

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 for certain definitions; to provide for license fees and requirements for manufacturers and distributors; to provide for certain fees upon the transfer of a master license; to provide for an auction of certain licenses; to provide a procedure for dispute resolution; to provide for related matters; 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 in Code Section 50-27-70, relating to legislative findings and definitions, by adding a new paragraph to subsection (b) to read as follows:

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

SECTION 2.

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

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

(1) For Class A machines:

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

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

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

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

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

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

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

(a.1) Every location owner or location operator shall pay an annual location license fee for each bona fide coin operated amusement machine offered to the public for play. The annual location license fee shall be \$25.00 for each Class A machine and \$125.00 for each Class B machine. The annual location license fee levied by this Code section shall be collected by the corporation, and the board may establish procedures for location license fee collection and set due dates for payment of such fees. The location license fee shall be paid to the corporation by company check, cash, cashier's check, money order, or any other method approved by the chief executive officer. Upon payment, the corporation shall issue a location license certificate that shall state the number of bona fide coin operated amusement machines permitted for each class without further description or identification of specific machines. No refund or credit of the location license fee shall be allowed to any location owner or location operator who ceases to offer bona fide coin operated amusement machines to the public for commercial use prior the end of any license period.

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

- (1) The licensee or applicant has intentionally violated a provision of this chapter or a regulation promulgated under this chapter;
 - (2) The licensee or applicant has intentionally failed to provide requested information or answer a question, intentionally made a false statement in or in connection with his or her application or renewal, or omitted any material or requested information;
 - (3) The licensee or applicant used coercion to accomplish a purpose or to engage in conduct regulated by the corporation;
 - (4) Failure to revoke or suspend the license would be contrary to the intent and purpose of this article;
 - (5) The licensee or applicant has engaged in unfair methods of competition and unfair or deceptive acts or practices as provided in Code Section 50-27-87.1; or
 - (6) Any applicant, or any person, firm, corporation, legal entity, or organization having any interest in any operation for which an application has been submitted, fails to meet any obligations imposed by the tax laws or other laws or regulations of this state.
- (b) A copy of an owner's master license and the location owner's or location operator's location license shall be prominently displayed at all locations where the owner and location owner or location operator have bona fide coin operated amusement machines available for commercial use and for play by the public to evidence the payment of the fees levied under this Code section. A manufacturer's license and distributor's license, as well as invoices for the sales of any Class B machines to any person or entity licensed by this chapter, shall be available for inspection at their places of business and upon request from the corporation.
- (c) Each manufacturer, distributor, and master license and each location license shall list the name and address of the manufacturer, distributor, owner, location owner, or location operator, as applicable.
- (d) The corporation may provide a duplicate license issued pursuant to this Code section if the original license has been lost, stolen, or destroyed. The fee for a duplicate original license is \$100.00. If the original license is lost, stolen, or destroyed, a sworn, written statement must be submitted explaining the circumstances by which the license was lost, stolen, or destroyed and including the number of the lost, stolen, or destroyed license, if applicable, before a duplicate original license can be issued. A license for which a duplicate license has been issued is void.
- (e) A license or permit issued under this Code section:
- (1) Is effective for a single business entity;
 - (2) Vests no property or right in the holder of the license or permit except to conduct the licensed or permitted business during the period the license or permit is in effect;

- (3) Except as provided in paragraph (5) of this subsection, is nontransferable, nonassignable by and between owners or location owners and location operators, and not subject to execution;
- (4) Expires upon the death of an individual holder of a license or permit or upon the dissolution of any other holder of a license or permit; and
- (5) As it relates to a master licensee, upon the sale of a master licensee's business in its entirety, the buyer shall pay to the corporation a transfer fee for the master license that accompanies the business in the following amounts:
- (A) For the first sale of a master licensee's business, a transfer fee for the master license in the amount of \$10,000.00;
 - (B) For the second sale of such business, a transfer fee for the master license in the amount of \$25,000.00;
 - (C) For the third sale of such business, a transfer fee for the master license in the amount of \$50,000.00; and
 - (D) For the fourth sale of such business and each sale thereafter, a transfer fee for the master license in an amount to be established by the corporation, which transfer fee shall be not less than \$50,000.00.
- (f) An application for the renewal of a license or permit must be made to the corporation in accordance with the due dates set forth in the rules promulgated by the board each year."
- "(k) A renewal application filed on or after the due dates set forth in the rules promulgated by the board, but before the license expires, shall be accompanied by a nonrefundable late fee of \$1,000.00. A manufacturer, distributor, or master license or location license that has been expired for more than 90 days may not be renewed. In such a case, the manufacturer, distributor, master license, or location license owner shall obtain a new license, as applicable, by complying with the requirements and procedures for obtaining an original license.
- (l) A holder of a license who properly completes the application and remits all fees with it by the due date may continue to manufacture, distribute, or operate bona fide coin operated amusement machines after the expiration date if its license or permit renewal has not been issued, unless the holder of the license is notified by the corporation prior to the expiration date of a problem with the renewal.
- (m) Holders of manufacturer, distributor, and location licenses and temporary location permits shall be subject to the same provisions of this article with regard to refunds, license renewals, license suspensions, and license revocations as are master licensees.
- (n) Failure to obtain a license as required by this Code section shall subject the person to a fine of up to \$25,000.00 and repayment of all fees or receipts due to the corporation pursuant to this article and may subject the person to a loss of all state licenses."

