

HOUSE BILL 290

By Hawk

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 6, Part 2; Title 67, Chapter 6, Part 3 and Title 67, Chapter 6, Part 7, relative to taxation on admission into certain amusements.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-6-212, is amended by adding the following new subsection:

(f)

(1) The tax imposed by subdivision (a)(2) applies to charges for sales of tickets, fees, or other charges for admission to places of amusement or other recreational events or activities that are conducted or located within this state and to such sales made through an office or other location within or outside this state. Any person making such sales who has no physical presence in this state shall collect and remit the tax as if the person has a physical presence in this state if the person meets either of the following criteria in the previous twelve-month period:

(A) The person's gross revenue from sales made in this state exceeds one hundred thousand dollars (\$100,000); or

(B) The person made two hundred (200) or more separate sales transactions in this state.

(2) Subdivision (f)(1) does not require a dealer to collect or remit the tax required by subdivision (a)(2) for sales made before January 1, 2020.

SECTION 2. Tennessee Code Annotated, Section 67-6-330(a)(7), is amended by deleting the subdivision.

SECTION 3. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following as a new section:

(a) As used in this section:

(1) "Admission" means admission into or for an amusement, whether as a participant, spectator, or otherwise, after consideration is paid by a single ticket, season ticket, or subscription; for any admission charged within any enclosure, in addition to the initial charge for admission to such enclosure; and for the use of sporting or recreational facilities or equipment, including the rental of such facilities or equipment; and applies to admission fees or charges, whether a ticket is issued or not;

(2) "Amusement" means any athletic event, recreational facility, playing field, race track, rafting or other event or activity conducted upon a river or waterway, off-road automobile event, ATV/UTV riding event, rental of off-road mechanical devices, exhibition, pageant, show, equine boarding, equine riding ranch, production, demonstration, play, performance, concert, musical, recital, reading, circus, carnival, act, exhibit, lecture, address, trade show, singing, dancing, or dancing facility for patrons, ride or excursion where passengers are taken on and discharged within the county boundaries, and shooting gallery, as well as all mechanical or electrical devices operated for pleasure or skill where a fee is charged for admission or entrance or for the purpose of playing them, or where there is any charge for them or in connection with them, either directly or indirectly, where such games or devices are located in an amusement park or amusement center. "Amusement" does not include play on coin-operated machines of skill or chance;

(3) "Charitable organization" means a group that is a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious, or eleemosynary organization, or for the benefit of law enforcement personnel,

firefighters, or other persons who protect the public safety, and in which no part of the net earnings inures or may lawfully inure to the benefit of any private shareholder or individual;

(4) "Consideration" means the consideration charged, whether or not received, for an admission to an amusement valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind without any deduction therefrom. This subdivision (a)(4) must not be construed to imply that a consideration must be charged when the service provided to the person is complimentary from the operator and no consideration is charged to or received from any person;

(5) "Consumer" means any person who pays consideration into, or for, an amusement;

(6) "Educational institution" means an institution organized and operated exclusively for educational purposes that maintains a regular faculty and curriculum, has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on, and that is approved by the state board of education, or exempt from such approval under the regulations of the state board of education, or is accredited by an agency recognized by the state board of education or by the U.S. department of education, and includes institutions that privately solicit contributions exclusively for such institutions, and organizations composed of parents of students and other persons connected with the institution that are organized and operated for the purpose of conducting activities in support of the operations or extracurricular activities of the institution;

(7) "Operator" means the person operating the amusement;

(8) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination thereof acting as a unit;

(9) "Religious organization" means a nonprofit entity that is tax exempt under Internal Revenue Code § 501(c)(3), codified in 26 U.S.C. § 501(c)(3), as a religious organization; and

(10) "Tourism" means the planning and conducting of programs of information and publicity designed to attract tourists, visitors, and other interested persons from outside the county levying the tax. "Tourism" also means the encouragement and coordination of the efforts of other public and private organizations or groups of citizens to publicize the facilities and attractions of the county for the same purposes, and the acquisition, construction, and remodeling of facilities useful in the attraction and promotion of tourists, conventions, and recreational businesses.

(b) A county, by resolution of its county legislative body, is authorized to levy a tax on the same charges for sales of tickets, fees, or other charges for admission to places of amusement or other recreational events or activities subject to taxation by the state under § 67-6-212(a)(2) that are conducted or located within the county, whether wholly or partially, to be levied and collected as provided in this section, but not to exceed two and three-fourths percent (2.75%) of the consideration charged by the operator.

