

Senate Bill 190

By: Senators Miller of the 49th, Unterman of the 45th, Orrock of the 36th, Dugan of the 30th, Ligon, Jr. of the 3rd and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 3 of Chapter 27 of Title 50 of the Official Code of Georgia Annotated,
2 relating to bona fide coin operated amusement machines, so as to provide for certain
3 definitions; to provide for license fees and requirements for manufacturers and distributors;
4 to provide for certain fees upon the transfer of a master license; to provide for an auction of
5 certain licenses; to provide a procedure for dispute resolution; to provide for related matters;
6 to repeal conflicting laws; and for other purposes.

7 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

8 **SECTION 1.**

9 Article 3 of Chapter 27 of Title 50 of the Official Code of Georgia Annotated, relating to
10 bona fide coin operated amusement machines, is amended in Code Section 50-27-70, relating
11 to legislative findings and definitions, by adding a new paragraph to subsection (b) to read
12 as follows:

13 "(10.1) 'Master licensee' means any person that has lawfully applied for and received a
14 master license."

15 **SECTION 2.**

16 Said article is further amended in Code Section 50-27-71, relating to license fees, issuance
17 of license, display of license, control number, duplicate certificates, application for license
18 or renewal, and penalty for noncompliance, by revising subsections (a) through (f) and (k)
19 through (n) as follows:

20 "(a) Every manufacturer, distributor, and owner, except an owner holding a bona fide coin
21 operated amusement machine solely for personal use or resale, who offers a bona fide coin
22 operated amusement machine for sale to a distributor or to an owner and who offers others
23 the opportunity to play for a charge, whether directly or indirectly, any bona fide coin
24 operated amusement machine shall pay annual master license fees to the corporation as
25 follows:

26 (1) For Class A machines:

27 (A) For five or fewer machines, the owner shall pay a master license fee of \$500.00.
 28 In the event such owner acquires a sixth or greater number of machines during a
 29 calendar year which ~~require~~ requires a certificate for lawful operation under this article
 30 so that the total number of machines owned does not exceed 60 machines or more, such
 31 owner shall pay an additional master license fee of \$1,500.00;

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

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

39 (2) For any number of Class B machines, the owner shall pay a master license fee of
 40 \$5,000.00;

41 (3) For any distributor, the distributor shall pay a distributor license fee of \$5,000.00; and

42 (4) For any manufacturer, the manufacturer shall pay a manufacturer license fee of
 43 \$5,000.00.

44 The cost of the license shall be paid to the corporation by company check, cash, cashier's
 45 check, money order, or any other method approved by the chief executive officer. Upon
 46 such payment, the corporation shall issue a master license certificate to the owner. The
 47 ~~master license fee~~ fees levied by this Code section shall be collected by the corporation on
 48 an annual basis ~~for the period from July 1 to June 30. The, and the~~ and the board may establish
 49 procedures for ~~master~~ license collection and set due dates for these license payments. No
 50 refund or credit of the ~~master~~ license charge levied by this Code section may be allowed
 51 to any owner who ceases the manufacture, distribution, or operation of bona fide coin
 52 operated amusement machines prior to the end of any license or permit period.

53 (a.1) Every location owner or location operator shall pay an annual location license fee for
 54 each bona fide coin operated amusement machine offered to the public for play. The
 55 annual location license fee shall be \$25.00 for each Class A machine and \$125.00 for each
 56 Class B machine. The annual location license fee levied by this Code section shall be
 57 collected by the corporation, and the board may establish procedures for location license
 58 fee collection and set due dates for payment of such fees. on an annual basis from July 1
 59 to June 30. The location license fee shall be paid to the corporation by company check,
 60 cash, cashier's check, money order, or any other method approved by the chief executive
 61 officer. Upon payment, the corporation shall issue a location license certificate that shall
 62 state the number of bona fide coin operated amusement machines permitted for each class
 63 without further description or identification of specific machines. ~~The board may establish~~

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

68 (a.2) The corporation may refuse to issue or renew a location owner or location operator
 69 license or may revoke or suspend a location owner or location operator license issued under
 70 this article if:

71 (1) The licensee or applicant has intentionally violated a provision of this chapter or a
 72 regulation promulgated under this chapter;

73 (2) The licensee or applicant has intentionally failed to provide requested information
 74 or answer a question, intentionally made a false statement in or in connection with his or
 75 her application or renewal, or omitted any material or requested information;

76 (3) The licensee or applicant used coercion to accomplish a purpose or to engage in
 77 conduct regulated by the corporation;

78 (4) Failure to revoke or suspend the license would be contrary to the intent and purpose
 79 of this article;

80 (5) The licensee or applicant has engaged in unfair methods of competition and unfair
 81 or deceptive acts or practices as provided in Code Section 50-27-87.1; or

82 (6) Any applicant, or any person, firm, corporation, legal entity, or organization having
 83 any interest in any operation for which an application has been submitted, fails to meet
 84 any obligations imposed by the tax laws or other laws or regulations of this state.

