

House Bill 353 (COMMITTEE SUBSTITUTE)

By: Representatives Powell of the 33<sup>rd</sup>, Washburn of the 144<sup>th</sup>, Jasperse of the 11<sup>th</sup>, Williams of the 168<sup>th</sup>, Mitchell of the 88<sup>th</sup>, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 27 of Title 50 of the Official Code of Georgia Annotated, the "Georgia  
2 Lottery for Education Act," so as to provide that administrative procedures and actions  
3 regarding bona fide coin operated amusement machines shall be subject to Chapter 13 of  
4 Title 50; to provide definitions; to provide for a limitation on the permitted noncash  
5 redemption award for Class A and Class B machines; to provide for redemption for  
6 successful play of bona fide coin operated amusement machines by automated kiosks under  
7 certain conditions; to provide for the qualifications of location owners and location operators;  
8 to authorize certain billiards and darts tournaments and the prizes therefor; to provide for the  
9 auction of certain licenses and the timing therefor; to provide for exceptions to provisions of  
10 law regarding the amount of funds that may come from the play of bona fide coin operated  
11 amusement machines for certain historical fraternal benefit associations and veterans  
12 organizations; to provide that certain provisions to location owners or location operators by  
13 master licensees shall not constitute an unfair method of competition or an unfair or  
14 deceptive act; to provide for the resolution of certain disputes between master licensees and  
15 location owners or location operators; to provide for an effective date; to provide for related  
16 matters; to repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 353 (SUB)

18

**SECTION 1.**

19 Chapter 27 of Title 50 of the Official Code of Georgia Annotated, the "Georgia Lottery for  
20 Education Act," is amended by revising paragraph (19) of subsection (a) of Code  
21 Section 50-27-9, relating to general powers of the Georgia Lottery Corporation, as follows:

22 "(19) To adopt and amend such regulations, policies, and procedures as necessary to  
23 carry out and implement its powers and duties, organize and operate the corporation,  
24 regulate the conduct of lottery games in general, and any other matters necessary or  
25 desirable for the efficient and effective operation of the lottery or the convenience of the  
26 public. The promulgation of any such regulations, policies, and procedures pursuant to  
27 Articles 1 and 2 of this chapter shall be exempt from the requirements of Chapter 13 of  
28 this title, the 'Georgia Administrative Procedure Act.' Notwithstanding any other  
29 provision of law to the contrary, the promulgation of any form of licensure, rules,  
30 regulations, policies, procedures, and administrative hearings regarding violations of  
31 Article 3 of this chapter shall be subject to the provisions of Chapter 13 of this title.  
32 Hearings under Code Section 50-27-102 shall be held in accordance with the provisions  
33 of Part 1 of Article 1 of Chapter 9 of Title 9, the 'Georgia Arbitration Code.'"

34

**SECTION 2.**

35 Said chapter is further amended by revising paragraph (3) of subsection (b) of Code Section  
36 50-27-70, relating to legislative findings and definitions, and adding a new paragraph to read  
37 as follows:

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

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

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

43 (C) Rewards a successful player with noncash merchandise, prizes, toys, gift  
44 certificates, or novelties in compliance with the provisions of subsection (c) or  
45 paragraph (1) of subsection (d) of Code Section 16-12-35, and does not reward a  
46 successful player with any item prohibited as a reward in subsection (i) of Code  
47 Section 16-12-35 or any reward redeemable as an item prohibited as a reward in  
48 subsection (i) of Code Section 16-12-35;

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

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

54 Notwithstanding the provisions of Code Section 16-12-35 or any other Code section to  
55 the contrary, the permitted noncash redemption award per play for a Class A machine  
56 shall not exceed a wholesale value of \$50.00."

57 "(5.1) 'Gift card' or 'gift certificate' means an electronic payment device or system issued  
58 for a specific amount of noncash redemption which was earned by a successful player of  
59 a bona fide coin operated amusement machine which:

60 (A) May or may not be increased in value or reloaded;

61 (B) Is provided or loaded on a prepaid basis for the future purchase or delivery of any  
62 merchandise or service permitted by law from a single merchant or service provider or  
63 multiple merchants or service providers, whether affiliated or not;

64 (C) Is honored upon presentation but cannot be exchanged for cash, change, or  
65 currency; and

66 (D) May be used off the premises of the location licensee, but is loaded or reloaded or  
67 caused to be loaded or reloaded only:

68 (i) On the location licensee's premises; or

69 (ii) By the location licensee or its employees on the location licensee's premises."