(c) If the place of amusement or other event or activity is conducted or located within two (2) or more counties, the amount of the tax imposed by any one (1) county shall not exceed one percent (1%). The tax imposed is an amusement and privilege tax

upon the consumer enjoying the amusement. The tax imposed by a county applies to all such sales of tickets, fees, or other charges for admission to the amusement, regardless of whether the sales are made through an office or other location outside the county.

(d) Every operator shall add the amusement and privilege tax to each ticket sold for a consideration for admission into and for the amusement, and shall collect the tax from the consumer and remit the tax to the county trustee. The tax must not be assumed by the operator. If the tax collected on any individual admission ticket includes any fraction of a cent, then the next highest full cent must be charged.

(e) The amusement and privilege tax levied pursuant to this section must be remitted to the county trustee by all operators who lease, rent, or own an amusement, to be remitted to such officer not later than the last day of each month next following collection from the consumer. The county trustee may promulgate reasonable rules and regulations for the enforcement and collection of the tax and may, by regulations, set other reporting and paying dates and periods. The county trustee shall prescribe any necessary forms for the purposes of this section.

(f) An operator of an amusement shall not advertise or state in any manner, whether directly or indirectly, that the amusement and privilege tax or any part thereof will be assumed or absorbed by the operator, or that the tax will be added to the consideration, or that, if added, any part will be refunded.

(g) The amusement and privilege tax does not apply to activities sponsored by any religious organization, charitable organization, or any public or private educational institution where the receipts are devoted exclusively to the use of such organization or institution. The tax does not apply to charges for admission to any activity sponsored or operated by the county, or to any nonprofit youth sports organizations.

(h) Amusement and privilege taxes collected by an operator that are not remitted to the county trustee on or before the due dates are delinquent. An operator is liable for interest on such delinquent taxes from the due date at the rate of one percent (1%) per annum, and for a penalty of one-half of one percent (0.5%) for each month, or a fraction thereof, that such taxes are delinquent. Such interest and penalty become a part of the tax required to be remitted. The willful refusal of an operator to collect or remit the tax or willful refusal of a consumer to pay the tax imposed constitutes a violation of this section, subject to a civil penalty not in excess of fifty dollars (\$50.00). The penalty levied pursuant to this subsection (h) is applicable to each individual transaction involving a taxable amusement when an operator fails or refuses to pay the tax payable to the county trustee.

(i) It is the duty of every operator who is liable for the collection and payment to the county of any amusement and privilege tax levied under the authority granted by this section to keep and preserve for a period of three (3) years all records necessary to determine the amount of such tax for whose collection and payment to the county the operator may have been liable. The county trustee has the right to inspect such records at all reasonable times.

(j) In administering and enforcing this section, the county trustee has the powers and duties with respect to the collection of taxes as provided in this title, or otherwise provided by law for county clerks.

(k) Upon any claim of illegal assessment and collection of taxes, the taxpayer has the remedy as provided in §§ 67-1-901 - 67-1-905 and 67-1-908 - 67-1-910, it being the intent of this section that the law applying to the recovery of taxes illegally assessed and collected applies to the tax collected under the authority of this section. The county trustee has the powers and duties as provided in § 67-1-707, with respect to the

adjustment and refund of the taxes provided for in this section. With respect to the adjustment and settlement with taxpayers of all errors of taxes collected by the county trustee under the authority of this section, the county trustee has the power to refund payment of such taxes. Notice of any tax paid under protest must be given to the county trustee, and suit for recovery must be brought against the county trustee.

(l) Amusement and privilege tax proceeds generated pursuant to this section must be used as determined by the county legislative body; provided, however, that at least twenty percent (20%) of the proceeds must be used for tourism promotion, tourism advertising, or tourism infrastructure, including, but not limited to, county-owned or operated event centers; at least twenty percent (20%) of the proceeds must be used by the county sheriff's department for law enforcement and for security at county events; and at least twenty percent (20%) of the proceeds shall be used by the county ambulance service to provide safety and medical care at county events. If at the end of the fiscal budget year all money is not expended, the remaining balance must be transferred to the county general fund balance.

(m) The tax levied pursuant to this section is in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied.

(n) The county trustee has the authority to make and publish reasonable rules and regulations not inconsistent with this section or other laws, for the enforcement of this section and the collection of revenues under this section. The county trustee shall design, prepare, print, and make available to all persons who are subject to this section, all necessary forms for filing returns and instructions to ensure full compliance with this section.

SECTION 4. This act shall take effect January 1, 2020, the public welfare requiring it.