85 (b) A copy of an owner's master license and the location owner's or location operator's
 86 location license shall be prominently displayed at all locations where the owner and
 87 location owner or location operator have bona fide coin operated amusement machines
 88 available for commercial use and for play by the public to evidence the payment of the fees
 89 levied under this Code section. A manufacturer's license and distributor's license, as well
 90 as invoices for the sales of any Class B machines to any person or entity licensed by this
 91 chapter, shall be available for inspection at their places of business and upon request from
 92 the corporation.

93 (c) Each manufacturer, distributor, and master license and each location license shall list
 94 the name and address of the manufacturer, distributor, owner, or location owner, or location
 95 operator, as applicable.

96 (d) The corporation may provide a duplicate ~~original master license certificate or location~~
 97 ~~license certificate~~ issued pursuant to this Code section if the original ~~certificate~~ license has
 98 been lost, stolen, or destroyed. The fee for a duplicate original ~~certificate~~ license is
 99 \$100.00. If the original ~~certificate~~ license is lost, stolen, or destroyed, a sworn, written
 100 statement must be submitted explaining the circumstances by which the ~~certificate~~ license

101 was lost, stolen, or destroyed and including the number of the lost, stolen, or destroyed
 102 ~~certificate license~~, if applicable, before a duplicate original ~~certificate license~~ can be issued.
 103 A ~~certificate license~~ for which a duplicate ~~certificate license~~ has been issued is void.
 104 (e) A license or permit issued under this Code section:
 105 (1) Is effective for a single business entity;
 106 (2) Vests no property or right in the holder of the license or permit except to conduct the
 107 licensed or permitted business during the period the license or permit is in effect;
 108 (3) Except as provided in paragraph (5) of this subsection, is ~~is~~ nontransferable,
 109 nonassignable by and between owners or location owners and location operators, and not
 110 subject to execution; ~~and~~
 111 (4) Expires upon the death of an individual holder of a license or permit or upon the
 112 dissolution of any other holder of a license or permit; ~~and~~
 113 (5) As it relates to a master licensee, upon the sale of a master licensee's business in its
 114 entirety, the buyer shall pay to the corporation a transfer fee for the master license that
 115 accompanies the business in the following amounts:
 116 (A) For the first sale of a master licensee's business, a transfer fee for the master
 117 license in the amount of \$10,000.00;
 118 (B) For the second sale of such business, a transfer fee for the master license in the
 119 amount of \$25,000.00;
 120 (C) For the third sale of such business, a transfer fee for the master license in the
 121 amount of \$50,000.00; and
 122 (D) For the fourth sale of such business and each sale thereafter, a transfer fee for the
 123 master license in an amount to be established by the corporation, which transfer fee
 124 shall be not less than \$50,000.00.
 125 (f) An application for the renewal of a license or permit must be made to the corporation
 126 ~~by June 1 of~~ in accordance with the due dates set forth in the rules promulgated by the
 127 board each year."
 128 "(k) A renewal application filed on or after July 1 the due dates set forth in the rules
 129 promulgated by the board, but before the license expires, shall be accompanied by a
 130 nonrefundable late fee of \$125.00 \$1,000.00. A manufacturer, distributor, or master
 131 license or location license that has been expired for more than 90 days may not be renewed.
 132 In such a case, the manufacturer, distributor, master license, or location license owner shall
 133 obtain a new master license or the location owner or location operator shall obtain a new
 134 location license, as applicable, by complying with the requirements and procedures for
 135 obtaining an original master license or location license.
 136 (l) A holder of a license who properly completes the application and remits all fees with
 137 it by the due date may continue to manufacture, distribute, or operate bona fide coin

138 operated amusement machines after the expiration date if its license or permit renewal has
 139 not been issued, unless the holder of the license is notified by the corporation prior to the
 140 expiration date of a problem with the renewal.

141 (m) Holders of manufacturer, distributor, and location licenses and temporary location
 142 permits shall be subject to the same provisions of this article with regard to refunds, license
 143 renewals, license suspensions, and license revocations as are ~~holders of master licenses~~
 144 licensees.

