transfer stickers from one machine to another in the same class and from location to location so long as all machines in commercial use available for play by the public have a sticker of the correct class and the owner uses the stickers only for machines that it owns.

(c) Each permit sticker shall not list the name of the owner but shall have a control number which corresponds with the control number issued on the master license certificate to allow for effective monitoring of the licensing and permit system. Permit stickers are only required for bona fide coin operated amusement machines in commercial use available to the public for play at a location.

(d) The commissioner may provide a duplicate permit sticker if a valid permit sticker has been lost, stolen, or destroyed. The fee for a duplicate permit sticker shall be \$10.00. If a permit sticker is lost, stolen, or destroyed, a sworn, written statement must be submitted explaining the circumstances by which the permit sticker was lost, stolen, or destroyed and including the number of the lost, stolen, or destroyed permit before a replacement permit can be issued. A permit for which a duplicate permit sticker has been issued is void."

SECTION 4.

Said chapter is further amended by revising Code Section 48-17-11, relating to permit fees for additional machines, as follows:

"48-17-11.

If an owner purchases or receives additional bona fide coin operated amusement machines during the calendar year, the ~~\$25.00~~ applicable annual permit fee shall be paid to the commissioner and the sticker shall be affixed to the machine ~~or placed at the location where the machine is located~~ before the machine may be legally operated. A penalty fee

206 of ~~\$50.00~~ equal to twice the applicable annual permit fee shall be assessed by the
207 commissioner for every machine in operation without a permit sticker."

208 **SECTION 5.**

209 Said chapter is further amended by revising Code Section 48-17-14, relating to validity of
210 prior existing obligations to state, as follows:

211 "48-17-14.

212 (a) All taxes, fees, penalties, and interest accruing to the State of Georgia under any other
213 provision of this title as it existed prior to ~~January 1, 1993~~ July 1, 2010, shall be and remain
214 valid and binding obligations to the State of Georgia for all taxes, penalties, and interest
215 accruing under the provisions of prior or preexisting laws and all such taxes, penalties, and
216 interest now or hereafter becoming delinquent to the State of Georgia prior to ~~January 1,~~
217 ~~1993~~ July 1, 2010, are expressly preserved and declared to be legal and valid obligations
218 to the state.

219 (b) The enactment and amendment of this chapter shall not affect offenses committed or
220 prosecutions begun under any preexisting law, but any such offenses or prosecutions may
221 be conducted under the law as it existed at the time of the commission of the offense.

222 (c) Nothing in this chapter shall be construed or have the effect to license, permit,
223 authorize, or legalize any machine, device, table, or bona fide coin operated amusement
224 machine the keeping, exhibition, operation, display, or maintenance of which is in violation
225 of the laws or Constitution of this state."

226 **SECTION 6.**

227 Said chapter is further amended by revising Code Section 48-17-15, relating to limitation on
228 percent of annual income derived from machines, as follows:

229 "48-17-15.

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

231 (1) 'Amusement or recreational establishment' means an open-air establishment
232 frequented by the public for amusement or recreation. Such an establishment shall be in
233 a licensed fixed location located in this state and which has been in operation for at least
234 35 years.

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

237 (3) 'Gross retail receipts' means the total revenue derived by a business at any one
238 business location from the sale of goods and services and the commission earned at any
239 one business location on the sale of goods and services but shall not include revenue from

the sale of goods or services for which the business will receive only a commission.

Revenue from the sale of goods and services at wholesale shall not be included.

~~(a)(b)(1)~~ No business owner or business operator shall derive more than 50 percent of such business owner's or business operator's ~~annual income from~~ monthly gross retail receipts for the business location in which the Class B bona fide coin operated amusement machine or machines are situated from such Class B bona fide coin operated amusement machines ~~that provide for noncash redemption as described in subsection (c) or (d) of Code Section 16-12-35.~~

(2) Except as authorized by a local ordinance, no business owner or business operator shall offer more than nine Class B bona fide coin operated amusement machines to the public for play in the same business location; provided, however, that this limitation shall not apply to an amusement or recreational establishment.

(c) For each business location which offers to the public one or more Class B bona fide coin operated amusement machines, the business owner or business operator shall prepare a monthly verified report setting out separately the gross retail receipts from the Class B bona fide coin operated amusement machines and the gross retail receipts for the business location. Upon request, the business owner or business operator shall supply such monthly reports to the commissioner. The department shall be authorized to audit any records for any such business location.

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

(e) A business owner or business operator shall report the information prescribed in this Code section in the form required by the commissioner. Such report shall be submitted in an electronic format approved by the commissioner."

SECTION 7.

Said chapter is further amended by adding new Code sections to read as follows:

"48-17-16.

(a) For single or repeated violations of this chapter by a business owner or business operator who offers one or more bona fide coin operated amusement machines for play by the public, the commissioner may impose the following penalties on such a business owner or business operator:

(1) A civil fine in an amount specified in rules and regulations promulgated in accordance with this chapter; or

(2) For a third or subsequent offense, a suspension or revocation of the privilege of offering one or more bona fide coin operated amusement machines for play by the public.

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

(c) In the case of a suspension or revocation in accordance with this Code section, the commissioner shall require the business owner or business operator to post a notice in the business location setting out the period of the suspension or revocation. No applicant or holder of a license or permit shall allow a bona fide coin operated amusement machine under the control of such applicant or holder of a license or permit to be placed in a business location owned or operated by a business owner or business operator who has been penalized by a suspension or revocation during the period of the suspension or revocation."

SECTION 8.

Code Section 50-13-2 of the Official Code of Georgia Annotated, relating to definitions relative to administrative procedure, is amended by revising paragraph (1) as follows:

"(1) 'Agency' means each state board, bureau, commission, department, activity, or officer authorized by law expressly to make rules and regulations or to determine contested cases, except the General Assembly; the judiciary; the Governor; the State Board of Pardons and Paroles; the State Financing and Investment Commission; the State Properties Commission; the Board of Bar Examiners; the Board of Corrections and its penal institutions; the State Board of Workers' Compensation; all public authorities except as otherwise expressly provided by law; the State Personnel Board (Merit System); the Department of Administrative Services or commissioner of administrative services; the Technical College System of Georgia; the Department of Revenue when conducting hearings relating to alcoholic beverages or relating to bona fide coin operated amusement machines or any violations relating thereto; the Georgia Tobacco Community Development Board; the Georgia Higher Education Savings Plan; any school, college, hospital, or other such educational, eleemosynary, or charitable institution; or any agency when its action is concerned with the military or naval affairs of this state. The term 'agency' shall include the State Board of Education and Department of Education, subject to the following qualifications:

(A) Subject to the limitations of subparagraph (B) of this paragraph, all otherwise valid rules adopted by the State Board of Education and Department of Education prior to January 1, 1990, are ratified and validated and shall be effective until January 1, 1991, whether or not such rules were adopted in compliance with the requirements of this chapter; and

(B) Effective January 1, 1991, any rule of the State Board of Education or Department of Education which has not been proposed, submitted, and adopted in accordance with the requirements of this chapter shall be void and of no effect."

SECTION 9.

This Act shall become effective on July 1, 2010.

SECTION 10.

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