

HOUSE SUBSTITUTE TO SENATE BILL 431

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 10-1-393, relating to unfair or deceptive practices in consumer
2 transactions unlawful, so as to further define unlawful lotteries with regard to promotions;
3 to amend Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to
4 offenses against public health and morals, so as to revise a definition; to provide for the
5 applicability of certain provisions to certain games and devices; to revise the prohibition
6 regarding certain noncash redemption items; to amend Title 48 of the Official Code of
7 Georgia Annotated, relating to revenue and taxation, so as to revise definitions relating to
8 coin operated amusement machines; to provide an exception from a limitation on the
9 allowable number of such machines at the same location; to authorize local governments to
10 adopt any combination of a list of ordinance provisions relating to bona fide coin operated
11 amusement machines; to provide for related matters; to provide for an effective date and
12 applicability; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Code Section 10-1-393, relating to unfair or deceptive practices in consumer transactions
16 unlawful, is amended in paragraph (16) of subsection (b) by revising subparagraph (N) and
17 adding a new subparagraph to read as follows:

18 "(N) Any promotion involving an element of chance which does not conform with the
19 provisions of this paragraph shall be considered an unlawful lottery as defined in Code
20 Section 16-12-20. Except as provided in Code Section 16-12-35 and Chapter 17 of
21 Title 48, any promotion involving an element of chance which involves the playing of
22 a game on a computer, mechanical device, or electronic device at a place of business
23 in this state shall be considered an unlawful lottery as defined in Code Section 16-12-20
24 and shall not be permitted under this chapter. Any promotion involving the playing of
25 a no-skill game on a computer, mechanical device, or electronic device at a place of
26 business in this state shall be considered an unlawful lottery as defined in Code

27 Section 16-12-20. The administrator may seek and shall receive the assistance of the
 28 prosecuting attorneys of this state in the commencement and prosecution of persons
 29 who promote and sponsor promotions which constitute an unlawful lottery;
 30 (N.1) All prizes offered and awarded shall be noncash prizes only and shall not be
 31 redeemable for cash;".

32 SECTION 2.

33 Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against
 34 public health and morals, is amended by revising paragraph (4) of Code Section 16-12-20,
 35 relating to definitions, as follows:

36 "(4) 'Lottery' means any scheme or procedure whereby one or more prizes are distributed
 37 by chance among persons who have paid or promised consideration for a chance to win
 38 such prize, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift
 39 enterprise, sale, policy game, or by some other name. Except as otherwise provided in
 40 Code Section 16-12-35, a lottery shall also include the payment of cash or other
 41 consideration or the payment for merchandise or services and the option to participate in
 42 or play, even if others can participate or play for free, a no skill game or to participate for
 43 cash, other consideration, other evidence of winnings, or other noncash prizes by lot or
 44 in a finite pool on a computer, mechanical device, or electronic device whereby the player
 45 is able to win a cash or noncash prize, other consideration, or other evidence of winnings.

46 A lottery shall also include the organization of chain letter or pyramid clubs as provided
 47 in Code Section 16-12-38. A lottery shall not mean a:

48 (A) Promotional giveaway or contest which conforms with the qualifications of a
 49 lawful promotion specified in paragraph (16) of subsection (b) of Code
 50 Section 10-1-393;

51 (B) Scheme whereby a business gives away prizes to persons selected by lot if such
 52 prizes are made on the following conditions:

53 (i) Such prizes are conducted as advertising and promotional undertakings in good
 54 faith solely for the purpose of advertising the goods, wares, and merchandise of such
 55 business; ~~and~~

56 (ii) No person to be eligible to receive such prize shall be required to:

57 (I) Pay any tangible consideration to the operator of such business in the form of
 58 money or other property or thing of value;

59 (II) Purchase any goods, wares, merchandise, or anything of value from such
 60 business; or

61 (III) Be present or be asked to participate in a seminar, sales presentation, or any
 62 other presentation, by whatever name denominated, in order to win such prizes; ~~or~~
 63 and

64 (iii) The prizes awarded shall be noncash prizes and cannot be awarded based upon
 65 the playing of a game on a computer, mechanical device, or electronic device at a
 66 place of business in this state;

67 (C) Raffle authorized under Code Section 16-12-22.1; or

68 (D) Promotion, contest, or sweepstakes conducted by any corporation or wholly owned
 69 subsidiary or valid franchise of such corporation, either directly or through another
 70 entity, provided that, at the time of such promotion, contest, or sweepstakes, such
 71 corporation:

72 (i) Is registered under the federal Securities Exchange Act of 1934; and

73 (ii) Has total assets of not less than \$100 million.

74 The provisions of this part shall not be applicable to games offered by the Georgia
 75 Lottery Corporation pursuant to Chapter 27 of Title 50."