145 (n) Failure to obtain a ~~master license or location~~ license as required by this Code section
 146 shall subject the person to a fine of up to \$25,000.00 and repayment of all fees or receipts
 147 due to the corporation pursuant to this article and may subject the person to a loss of all
 148 state licenses."

149 **SECTION 3.**

150 Said article is further amended in Code Section 50-27-72, relating to refund of license, by
 151 revising subsection (a) as follows:

152 "(a) No refund is allowed for a manufacturer, distributor, or master license except as
 153 follows:

154 (1) The ~~owner~~ licensee makes a written request to the corporation for a refund prior to
 155 the beginning of the calendar year for which it was purchased;

156 (2) The ~~owner~~ licensee makes a written request prior to the issuance of the ~~master~~ license
 157 or registration certificate;

158 (3) The ~~owner~~ licensee makes a written request for a refund claiming the ~~master~~ license
 159 or registration certificate was mistakenly purchased due to reliance on incorrect
 160 information from the corporation;

161 (4) The processing of the ~~master~~ license is discontinued; or

162 (5) The issuance of the ~~master~~ license is denied."

163 **SECTION 4.**

164 Said article is further amended by revising Code Section 50-27-73, relating to refusal to issue
 165 or renew license, revocation or suspension, and limitation on issuance of licenses, as follows:

166 "50-27-73.

167 (a) The corporation shall not renew a ~~master, location owner, or location operator~~ license
 168 for a business person under this article and shall suspend for any period of time or cancel
 169 a ~~master, location owner, or location operator~~ license if the corporation finds that the
 170 applicant or licensee is indebted to the state for any fees, costs, penalties, or delinquent
 171 fees.

172 (b) The corporation shall not issue or renew a license for a ~~business~~ person under this
 173 article if the applicant does not designate and maintain an office in this state or if the
 174 applicant does not permit inspection by the corporation's agents of his or her place of
 175 business or of all records which the applicant or licensee is required to maintain; provided,
 176 however, that this subsection shall not apply to manufacturers.

177 (c) The corporation may refuse to issue or renew a manufacturer, distributor, or master
 178 license or may revoke or suspend a manufacturer, distributor, or master license issued
 179 under this chapter if:

180 (1) The licensee or applicant has intentionally violated a provision of this chapter or a
 181 regulation promulgated under this chapter;

182 (2) The licensee or applicant has intentionally failed to provide requested information
 183 or answer a question, intentionally made a false statement in or in connection with his or
 184 her application or renewal, or omitted any material or requested information;

185 (3) The licensee or applicant used coercion to accomplish a purpose or to engage in
 186 conduct regulated by the corporation;

187 (4) A master licensee or applicant allows the use of its master license certificate or per
 188 machine permit stickers by any other business entity or person ~~who~~ that owns or operates
 189 bona fide coin operated amusement machines available for commercial use and available
 190 to the public for play. If such unauthorized use occurs, the corporation may fine the
 191 licensee as follows:

192 (A) One thousand dollars for each improper use of a per machine permit sticker; and

193 (B) Twenty-five thousand dollars for each improper use of a master license certificate.

194 In addition, the corporation is authorized to seize the machines in question and assess the
 195 master license and permit fees as required by law and to assess the costs of such seizure
 196 to the owner or operator of the machines;

197 (5) Failure to suspend or revoke the license would be contrary to the intent and purpose
 198 of this article;

199 (6) The licensee or applicant has engaged in unfair methods of competition and unfair
 200 or deceptive acts or practices as provided in Code Section 50-27-87.1; or

201 (7) Any applicant, or any person, firm, corporation, legal entity, or organization having
 202 any interest in any operation for which an application has been submitted, fails to meet
 203 any obligations imposed by the tax laws or other laws or regulations of this state.

204 (d) The corporation, on the request of a licensee or applicant for a license, shall conduct
 205 a hearing to ascertain whether a licensee or applicant for a license has engaged in conduct
 206 which would be grounds for revocation, suspension, or refusal to issue or renew a license.

207 (e) Effective July 1, 2015, the ~~The~~ corporation ~~shall not~~ may issue ~~any new~~ up to 220
 208 Class B master licenses ~~until one year after it certifies that the Class B accounting terminal~~

209 ~~authorized by Code Section 50-27-101 is implemented through a process of competitive~~
 210 ~~auction to be established by the corporation and such competitive auction shall occur at~~
 211 ~~least once every three years effective July 1, 2015; provided, however, that any person or~~
 212 ~~entity holding a Class B master license on the effective date of this subsection shall not be~~
 213 ~~subject to the competitive auction process provided for in this Code section but shall be~~
 214 ~~subject to all other requirements of this article; provided, however, further, that the~~
 215 corporation shall be permitted to renew Class B master licenses at any time."