70 **SECTION 3.**

71 Said chapter is further amended by revising subsection (a.1) of Code Section 50-27-71,  
72 relating to license fees, issuance of license, display of license, control number, duplicate  
73 certificates, application for license or renewal, and penalty for noncompliance, and adding  
74 new subsections to read as follows:

75 "(a.1) Every location owner or location operator shall pay an annual location license fee  
76 for each bona fide coin operated amusement machine offered to the public for play. To be  
77 eligible to apply for and to maintain a location owner or location operator license, the  
78 applicant for such license shall provide documentary proof satisfactory to the corporation  
79 that the applicant owns or leases the location for which the license is sought. The annual  
80 location license fee shall be \$25.00 for each Class A machine and \$125.00 for each Class B  
81 machine. The annual location license fee levied by this Code section shall be collected by  
82 the corporation, and the board may establish procedures for location license fee collection  
83 and set due dates for payment of such fees. The location license fee shall be paid to the  
84 corporation by company check, cash, cashier's check, money order, or any other method  
85 approved by the chief executive officer. Upon payment, the corporation shall issue a  
86 location license certificate that shall state the number of bona fide coin operated  
87 amusement machines permitted for each class without further description or identification  
88 of specific machines. No refund or credit of the location license fee shall be allowed to any  
89 location owner or location operator who ceases to offer bona fide coin operated amusement  
90 machines to the public for commercial use prior the end of any license period."

91 "(a.3)(1) A location owner or location operator may offer gift cards for noncash  
92 redemption for successful play of a Class A or Class B machine at such location in the  
93 same manner as other merchandise for sale at such location. The acceptance of a gift  
94 card offered by the location owner or location operator shall constitute the act of in-store  
95 redemption by a successful player. No value shall be placed on such gift card unless such

96 value has been won by the player for the successful play of a game on such bona fide coin  
97 operated amusement machine.

98 (2) Notwithstanding any provision of law to the contrary, the merchandise, prizes, toys,  
99 gift cards, gift certificates, novelties, or rewards which may be awarded to a successful  
100 player shall include or be redeemable or exchangeable for any goods or services which  
101 such player is entitled or permitted by law to purchase.

102 (3) Notwithstanding the provisions of Code Section 16-12-35 or any other Code section  
103 to the contrary, a location owner or location operator shall be permitted to allow a player  
104 of a bona fide coin operated amusement machine to redeem winnings for a gift card or  
105 gift certificate, and the award of such gift card or gift certificate shall be a lawful act of  
106 in-store redemption and shall be permitted to be fully redeemed off the premises.

107 (4) Subject to the requirements of this subsection, successful players may redeem their  
108 winnings on a gift card or gift certificate from a self-service gift card or gift certificate  
109 redemption device. The device and the cost of such device may be provided by the  
110 location owner or location operator, the master licensee, or both."

111 "(o)(1) As used in this subsection, the term:

112 (A) 'Billiards' shall have the same meaning as provided in paragraph (3) of Code  
113 Section 43-8-1.

114 (B) 'Darts' means any one of the games played with two or more players who, using  
115 their bare hands, throw small sharp-pointed missiles known as darts at a target known  
116 as a dartboard to accumulate points.

117 (2) A master licensee, a location owner, a location operator, or a combination of such  
118 licensees shall be authorized to conduct billiards or darts tournaments on the premises for  
119 which such licensees have a contract for the installation of bona fide coin operated  
120 amusement machines. Such tournaments may be conducted on bona fide coin operated  
121 amusement machines or noncoin operated devices. The licensee or licensees may award  
122 prizes to the winners of such tournaments, but such prizes shall be limited to gift cards

123 or other forms of noncash redemption. If such tournaments are jointly sponsored, such  
124 licensees shall share equally in the cost of such prizes.

125 (p) At any time following a proposed revocation or a proposed nonrenewal of a master  
126 license by the corporation, any settlement of such proposed revocation or proposed  
127 nonrenewal involving the sale of the master license and associated assets, including, but  
128 not limited to, location licenses, master license contracts, and bona fide coin operated  
129 amusement machines, shall require a public auction."

