

House Bill 353

By: Representatives Powell of the 33rd, Washburn of the 144th, Jasperse of the 11th, Williams of the 168th, Mitchell of the 88th, 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 for certain terms and conditions for contracts for the provision of
13 bona fide coin operated amusement machines between master licensees and location owners
14 or location operators; to provide that certain provisions to location owners or location
15 operators by master licensees shall not constitute an unfair method of competition or an
16 unfair or deceptive act; to provide for the resolution of certain disputes between master
17 licensees and location owners or location operators; to provide for an effective date; to
18 provide for related matters; to repeal conflicting laws; and for other purposes.

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 **SECTION 1.**

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

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

36 **SECTION 2.**

37 Said chapter is further amended by revising paragraph (3) of subsection (b) of Code Section
38 50-27-70, relating to legislative findings and definitions, and adding a new paragraph to read
39 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

72 **SECTION 3.**

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

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

93 "(a.3)(1) A location owner or location operator may offer gift cards for noncash
94 redemption for successful play of a Class A or Class B machine at such location in the
95 same manner as other merchandise for sale at such location. The acceptance of a gift
96 card offered by the location owner or location operator shall constitute the act of in-store

97 redemption by a successful player. No value shall be placed on such gift card unless such
98 value has been won by the player for the successful play of a game on such bona fide coin
99 operated amusement machine.

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

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

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

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

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

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

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

124 prizes to the winners of such tournaments, but such prizes shall be limited to gift cards
 125 or other forms of noncash redemption. If such tournaments are jointly sponsored, such
 126 licensees shall share equally in the cost of such prizes."

127 **SECTION 4.**

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

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

139 **SECTION 5.**

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

144 "50-27-84.

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

146 (1) 'Amusement or recreational establishment' means an open-air establishment
 147 frequented by the public for amusement or recreation. Such an establishment shall be in

148 a licensed fixed location located in this state and which has been in operation for at least
149 35 years.

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

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

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

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

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

173 (1) The gross receipts from the Class B machines;

174 (2) The gross retail receipts for the business location; and

175 (3) The net receipts of the Class B machines.

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

178 (1) The gross receipts from the Class B machines which the master licensee maintains;
179 and

180 (2) The net receipts of the Class B machines.

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

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

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

198

SECTION 6.

199 Said chapter is further amended by revising paragraph (3) of subsection (b) of Code
 200 Section 50-27-87, relating to master licenses and requirements and restrictions for licensees,
 201 as follows:

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

209 (B) Any agreement entered into or renewed after ~~May 3, 2016~~, July 1, 2023, shall be
 210 for at least ~~one year~~ two years but, if the premises where the bona fide coin operated
 211 amusement machines are to be located are leased, the term of such agreement shall not
 212 exceed the term of the lease of the premises.

213 (C) Any applicant for a new location license for a location where machines have been
 214 placed at any time in the immediately preceding ~~nine~~ 24 months shall either:

215 (i) Not place machines in such location for ~~nine~~ 24 months from the date of the
 216 granting of the location license plus the time remaining on the contract between the
 217 present master licensee and the location owner or location operator, not to exceed an
 218 additional 24 months; or

219 (ii) ~~Formally accept~~ Accept formally, or continue to perform under the written
 220 agreement in a manner which evinces an acceptance of, an assignment of the written
 221 agreement between the master licensee and the immediately preceding location owner
 222 or location operator; provided, however, that the master licensee may refuse to assign
 223 the written agreement.

224 For the purposes of division (ii) of this subparagraph, the master licensee is the master
225 licensee that, in the ~~nine~~ 24 months preceding the application for a new location license,
226 had the last written agreement with the immediately preceding location owner or
227 location operator or the master licensee that, in the ~~nine~~ 24 months preceding the
228 application for a new location license, had requested or commenced a hearing pursuant
229 to Code Section 50-27-102, whichever had machines placed in the location first.

230 (D) A location owner or location operator that is evicted by a landlord from the
231 premises for which there is an agreement for the placement of bona fide coin operated
232 amusement machines through a dispossessory or similar proceeding shall not be subject
233 to the provisions of subparagraph (C) of this paragraph.