76 SECTION 3.

77 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
 78 amended by revising paragraphs (2.2) and (2.3) of Code Section 48-17-1, relating to
 79 definitions relative to coin operated amusement machines, as follows:

80 "(2.2) 'Class A machine' means a bona fide coin operated amusement machine that is not
 81 a Class B machine, does not allow a successful player to carry over points won on one
 82 play to a subsequent play or plays, and:

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

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

85 (C) Rewards a successful player with noncash merchandise, prizes, toys, gift
 86 certificates, or novelties in compliance with the provisions of subsection (c) or
 87 paragraph (1) of subsection (d) of Code Section 16-12-35, and does not reward a
 88 successful player with any item prohibited as a reward in subsection (i) of Code
 89 Section 16-12-35 or any reward redeemable as an item prohibited as a reward in
 90 subsection (i) of Code Section 16-12-35;

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

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

96 (2.3) 'Class B machine' means a bona fide coin operated amusement machine that
 97 ~~rewards a successful player with any combination of items listed in subparagraphs~~
 98 ~~(d)(1)(B) and (d)(1)(C) of Code Section 16-12-35~~ allows a successful player to accrue
 99 points on the machine and carry over points won on one play to a subsequent play or
 100 plays in accordance with paragraph (2) of subsection (d) of Code Section 16-12-35 and:
 101 (A) Rewards a successful player in compliance with the provisions of paragraphs (1)
 102 and (2) of subsection (d) of Code Section 16-12-35; and
 103 (B) Does not reward a successful player with any item prohibited as a reward in
 104 subsection (i) of Code Section 16-12-35 or any reward redeemable as an item
 105 prohibited as a reward in subsection (i) of Code Section 16-12-35."

106 SECTION 4.

107 Said title is further amended by adding a new Code section to read as follows:

108 "48-17-17.

109 In addition to the state regulatory provisions regarding bona fide coin operated amusement
 110 machines contained in Code Section 16-12-35 and this chapter, the governing authority of
 111 any county or municipal corporation shall be authorized to enact and enforce an ordinance
 112 which includes any or all of the following provisions:

113 (1) Permitting the offering to the public of more than nine Class B bona fide coin
 114 operated amusement machines that reward the player exclusively with noncash
 115 merchandise, prizes, toys, gift certificates, or novelties at the same business location;

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

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

126 (4) Providing for the suspension or revocation of a license granted by such local
 127 governing authority to manufacture, distribute, or sell alcoholic beverages or for the
 128 suspension or revocation of any other license granted by such local governing authority
 129 as a penalty for conviction of the business owner or business operator of a violation of
 130 subsection (e), (f), or (g) of Code Section 16-12-35, or both. An ordinance providing for
 131 the suspension or revocation of a license shall conform to the due process guidelines for

- 132 granting, refusal, suspension, or revocation of a license for the manufacture, distribution,
 133 or sale of alcoholic beverages set out in subsection (b) of Code Section 3-3-2;
 134 (5) Providing for penalties, including fines or suspension or revocation of a license as
 135 provided in paragraph (4) of this subsection, or both, for a violation of any ordinance
 136 enacted pursuant to this subsection; provided, however, that a municipal corporation shall
 137 not be authorized to impose any penalty greater than the maximum penalty authorized by
 138 such municipal corporation's charter;
 139 (6) Requiring any business owner or business operator subject to paragraph (1) of
 140 subsection (b) of Code Section 48-17-15 to provide to the local governing authority a
 141 copy of each verified monthly report prepared in accordance with such Code section,
 142 incorporating the provisions of such Code section in the ordinance, and providing for any
 143 and all of the penalties authorized by subsection (d) of Code Section 48-17-15;
 144 (7) Requiring the business owner or business operator of any business location which
 145 offers to the public one or more bona fide coin operated amusement machines to post
 146 prominently a notice including the following or substantially similar language:
 147 'GEORGIA LAW PROHIBITS PAYMENT OR RECEIPT OF MONEY FOR
 148 WINNING A GAME OR GAMES ON THIS AMUSEMENT MACHINE; PAYMENT
 149 OR RECEIPT OF MONEY FOR FREE REPLAYS WON ON THIS AMUSEMENT
 150 MACHINE; PAYMENT OR RECEIPT OF MONEY FOR ANY MERCHANDISE,
 151 PRIZE, TOY, GIFT CERTIFICATE, OR NOVELTY WON ON THIS AMUSEMENT
 152 MACHINE; OR AWARDING ANY MERCHANDISE, PRIZE, TOY, GIFT
 153 CERTIFICATE, OR NOVELTY OF A VALUE EXCEEDING \$5.00 FOR A SINGLE
 154 PLAY OF THIS MACHINE.';
 155 (8) Providing for restrictions relating to distance from specified structures or uses so long
 156 as those distance requirements are no more restrictive than such requirements applicable
 157 to the sale of alcoholic beverages;
 158 (9) Requiring as a condition for doing business in the jurisdiction disclosure by the
 159 business owner or business operator of the name and address of the owner of the bona
 160 fide coin operated amusement machine or machines;
 161 (10) Requiring that all bona fide coin operated amusement machines are placed and kept
 162 in plain view and accessible to any person who is at the business location; and
 163 (11) Requiring a business that offers one or more bona fide coin operated amusement
 164 machines to the public for play to post its business license or occupation tax certificate."

165 **SECTION 5.**

166 This Act shall become effective upon its approval by the Governor or upon its becoming law
 167 without such approval and shall apply to conduct that occurs on and after such date. It is not

168 the intention of this Act to abate any prosecution undertaken for conduct occurring under the
169 law in effect prior to such date, and any offense committed before the effective date of this
170 Act shall be prosecuted and punished under the statutes in effect at the time the offense was
171 committed.

172

SECTION 6.

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