130 **SECTION 4.**

131 Said chapter is further amended by revising subsection (e) of Code Section 50-27-73, relating  
132 to refusal to issue or renew license, revocation or suspension, hearing, and limitation on  
133 issuance of licenses, as follows:

134 "(e) Effective July 1, ~~2015~~ 2023, the corporation may issue up to 220 Class B master  
135 licenses through a process of competitive auction to be established by the corporation and  
136 ~~such a~~ competitive auction for one license shall occur ~~at least~~ once every three years  
137 effective July 1, ~~2015~~ 2023; provided, however, that any person or entity holding a Class  
138 B master license on the effective date of this subsection shall not be subject to the  
139 competitive auction process provided for in this Code section but shall be subject to all  
140 other requirements of this article; provided, further, that the corporation shall be permitted  
141 to renew Class B master licenses at any time."

142 **SECTION 5.**

143 Said chapter is further amended by revising Code Section 50-27-84, relating to limitation on  
144 percent of monthly gross retail receipts derived from machines, monthly verified reports,  
145 issuance of fine or revocation or suspension of license for violations, and submission of  
146 electronic reports, as follows:

147 "50-27-84.

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

149 (1) 'Amusement or recreational establishment' means an open-air establishment  
150 frequented by the public for amusement or recreation. Such an establishment shall be in  
151 a licensed fixed location located in this state and which has been in operation for at least  
152 35 years.

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

155 (3) 'Gross retail receipts' means the total revenue derived by a business at any one  
156 business location from the sale of goods and services and the commission earned at any  
157 one business location on the sale of goods and services but shall not include revenue from  
158 the sale of goods or services for which the business will receive only a commission. The  
159 sale of goods or services for which the business will receive only a commission shall not  
160 include the sale of any item which the business has purchased for resale. Revenue shall  
161 not include the sale of goods and services at wholesale.

162 (b)(1) No location owner or location operator shall derive more than 50 percent of such  
163 location owner's or location operator's ~~monthly~~ quarterly gross retail receipts for the  
164 business location in which the Class B machine or machines are situated from such Class  
165 B machines; provided, however, that revenues that are due to a master licensee or the  
166 corporation or noncash redemption that is earned by the player shall not be deemed  
167 revenue derived from Class B machines. This paragraph shall not apply to historical  
168 fraternal benefit associations or veterans organizations which are exempt from taxes and  
169 are described in Code Section 48-5-41 or Code Section 48-5-478.4.

170 (2) No location owner or location operator shall offer more than nine Class B machines  
171 to the public for play in the same business location; provided, however, that this  
172 limitation shall not apply to an amusement or recreational establishment.

173 (c) For each business location which offers to the public one or more Class B machines,  
174 the location owner or location operator shall prepare a ~~monthly~~ quarterly verified report  
175 setting out separately by location in Georgia:

- 176 (1) The gross receipts from the Class B machines;
- 177 (2) The gross retail receipts for the business location; and
- 178 (3) The net receipts of the Class B machines.

179 (c.1) Each person holding a Class B master license shall prepare a ~~monthly~~ quarterly  
180 verified report setting out separately by location in Georgia:

- 181 (1) The gross receipts from the Class B machines which the master licensee maintains;  
182 and
- 183 (2) The net receipts of the Class B machines.

184 (d) In accordance with the provisions of Code Section 50-27-73 and the procedures set out  
185 in Code Sections 50-27-74 and 50-27-75, the corporation may fine an applicant or holder  
186 of a license, refuse to issue or renew a location license or master license, or revoke or  
187 suspend a location license or master license for single or repeated violations of  
188 subsection (b) of this Code section.

189 (e) A location owner or location operator shall report the information prescribed in this  
190 Code section in the form required by the corporation. Such report shall be submitted in an  
191 electronic format approved by the corporation.

192 (f) Beginning on ~~August 20, 2013~~ July 20, 2023, and on the twentieth day of ~~each month~~  
193 January, April, July, and October of each year thereafter, for the previous ~~month~~ calendar  
194 quarter, the reports required by subsections (c) and (c.1) of this Code section shall be  
195 supplied to the corporation on forms provided by the corporation, including electronic  
196 means. The corporation shall be authorized to audit any records for any such business  
197 location or master licensee subject to this Code section. The corporation may contract with  
198 any state agencies to perform the audits authorized by this Code section, and it may

199 contract or enter into a memorandum of understanding with the Department of Revenue  
200 to enforce the provisions of this Code section."

