

Representative Powell of the 32<sup>nd</sup> offers the following substitute to SB 388:

A BILL TO BE ENTITLED  
AN ACT

To amend Article 3 of Chapter 27 of Title 50 of the Official Code of Georgia Annotated, relating to bona fide coin operated amusement machines, so as to provide a fee for a duplicate sticker; to prohibit the removal of a sticker without authorization; to provide that noncash redemption earned by a player shall not be deemed revenue from Class B machines for certain purposes; to revise the penalties for improper placement of machines; to prohibit certain actions with regard to bona fide coin operated amusement machines; to provide that certain unfair methods of competition and unfair and deceptive acts shall be unlawful; to provide for the terms of certain agreements; to provide for service in cases of disputes between licensees and location owners or operators; to provide for default judgments in certain circumstances; to provide for delays in hearings for good cause; 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.**

Article 3 of Chapter 27 of Title 50 of the Official Code of Georgia Annotated, relating to bona fide coin operated amusement machines, is amended by revising Code Section 50-27-74, relating to right to notice and hearing, service of notice, and establishment of procedures, by adding a new subsection to read as follows:

"(d) At the time that a master licensee receives notice of a potential revocation of its master license as provided in this Code section, the master licensee shall be prohibited from assigning, selling, or otherwise transferring any of its contracts with location owners or location operators to any other master licensee or other person, and such prohibition shall remain in effect unless or until a final decision, not subject to further appeal, is rendered which does not result in the revocation of the master license. After a master license is revoked by final order and no other appeals are available, any contracts between a master licensee and a location owner or location operator for the providing of bona fide coin

operated amusement machines shall be null and void. Nothing in this subsection shall prevent a location owner or location operator from exercising any contractual right to place machines of another master licensee in such location."

## SECTION 2.

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

"(d) The corporation 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 ~~\$50.00~~ \$25.00 for each Class A machine and \$125.00 for each Class B machine. 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."

"(h) It shall be unlawful to remove or deface a sticker which is attached to a machine without authorization by the owner of the machine or the corporation. A violation of this subsection shall be a misdemeanor."

## SECTION 3.

Said article is further amended by revising paragraph (3) of subsection (a) and paragraph (1) of subsection (b) of Code Section 50-27-84, relating to limitation on percent of monthly gross retail receipts derived from machines, monthly verified reports, issuance of fine or revocation or suspension of license for violations, and submission of electronic reports, as follows:

"(3) 'Gross retail receipts' means the total revenue derived by a business at any one business location from the sale of goods and services and the commission earned at any 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. The sale of goods or services for which the business will receive only a commission shall not include the sale of any item which the business has purchased for resale. Revenue ~~from shall not include~~ the sale of goods and services at wholesale ~~shall not be included~~."

"(b)(1) No location owner or location operator shall derive more than 50 percent of such location owner's or location operator's monthly gross retail receipts for the business location in which the Class B machine or machines are situated from such Class B machines; provided, however, that revenues that are due to a master licensee or the

corporation or noncash redemption that is earned by the player shall not be deemed revenue derived from Class B machines."

#### SECTION 4.

Said article is further amended by revising subsection (b) of Code Section 50-27-87, relating to master licenses and requirements and restrictions for licensees, as follows:

"(b)(1) No bona fide coin operated amusement machine, its parts, or software or hardware shall be placed or leased in any location owner's or location operator's establishment except by a master licensee and only if the owner or agent of the location owner or location operator has entered into a written agreement with a master licensee for placement of the bona fide coin operated amusement machine. Beginning on July 1, 2013, no person with or applying for a location owner's or location operator's license shall have an interest in any person or immediate family member of a person with a master license, or doing business as a distributor, or manufacturer in this state. A location owner or location operator may sell a bona fide coin operated amusement machine to anyone except another location owner or location operator. Failure to adhere to this subsection shall result in a fine of ~~not less than~~ up to \$50,000.00 and loss of the location owner's or location operator's license for a period of one to five years per incident and subject the location owner or location operator to the loss of any other state or local licenses held by the location owner or location operator. The corporation shall notify any state or federal agency that issues a license to such location owner or location operator of the breach of its duties under this article.

(2) A copy of the written agreement shall be on file in the master licensee's and the location owner's and location operator's place of business and available for inspection by individuals authorized by the corporation.

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

(B) Any agreement entered into or renewed after the effective date of this subparagraph shall be for at least one year.

(C) Any applicant for a new location license for a location where machines have been placed at any time in the immediately preceding nine months shall either:

(i) Not place machines in such location for nine months from the date of the granting of the location license; or

(ii) Formally accept an assignment of the written agreement between the master licensee and the immediately preceding location owner or location operator; provided, however, that the master licensee may refuse to assign the written agreement.

For the purposes of division (ii) of this subparagraph, the master licensee is the master licensee that, in the nine months preceding the application for a new location license, had the last written agreement with the immediately preceding location owner or location operator or the master licensee that, in the nine months preceding the application for a new location license, had requested or commenced a hearing pursuant to Code Section 50-27-102, whichever had machines placed in the location first."

## **SECTION 5.**

Said article is further amended by revising paragraphs (2) and (4) of subsection (d) of Code Section 50-27-102, relating to role of corporation, implementation and certification, separation of funds and accounting, and disputes, as follows:

"(2) The corporation shall have jurisdiction of all disputes between and among any licensees or former licensees whose licenses were issued pursuant to this article relating in any way to any agreement involving coin operated amusement machines, distribution of funds, tortious interference with contract, other claims against a subsequent master license holder or location owner, or any other claim involving coin operated amusement machines; provided, however, that this paragraph shall not apply to any agreement which expired on or before April 10, 2013. Except as provided in paragraph (1) of this subsection, the corporation shall refer any dispute certified by any master licensee against any other master licensee or any location owner or location operator or by any location owner or location operator against any master licensee to a hearing officer. For the purpose of service on licensees with respect to disputes, each licensee or former licensee shall register and keep current with the corporation the name of an agent and his or her address and an email address which shall be made available to any licensee on request. Service by registered mail, courier delivery, or overnight mail delivered to the agent's registered address and to the email address shall be adequate service on the licensee for a hearing on the dispute. All disputes subject to the provisions of this Code section certified by a master licensee, location owner, or location operator shall be decided by a hearing officer approved or appointed by the corporation. The corporation shall adopt rules and regulations governing the selection of hearing officers after consultation with the Bona Fide Coin Operated Amusement Machine Operator Advisory Board. Costs of the hearing officer's review, including any hearing set pursuant to this Code Section

section, shall be shared equally between the parties in the dispute unless provided otherwise in the agreement or by the hearing officer; provided, however, that the corporation shall not be responsible for any of the costs associated with the dispute resolution mechanism set forth in this Code section. If any party fails to timely pay the costs of the hearing officer's review within ten days of service of notice of costs by the hearing officer, the hearing officer shall grant a default judgment on liability against the nonpaying party. The hearing officer shall then consider evidence related to damages or any other relief and shall render judgment based upon a preponderance of the evidence."

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

#### SECTION 6.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

#### SECTION 7.

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