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Lottery for Education HB 487

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STATE GOVERNMENT

Lottery for Education: Amend Title 48 of the Official Code of Georgia Annotated, Relating to Revenue and Taxation, so as to Transfer Responsibility for Administration and Enforcement of Provisions Relating to Coin Operated Amusement Machines from the Department of Revenue to the Georgia Lottery Corporation; Amend Chapter 27 of Title 50 of the Official Code of Georgia Annotated, Relating to a Lottery for Education, so as to Provide for such Transfer of Responsibility; Provide for Findings of the General Assembly; Revise Provisions Relating to such Administration and Enforcement; Provide for Licensing of Operators; Create the Class B Machine Operators Advisory Board; Provide for a Class B Accounting Terminal; Provide for Procedures, Conditions, and Limitations; Provide for Fees and Penalties; Provide for Disposition of Certain Revenues; Amend Part 1 of Article 2 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, Relating to Improper Use of Coin Operated Amusement Machines, so as to Change Certain Provisions Relating to Definitions; Amend Various Other Provisions of the Official Code of Georgia Annotated so as to Conform Related Cross-references; State Legislative Intent with Respect to the Effect of this Act on Maritime Vessels; Provide for an Effective Date; Provide for an Automatic Repeal upon a Finding of Unconstitutionality; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 16-12-35 (amended); 48-8-3 (amended); 48-13-9 (amended); 48-17-1, -2, -3, -4, -5, -6, -7, -8, -9, -10, -11, -12, -13, -14, -15, -16, -17 (amended); 50-27-9 (amended); 50-27-70, -71, -72, -73, -74, -75, -76, -77, -78, -79, -80, -81, -82, -83, -84, -85, -86, -87, -87.1, -88, -89, -100, -101, -102, -103, -104 (new)
BILL NUMBER:	HB 487
ACT NUMBER:	15

GEORGIA LAWS:	2013 Ga. Laws 37
SUMMARY:	This Act seeks to crack down on illegal gambling and provide additional funding for the HOPE Scholarship and Grant by transferring authority to regulate coin operated amusement machines from the Georgia Department of Revenue to the Georgia Lottery Corporation (GLC). In addition, this Act authorizes the creation of the "Bona Fide Coin Operated Amusement Machine Operator Advisory Board" (Board), which shall aid in the transition of oversight of the machines to the GLC. The Board, in conjunction with the GLC, shall oversee the implementation of an "accounting terminal" by which all coin operated amusement machines will be linked through a communications network to provide for better auditing and regulation of the industry.
EFFECTIVE DATE:	April 10, 2013

History

Supporters introduced House Bill (HB) 487 to provide financial support for the HOPE Scholarship and Grant programs and to stifle illegal gambling.[1] By transferring oversight of video gaming machines from the Georgia Department of Revenue to the GLC, the GLC will increase scrutiny over the activities by beginning to monitor the machines electronically and, in turn, receive a share of the gaming profits.[2]

1. Video Recording of Senate Proceedings, Mar. 14, 2013 at 1 hr., 25 min., 10 sec. (remarks by Sen. Butch Miller (R-49th)), http://www.gpb.org/lawmakers/2013/day-34 [hereinafter Senate Video].

2. Nick Montano, *Georgia's Risk-Reward Game Bill Is In Effect; Gov. Deal Signs on April 10*, VENDING TIMES, Apr. 18, 2013, *available at* http://www.vendingtimes.com/ME2/dirmod.asp?sid=EB79A487112B48A296B38C81345C8C7F&nm=Vending+Features&type=Publishing&mod=Publications%3A%3AArticle&mid=8F3A7027421841978F18BE895F87F791&tier=4&id=20875491925740D8

The first goal for additional financial support for the HOPE program derived from an expansion made to the Grant program this legislative session.[3] The Hope Grant is financial aid available to students that attend the state's technical colleges.[4] Students are not required to attend college full-time, and they are not required to graduate from high school with a specific grade point average (GPA) to receive the Grant, unlike the HOPE Scholarship program.[5] Historically, the Grant program only required students maintain a postsecondary cumulative 2.0 GPA, at certain checkpoints, in order to maintain financial assistance.[6] Under these standards, nearly 75% of technical college students received HOPE.[7] Due to budgetary concerns two years ago, the Georgia legislature raised the HOPE Grant GPA requirement to 3.0.[8] This change resulted in almost 9,000 students losing the financial award because they could not meet the higher standard.[9]

The reduction in the number of students eligible for the Grant led to a reduction in the number of students attending technical college; this trend sounded an alarm. Ron Jackson, the Commissioner of the Technical College System of Georgia, lobbied the legislature to return to the former 2.0 GPA requirement because students were dropping out or not enrolling due to the fact that they could not afford to pay what HOPE no longer covered.[10] "The system's enrollment dropped by about 24,500 students" since the heightened academic requirement.[11] One enrolled student explained the cyclical nature of her increased stress levels from the heightened requirement: "'If you're worried about bills [and not being able to afford school],

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BC7DB55449DEEC41.