SECTION 3.

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

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

- (1) The licensee makes a written request to the corporation for a refund prior to the beginning of the calendar year for which it was purchased;
- (2) The licensee makes a written request prior to the issuance of the license or registration certificate;
- (3) The licensee makes a written request for a refund claiming the license or registration certificate was mistakenly purchased due to reliance on incorrect information from the corporation;
- (4) The processing of the license is discontinued; or
- (5) The issuance of the license is denied."

SECTION 4.

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

"50-27-73.

(a) The corporation shall not renew a license for a person under this article and shall suspend for any period of time or cancel a license if the corporation finds that the applicant or licensee is indebted to the state for any fees, costs, penalties, or delinquent fees.

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

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

- (1) The licensee or applicant has intentionally violated a provision of this chapter or a regulation promulgated under this chapter;
- (2) The licensee or applicant has intentionally failed to provide requested information or answer a question, intentionally made a false statement in or in connection with his or her application or renewal, or omitted any material or requested information;
- (3) The licensee or applicant used coercion to accomplish a purpose or to engage in conduct regulated by the corporation;

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

- (A) One thousand dollars for each improper use of a per machine permit sticker; and
- (B) Twenty-five thousand dollars for each improper use of a master license certificate.

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

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

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

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

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

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

SECTION 5.

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

"(a) Every owner, except an owner holding a coin operated amusement machine solely for personal use or resale, who offers others the opportunity to play for a charge, whether direct or indirect, any bona fide coin operated amusement machine shall pay an annual permit fee for each bona fide coin operated amusement machine in the amount of \$25.00

for each Class A machine and \$125.00 for each Class B machine. The fee shall be paid to the corporation by company check, cash, cashier's check, money order, or any other method approved by the chief executive officer. Upon payment, the corporation shall issue a sticker for each bona fide coin operated amusement machine. The board may establish procedures for annual collection and set due dates for the fee payments. No refund or credit of the annual fee levied by this article shall be allowed to any owner who ceases the exhibition or display of any bona fide coin operated amusement machine prior to the end of any license or permit period."

SECTION 6.

Said article is further amended in 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, by revising subsection (b) as follows:

"(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 shall not be deemed revenue derived from Class B machines.

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

SECTION 7.

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

"(4) On or after July 1, 2013, no person with or applying for a master license shall have an interest in any manufacturer, distributor, location owner, or location operator in this state. No person with or applying for a manufacturer license shall have an interest in a distributor, master licensee, location owner, or location operator in this state. No person applying for a distributor license shall have an interest in a manufacturer, master licensee, location owner, or location operator in this state. Additionally, no group or association whose membership includes manufacturers, distributors, operators, master licensees, location owners, or location operators shall obtain a master license nor shall they form an entity which acts as a master licensee, operator, location owner, or location operator for the purpose of obtaining a master license; provided, however, that through June 30,

2015, this paragraph shall not apply to persons who, as of December 31, 2013, have or will have continuously possessed a master license for ten or more years and, for ten or more years, have or will have continuously owned or operated a location where a bona fide coin operated machine has been placed. Nothing in this paragraph shall prohibit a manufacturer, distributor, or master licensee from entering into a financing arrangement with the other for the sale of machines, including but not limited to a lien, guaranty, or line of credit."

"(3) 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."

SECTION 8.

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

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

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

SECTION 9.

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

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

(2) All disputes subject to the provisions of this Code section 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, shall be shared equally between the parties in the dispute; 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.

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

(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 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.

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

SECTION 10.

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