201 **SECTION 6.**

202 Said chapter is further amended by designating the existing text of Code Section 50-27-87.1,  
203 relating to unfair methods of competition and unfair and deceptive acts, as subsection (a) and  
204 adding a new subsection to read as follows:

205 "(b) The provision by the master licensee of non-fixtures on or within a building in which  
206 there is a licensed location at which bona fide coin operated amusement machines are  
207 located, including, but not limited to, branded posters; signage, including, but not limited  
208 to, digital video signage; rugs; seating; removable partition walls; or wall coverings to a  
209 location owner or location operator with whom the master licensee has a contract for the  
210 placement of Class B machines shall not be deemed to be unfair methods of competition  
211 or unfair or deceptive acts under this article. Such non-fixtures shall be exclusively for the  
212 facilitation and promotion of the play of such Class B machines and the redemption of  
213 approved gift cards. Such non-fixtures shall remain the property of the master licensee and  
214 shall be removed not later than when the Class B machines are removed from the location."

215 **SECTION 7.**

216 Said chapter is further amended by revising paragraph (1) of subsection (d) of Code  
217 Section 50-27-102, relating to role of corporation, implementation and certification,  
218 separation of funds and accounting, and disputes, and adding a new paragraph to read as  
219 follows:

220 "(d)(1) As a condition of the license issued pursuant to this article, no master licensee or  
221 location owner or location operator shall replace or remove a Class A or Class B ~~bona~~  
222 ~~fide coin operated amusement~~ machine from a location until the master licensee and  
223 location owner or location operator certify to the corporation that there are no disputes

224 regarding any agreement, distribution of funds, or other claim between the master  
225 licensee and location owner or location operator; provided, however, that this  
226 certification shall not be required if a master licensee is replacing its own Class A or  
227 Class B ~~bona fide coin-operated amusement~~ machine at a location. If either the master  
228 licensee or location owner or location operator is unable to make the certification  
229 required by this Code section, the corporation shall refer the dispute to a hearing officer  
230 as set forth in this subsection. If a master licensee certifies that there is a dispute with a  
231 location owner or location operator, which certification causes the continued generation  
232 of revenue from the master licensee's Class A or Class B machine subject to the alleged  
233 dispute pending a decision on the dispute, and, after the hearing officer's or court's  
234 determination, the location owner or location operator is the prevailing party and the  
235 hearing officer or court finds by clear and convincing evidence that the action was  
236 brought by the master licensee without substantial justification or was brought for delay  
237 or harassment, the hearing officer or court shall, in addition to any other remedy provided  
238 for in this article, order that any revenues received by or due to the master licensee as a  
239 result of the master licensee's certification of the dispute shall not be kept by the master  
240 licensee but shall be awarded to the prevailing location owner or location operator and  
241 the hearing officer or court shall also award the costs of the proceeding and attorney fees  
242 to the location owner or location operator and against the master licensee. However, if,  
243 after the hearing officer's or court's determination, the master licensee is the prevailing  
244 party and the hearing officer or court finds by clear and convincing evidence that the  
245 action was defended by the location owner or location operator without substantial  
246 justification or was defended for delay or harassment, the hearing officer or court shall,  
247 in addition to any other remedy provided for in this article, order that any revenues  
248 received by or due to the location owner or location operator as a result of the master  
249 licensee's certification of the dispute shall not be kept by the location owner or location  
250 operator but shall be awarded to the master licensee and the hearing officer or court shall

251 also award the costs of the proceeding and attorney fees to the master licensee and against  
252 the location owner or location operator. As used in this Code section, "without  
253 substantial justification" means substantially frivolous, substantially groundless, or  
254 substantially vexatious. Applicants for licenses shall submit all disputes against existing  
255 or previous licensees under this article, including master licensees, location owners,  
256 location operators, manufacturers, and distributors, to a hearing officer under this  
257 paragraph."

258 "(6) In the event that a violation of paragraph (3) of Code Section 50-27-87.1 by a  
259 location owner or operator is proven in a proceeding under this Code section, the current  
260 contract with the master licensee shall not be terminated and any change in master  
261 licensees shall be denied. In the event that a violation of paragraph (4) of subsection (a)  
262 of Code Section 50-27-87.1 by a master licensee who is not a party to the current contract  
263 for such location is proven in a proceeding under this Code section, no change in master  
264 licensees shall be authorized at such location and the hearing officer or court shall award  
265 the master licensee the right to continue to provide bona fide coin operated amusement  
266 machines at such location for a period of two years or a period of time equal to the term  
267 of the previous contract, whichever is greater."

268 **SECTION 8.**

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

271 **SECTION 9.**

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