3. *See* HB 372, as introduced, 2013 Ga. Gen. Assem. (reducing GPA requirement from 3.0 to 2.0 for Grant eligibility).

4. *HOPE Grant Program, Regulations—300, 2013–2014 Award Year*, GA. STUDENT FIN. COMM'N, *available at* http://www.gsfc.org/gsfcnew/SandG_regs.cfm (last visited Oct. 14, 2013).

5. *Id.*

6. *Id.*

7. Maureen Downey, *Gov. Deal Responds to Concerns About HOPE Grant and Lowers GPA Requirement to 2.0*, ATLANTA J.-CONST., Feb. 7, 2013, http://blogs.ajc.com/get-schooled-blog/2013/02/07/gov-deal-responds-to-concerns-about-hope-grant-and-lowers-gpa-requirement-to-2-0/.

8. *Id.* When Governor Deal (R) assumed office two years ago, the HOPE reserve funds were on the path to bankruptcy. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

you're trying to work, and [then] your grades start to slip.'"[12] The student also explained that while she strives to achieve a 3.0 GPA, the GPA reduction would remove "that extra stress" and remove the worries associated with finding money "to pay for . . . tuition or . . . books."[13]

Governor Deal (R), along with a bipartisan group of members of the legislature, responded to Mr. Jackson and technical college students' concerns and vowed to work together and reinstate the original requirement of a 2.0 GPA.[14] "By expanding access to the Hope Grant, the governor and legislators aim to strengthen the state's workforce development efforts."[15] The cost of the expansion to the state will be approximately five to eight million dollars.[16]

Governor Deal (R) and the General Assembly protected the budget from the increase in students that will again become eligible for HOPE by adding additional revenue to the lottery fund, including the profit sharing from coin operated amusement machines as a result of the GLC's new oversight responsibility.[17] Even without the new oversight responsibility, the state witnessed a recent growth in lottery revenues. "In the first six months of this fiscal year, deposits were up $32 million, a 7.6% increase over the same period the year before."[18]

Finally, the bill also aimed to regulate class B gaming machines, like video poker.[19] Class B machines are often found lining the walls of convenience and liquor stores.[20] In 1991, "Georgia legalized skilled-based games that allowed players to rack up winning scores that could be redeemed for non-cash prizes."[21] But just a decade

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12. *GPA Requirements Drop for HOPE Grant*, WRDW-TV AUGUSTA, May 26. 2013, *available at* http://www.wrdw.com/news/schools/headlines/GPA-Requirements-Drop-For-Georgias-Hope-Grant—196528441.html.

13. *Id.*

14. Downey, *supra* note 7.

15. *Id.*

16. WRDW-TV AUGUSTA, *supra* note 12.

17. *See* O.C.G.A. § 50-27-102 (2013).

18. Downey, *supra* note 7.

19. *See, e.g.*, O.C.G.A. §§ 50-27-70, -71, -78 (2013).

20. Pam O'Dell, *Bill Passes Georgia House Regulating Gaming Machines*, SPIRIT NEWSPAPERS, *available at* http://thespiritnewspaper.com/bill-passes-georgia-house-regulating-gaming-machines-p4282-1.htm (last visited Sept. 29, 2013).

21. Scott Henry, *HOPE Scholarship—and Gov. Deal—Could Benefit From New Video Gaming Law*, ATLANTA MAGAZINE, Apr. 16. 2013, http://www.atlantamagazine.com/agenda/2013/4/16/hope-scholarship-and-gov-deal-could-benefit-from-new-video-gaming-law/print.

later, "lawmakers outlawed the winning of lottery tickets" as a non-cash prize.[22] The Department of Revenue had been the state agency charged with enforcement of the gaming policies; historically, the machines have been "hard to regulate (let alone tax) and have lead to environments which breed crime."[23] Senator Tommie Williams (R-19th), who wanted the machines outlawed—as opposed to simply a transfer in regulation responsibility—argued to his colleagues that, "'[t]he GBI [Georgia Bureau of Investigation] wants them done away with.'"[24] The Senator argued that peoples' lives were being destroyed by video poker and that, "'[p]eople have been playing these machines when they needed to be buying groceries.'"[25] Senator Williams supported a total ban because he "recalled numerous efforts to limit both the types and amounts of giveaways" and concluded that legislative remedies never worked.[26]

