

Senate Bill 397

By: Senators Walker III of the 20th, Hufstetler of the 52nd, Cowser of the 46th, Robertson of the 29th, Watson of the 1st and others

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 change the number of bona
3 fide coin operated amusement machines that may be prohibited in local ordinance; to
4 increase the percentage of net receipts of bona fide coin operated amusement machine
5 proceeds to be paid to the Georgia Lottery Corporation; to provide for related matters; to
6 provide for an effective date; 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 by revising paragraph (1) of Code
11 Section 50-27-86, relating to local government to adopt any combination of a list of
12 ordinance provisions, as follows:

13 "(1) Prohibiting the offering to the public of more than ~~six~~ three Class B machines that
14 reward the player exclusively with noncash merchandise, prizes, toys, gift certificates,
15 or novelties at the same business location;"

16 **SECTION 2.**

17 Said article is further amended by revising Code Section 50-27-102, relating to role of the
18 Georgia Lottery Corporation, implementation and certification of Class B accounting
19 terminal, separation of funds and accounting, and disputes, as follows:

20 "50-27-102.

21 (a) Upon successful implementation and certification of the Class B accounting terminal
22 under the provisions of Code Section 50-27-101, and for ~~the first~~ every fiscal year
23 thereafter, the corporation shall:

24 (1) Retain ~~5~~ 20 percent of the net receipts;

25 (2) Provide, within five business days of receipt, ~~47.5~~ 40 percent of the net receipts to
 26 the location owner and location operator for the cost associated with allowing the Class
 27 B machines to be placed; and

28 (3) Provide, within five business days of receipt, ~~47.5~~ 40 percent of the net receipts to
 29 the operator holding the Class B master license for the cost of securing, operating, and
 30 monitoring the machines.

31 ~~(b) In each fiscal year after the implementation and certification required by subsection (a)~~
 32 ~~of this Code section, the corporation's share shall increase 1 percent, taken evenly from the~~
 33 ~~location owner or location operator and the operator, to a maximum of 10 percent.~~

34 ~~(c)~~(b) The corporation shall require location owners and location operators to place all
 35 bona fide coin operated amusement machine proceeds due the corporation in a segregated
 36 account in institutions insured by the Federal Deposit Insurance Corporation not later than
 37 the close of the next banking day after the date of their collection by the retailer until the
 38 date they are paid over to the corporation. At the time of such deposit, bona fide coin
 39 operated amusement machine proceeds shall be deemed to be the property of the
 40 corporation. The corporation may require a location owner or location operator to establish
 41 a single separate electronic funds transfer account where available for the purpose of
 42 receiving proceeds from Class B machines, making payments to the corporation, and
 43 receiving payments for the corporation. Unless otherwise authorized in writing by the
 44 corporation, each bona fide coin operated amusement machine location owner or location
 45 operator shall establish a separate bank account for bona fide coin operated amusement
 46 machine proceeds which shall be kept separate and apart from all other funds and assets
 47 and shall not be commingled with any other funds or assets. Whenever any person who
 48 receives proceeds from bona fide coin operated amusement machines becomes insolvent
 49 or dies insolvent, the proceeds due the corporation from such person or his or her estate
 50 shall have preference over all debts or demands. If any financial obligation to the
 51 corporation has not been timely received, the officers, directors, members, partners, or
 52 shareholders of the location owner or location operator shall be personally liable for the
 53 moneys owed to the corporation.

54 ~~(d)~~(c)(1) As a condition of the license issued pursuant to this article, no master licensee
 55 or location owner or location operator shall replace or remove a Class A or Class B bona
 56 fide coin operated amusement machine from a location until the master licensee and
 57 location owner or location operator certify to the corporation that there are no disputes
 58 regarding any agreement, distribution of funds, or other claim between the master
 59 licensee and location owner or location operator; provided, however, that this
 60 certification shall not be required if a master licensee is replacing its own Class A or
 61 Class B bona fide coin operated amusement machine at a location. If either the master

62 licensee or location owner or location operator is unable to make the certification
63 required by this Code section, the corporation shall refer the dispute to a hearing officer
64 as set forth in this subsection.

65 (2) The corporation shall have jurisdiction of all disputes between and among any
66 licensees or former licensees whose licenses were issued pursuant to this article relating
67 in any way to any agreement involving coin operated amusement machines, distribution
68 of funds, tortious interference with contract, other claims against a subsequent master
69 license holder or location owner, or any other claim involving coin operated amusement
70 machines; provided, however, that this paragraph shall not apply to any agreement which
71 expired on or before April 10, 2013. Except as provided in paragraph (1) of this
72 subsection, the corporation shall refer any dispute certified by any master licensee against
73 any other master licensee or any location owner or location operator or by any location
74 owner or location operator against any master licensee to a hearing officer. For the
75 purpose of service on licensees with respect to disputes, each licensee or former licensee
76 shall register and keep current with the corporation the name of an agent and his or her
77 address and an ~~e-mail~~ email address which shall be made available to any licensee on
78 request. Service by registered mail, courier delivery, or overnight mail delivered to the
79 agent's registered address and to the ~~e-mail~~ email address shall be adequate service on the
80 licensee for a hearing on the dispute. All disputes subject to the provisions of this Code
81 section certified by a master licensee, location owner, or location operator shall be
82 decided by a hearing officer approved or appointed by the corporation. The corporation
83 shall adopt rules and regulations governing the selection of hearing officers after
84 consultation with the Bona Fide Coin Operated Amusement Machine Operator Advisory
85 Board. Costs of the hearing officer's review, including any hearing set pursuant to this
86 Code section, shall be shared equally between the parties in the dispute unless provided
87 otherwise in the agreement or by the hearing officer; provided, however, that the
88 corporation shall not be responsible for any of the costs associated with the dispute
89 resolution mechanism set forth in this Code section. If any party fails to timely pay the
90 costs of the hearing officer's review within ten days of service of notice of costs by the
91 hearing officer, the hearing officer shall grant a default judgment on liability against the
92 nonpaying party. The hearing officer shall then consider evidence related to damages or
93 any other relief and shall render judgment based upon a preponderance of the evidence.

94 (3) The corporation shall also adopt rules governing the procedure, evidentiary matters,
95 and any prehearing discovery applicable to disputes resolved pursuant to this Code
96 section. Such rules shall be consistent with the Georgia Arbitration Code, and the
97 corporation shall consult the Bona Fide Coin Operated Amusement Machine Operator
98 Advisory Board regarding the procedures or rules adopted pursuant to this subsection.

99 Notwithstanding Code Section 9-9-9, such procedures and rules shall include at least the
100 right of notice to produce books, writings, and other documents or tangible things;
101 depositions; and interrogatories.

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

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

123 **SECTION 3.**

124 This Act shall become effective on July 1, 2021.

125 **SECTION 4.**

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