216 **SECTION 5.**

217 Said article is further amended in Code Section 50-27-78, relating to payment and collection
 218 of annual permit fee, permit stickers, and treatment of fees, by revising subsection (a) as
 219 follows:

220 "(a) Every owner, except an owner holding a coin operated amusement machine solely for
 221 personal use or resale, who offers others the opportunity to play for a charge, whether
 222 direct or indirect, any bona fide coin operated amusement machine shall pay an annual
 223 permit fee for each bona fide coin operated amusement machine in the amount of \$25.00
 224 for each Class A machine and \$125.00 for each Class B machine. The fee shall be paid to
 225 the corporation by company check, cash, cashier's check, money order, or any other method
 226 approved by the chief executive officer. Upon payment, the corporation shall issue a
 227 sticker for each bona fide coin operated amusement machine. ~~The annual fees levied by~~
 228 ~~this article shall be collected by the corporation on an annual basis for the period from July~~
 229 ~~1 to June 30.~~ The board may establish procedures for annual collection and set due dates
 230 for the fee payments. No refund or credit of the annual fee levied by this article shall be
 231 allowed to any owner who ceases the exhibition or display of any bona fide coin operated
 232 amusement machine prior to the end of any license or permit period."

233 **SECTION 6.**

234 Said article is further amended in Code Section 50-27-84, relating to limitation on percent
 235 of monthly gross retail receipts derived from machines, monthly verified reports, issuance
 236 of fine or revocation or suspension of license for violations, and submission of electronic
 237 reports, by revising subsection (b) as follows:

238 "(b)(1) No location owner or location operator shall derive more than 50 percent of such
 239 location owner's or location operator's monthly gross retail receipts for the business
 240 location in which the Class B machine or machines are situated from such Class B
 241 machines; provided, however, that revenues that are due to a master licensee or the
 242 corporation shall not be deemed revenue derived from Class B machines.

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

247 **SECTION 7.**

248 Said article is further amended in Code Section 50-27-87, relating to master licenses and
 249 requirements and restrictions for licensees, by revising paragraph (4) of subsection (a) and
 250 paragraph (3) of subsection (b) as follows:

251 "(4) On or after July 1, 2013, no person with or applying for a master license shall have
 252 an interest in any manufacturer, distributor, location owner, or location operator in this
 253 state. No person with or applying for a manufacturer license shall have an interest in a
 254 distributor, master licensee, location owner, or location operator in this state. No person
 255 applying for a distributor license shall have an interest in a manufacturer, master licensee,
 256 location owner, or location operator in this state. Additionally, no group or association
 257 whose membership includes manufacturers, distributors, operators, master licensees,
 258 location owners, or location operators shall obtain a master license nor shall they form
 259 an entity which acts as a master licensee, operator, location owner, or location operator
 260 for the purpose of obtaining a master license; provided, however, that through June 30,
 261 2015, this paragraph shall not apply to persons who, as of December 31, 2013, have or
 262 will have continuously possessed a master license for ten or more years and, for ten or
 263 more years, have or will have continuously owned or operated a location where a bona
 264 fide coin operated machine has been placed. Nothing in this paragraph shall prohibit a
 265 manufacturer, distributor, or master licensee from entering into a financing arrangement
 266 with the other for the sale of machines, including but not limited to a lien, guaranty, or
 267 line of credit."

268 "(3) Any written agreement entered into after April 10, 2013, shall be exclusive as
 269 between one bona fide coin operated amusement machine master licensee and one
 270 location owner or location operator per location. Any agreement entered into before
 271 April 10, 2013, shall not be deemed void for failure to allocate revenue pursuant to Code
 272 Section 50-27-87.1 or 50-27-102, and notwithstanding any agreements between master
 273 licensees and location owners and location operators, both shall act in a manner that
 274 complies with this chapter."