234 (E) A location owner or location operator that enters into an agreement with a master
235 licensee for the placement of bona fide coin operated amusement machines and that
236 subsequently abandons the location or repudiates or breaches such agreement without
237 legal basis for doing so shall be personally liable for all damages to the master licensee
238 arising under the agreement."

239 **SECTION 7.**

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

243 "(b) The provision by the master licensee of non-fixtures on or within a building in which
244 there is a licensed location at which bona fide coin operated amusement machines are
245 located, including, but not limited to, branded posters; signage, including, but not limited
246 to, digital video signage; rugs; seating; removable partition walls; or wall coverings to a
247 location owner or location operator with whom the master licensee has a contract for the
248 placement of Class B machines shall not be deemed to be unfair methods of competition
249 or unfair or deceptive acts under this article. Such non-fixtures shall be exclusively for the

250 facilitation and promotion of the play of such Class B machines and the redemption of
 251 approved gift cards. Such non-fixtures shall remain the property of the master licensee and
 252 shall be removed not later than when the Class B machines are removed from the location."

253

SECTION 8.

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

258 "(d)(1) As a condition of the license issued pursuant to this article, no master licensee or
 259 location owner or location operator shall replace or remove a Class A or Class B ~~bona~~
 260 ~~fide coin operated amusement~~ machine from a location until the master licensee and
 261 location owner or location operator certify to the corporation that there are no disputes
 262 regarding any agreement, distribution of funds, or other claim between the master
 263 licensee and location owner or location operator; provided, however, that this
 264 certification shall not be required if a master licensee is replacing its own Class A or
 265 Class B ~~bona fide coin operated amusement~~ machine at a location. If either the master
 266 licensee or location owner or location operator is unable to make the certification
 267 required by this Code section, the corporation shall refer the dispute to a hearing officer
 268 as set forth in this subsection. If a master licensee certifies that there is a dispute with a
 269 location owner or location operator, which certification causes the continued generation
 270 of revenue from the master licensee's Class A or Class B machine subject to the alleged
 271 dispute pending a decision on the dispute, and, after the hearing officer's or court's
 272 determination, the location owner or location operator is the prevailing party and the
 273 hearing officer or court finds that the action was brought by the master licensee without
 274 substantial justification or was brought for delay or harassment, the hearing officer or
 275 court shall, in addition to any other remedy provided for in this article, order that any

276 revenues received by or due to the master licensee as a result of the master licensee's
277 certification of the dispute shall not be kept by the master licensee but shall be awarded
278 to the prevailing location owner or location operator and the hearing officer or court shall
279 also award the costs of the proceeding and attorney fees to the location owner or location
280 operator and against the master licensee. However, if, after the hearing officer's or court's
281 determination, the master licensee is the prevailing party and the hearing officer or court
282 finds that the action was defended by the location owner or location operator without
283 substantial justification or was defended for delay or harassment, the hearing officer or
284 court shall, in addition to any other remedy provided for in this article, order that any
285 revenues received by or due to the location owner or location operator as a result of the
286 master licensee's certification of the dispute shall not be kept by the location owner or
287 location operator but shall be awarded to the master licensee and the hearing officer or
288 court shall also award the costs of the proceeding and attorney fees to the master licensee
289 and against the location owner or location operator. As used in this Code section,
290 "without substantial justification" means substantially frivolous, substantially groundless,
291 or substantially vexatious. Applicants for licenses shall submit all disputes against
292 existing or previous licensees under this article, including master licensees, location
293 owners, location operators, manufacturers, and distributors, to a hearing officer under this
294 paragraph."

295 "(6) In the event that a violation of paragraph (3) of Code Section 50-27-87.1 by a
296 location owner or operator is proven in a proceeding under this Code section, the current
297 contract with the master licensee shall not be terminated and any change in master
298 licensees shall be denied. In the event that a violation of paragraph (4) of subsection (a)
299 of Code Section 50-27-87.1 by a master licensee who is not a party to the current contract
300 for such location is proven in a proceeding under this Code section, no change in master
301 licensees shall be authorized at such location and the hearing officer or court shall award
302 the master licensee the right to continue to provide bona fide coin operated amusement

303 machines at such location for a period of two years or a period of time equal to the term
304 of the previous contract, whichever is greater."

305 **SECTION 9.**

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

308 **SECTION 10.**

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