275 **SECTION 8.**

276 Said article is further amended in Code Section 50-27-87.1, relating to unfair methods of
 277 competition and unfair and deceptive acts, by revising paragraphs (3) and (4) as follows:

278 "(3) A location owner or location operator asking, demanding, or accepting anything of
 279 value, including but not limited to a loan or financing arrangement, gift, procurement fee,
 280 lease payments, revenue sharing, or payment of license fees or permit fees from a
 281 manufacturer, distributor, or master licensee, as an incentive, inducement, or any other
 282 consideration to locate bona fide coin operated amusement machines in that
 283 establishment. A location owner that violates this subsection shall have all of the location
 284 owner's state business licenses revoked for a period of one to five years per incident. The
 285 location owner also shall be fined up to \$50,000.00 per incident and required to repay any
 286 incentive fees or other payments received from the operator; and

287 (4) ~~At~~ A manufacturer, distributor, operator, master licensee, or individual providing
 288 anything of value, including but not limited to a loan or financing arrangement, gift,
 289 procurement fee, lease payments, revenue sharing, or payment of license fees or permit
 290 fees to a location owner or location operator, as any incentive, inducement, or any other
 291 consideration to locate bona fide coin operated amusement machines in that
 292 establishment. ~~At~~ A manufacturer, distributor, operator, master licensee, or individual
 293 who violates this subsection shall have all of his or her state business licenses revoked
 294 for a period of one to five years per incident. The individual, manufacturer, distributor,
 295 owner, or master licensee also shall be fined up to \$50,000.00 per incident."

296 **SECTION 9.**

297 Said article is further amended in Code Section 50-27-102, relating to role of the corporation,
 298 implementation and certification, and separation of funds and accounting, by adding a new
 299 subsection to read as follows:

300 "(d)(1) As a condition of the license issued pursuant to this article, no master licensee or
 301 location owner or location operator shall replace or remove a Class A or Class B bona
 302 fide coin operated amusement machine from a location until the master licensee and
 303 location owner or location operator certify to the corporation that there are no disputes
 304 regarding any agreement, distribution of funds, or other claim between the master
 305 licensee and location owner or location operator; provided, however, that this
 306 certification shall not be required if a master licensee is replacing its own Class A or
 307 Class B bona fide coin operated amusement machine at a location. If either the master
 308 licensee or location owner or location operator is unable to make the certification
 309 required by this Code section, the corporation shall refer the dispute to a hearing officer
 310 as set forth in this subsection.

311 (2) All disputes subject to the provisions of this Code section shall be decided by a
312 hearing officer approved or appointed by the corporation. The corporation shall adopt
313 rules and regulations governing the selection of hearing officers after consultation with
314 the Bona Fide Coin Operated Amusement Machine Operator Advisory Board. Costs of
315 the hearing officer's review, including any hearing set pursuant to this Code Section, shall
316 be shared equally between the parties in the dispute; provided, however, that the
317 corporation shall not be responsible for any of the costs associated with the dispute
318 resolution mechanism set forth in this Code section.

319 (3) The corporation shall also adopt rules governing the procedure, evidentiary matters,
320 and any prehearing discovery applicable to disputes resolved pursuant to this Code
321 section. Such rules shall be consistent with the Georgia Arbitration Code, and the
322 corporation shall consult the Bona Fide Coin Operated Amusement Machine Operator
323 Advisory Board regarding the procedures or rules adopted pursuant to this subsection.
324 Notwithstanding Code Section 9-9-9, such procedures and rules shall include at least the
325 right of notice to produce books, writings, and other documents or tangible things;
326 depositions; and interrogatories.

327 (4) If requested by the master licensee or the location owner or location operator, the
328 hearing officer shall conduct a hearing as to the dispute, but in no case shall the hearing
329 officer conduct a hearing more than 90 days after he or she has been appointed or selected
330 to decide the dispute. No Class B bona fide coin operated amusement machine that is
331 subject to the dispute resolution mechanism required by this Code section shall be
332 removed from the terminal by a master licensee, location owner, or location operator or
333 otherwise prevented by a master licensee, location owner, or location operator from play
334 by the public until a final decision is entered and all appellate rights have been exhausted,
335 or until the master licensee and location owner or location operator agree to a resolution,
336 whichever occurs first.

337 (5) The decision of the hearing officer may be appealed to the chief executive officer or
338 his or her designee. The chief executive officer shall not reverse a finding of fact of the
339 hearing officer if any evidence supports the hearing officer's conclusion. The chief
340 executive officer shall not reverse a conclusion of law of the hearing officer unless it was
341 clearly erroneous, arbitrary, and capricious or exceeded the hearing officer's jurisdiction.
342 The decision of the chief executive officer may be appealed to the Superior Court of
343 Fulton County, which court shall not reverse the chief executive officer's findings of fact
344 unless it is against the weight of the evidence as set forth in Code Section 5-5-21, and the
345 chief executive officer's legal conclusions shall not be set aside unless there is an error
346 of law."

347

SECTION 10.

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