Since the machines could result in abuse, the need for strong regulation spurred HB 487. Even though the law prohibits cash payouts, such payouts are difficult to prohibit because enforcement "require[s] continued surveillance and multi-jurisdictional law enforcement as well as the resources of local prosecutors to control."[27] Thus, Governor Deal (R) and lawmakers suggested that the GLC be permitted to enforce the gaming laws and to then receive up to ten percent of the profits of the machines in order to fund HOPE programs.[28]

Not only did the bill have powerful political support from Governor Deal (R), but industry also urged its passage. Jim Tudor, President of the Georgia Association of Convenience Stores, circulated memoranda to lawmakers supporting the legislation.[29] Also, Les Schneider, an attorney for the Georgia Amusement and Music Operators Association argued that "'you'll see more enforcement and more transparency because of this law, and it will

22. *Id.*
23. O'Dell, *supra* note 20.
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. Henry, *supra* note 21.

help with tax revenues.'"[30] The bill's supporters claim the GLC will better be able to "license both the owners of the games and the owners of the locations where they operate."[31] Just as the Department of Revenue focused their enforcement on prohibiting cash payouts, the GLC will focus their efforts on the prizes at stake.[32] Now, however, the GLC will not need to focus on lottery ticket payouts because this bill reverses that 2001 prohibition.[33]

Bill Tracking of HB 487

Consideration and Passage by the House

Representatives Matt Ramsey (R-72nd), Matt Hatchett (R-150th), Christian Coomer (R-14th), and Chad Nimmer (R-178th) sponsored HB 487 in the House.[34] The House read the bill for the first time on February 27, 2013.[35] The House read the bill for the second time on February 28, 2013.[36] The Speaker of the House, David Ralston (R-7th), assigned the bill to the House Committee on Regulated Industries, which favorably reported a Committee substitute on February 28, 2013.[37] The Committee substitute vastly expanded the scope of the bill as introduced, which simply corrected a cross-reference and clarified the applicability of certain provisions of the Code to the Georgia Lottery Corporation, by transferring oversight of "Class B coin operated amusement machines" from the Department of Revenue to the Georgia Lottery Corporation and by providing for an accounting terminal for the machines, among other provisions.[38] The substitute was offered because the regulations aimed at Class B machines "flat out aren't working" and the bill as introduced did not

30. *Id.*
31. *Id.*
32. Montano, *supra* note 2.
33. Henry, *supra* note 21.
34. HB 487, as introduced, 2013 Ga. Gen. Assem.
35. State of Georgia Final Composite Status Sheet, HB 487, May 9, 2013.
36. *Id.*
37. *Id.*
38. *See generally* Video Recording of House Regulated Industries Committee, Feb. 28, 2013, http://media.legis.ga.gov/hav/13_14/2013/committees/regInd/regInd022813EDITED.wmv [hereinafter House Committee Video]. *Compare* HB 487, as introduced, 2013 Ga. Gen. Assem., *with* HB 487 (HCS), 2013 Ga. Gen. Assem.

provide for any substantive changes that would address problems within the industry.[39] The House read the Committee substitute on March 7, 2013 and adopted the substitute by a vote of 166 to 4.[40]

Consideration and Passage by the Senate

Senator Butch Miller (R-49th) sponsored HB 487 in the Senate and the bill was first read on March 11, 2013.[41] Lieutenant Governor Casey Cagle (R) assigned the bill to the Senate Regulated Industries and Utilities Committee.[42] The Committee favorably reported the bill by substitute on March 12, 2013 and the bill was read a second time on March 13, 2013.[43]

Eleven floor amendments to the substitute were offered.[44] The first, offered by Senators Emanuel Jones (D-10th) and Lester Jackson (D-2nd), provided that the Georgia Lottery Corporation would establish a "Minority Business Participation Division to monitor and encourage participation by minority businesses."[45] The Senate rejected this amendment 14 to 32.[46]

The second floor amendment, offered by Senators Jason Carter (D-42nd) and Charlie Bethel (R-54th), provided that all fees assessed by the GLC would be considered lottery proceeds and prohibited the funds from being used in the general fund.[47] The second amendment was adopted without objection.[48]

The third floor amendment, offered by Senators Vincent Fort (D-39th), Steve Henson (D-41st) and Horacena Tate (D-38th), provided that the Chief Executive Officer of the GLC have at least

39. House Committee Video, *supra* note 38, at 2 min., 58 sec. (remarks by Rep. Matt Ramsey (R-72nd)).

40. State of Georgia Final Composite Status Sheet, HB 487, May 9, 2013; Georgia House of Representatives Voting Record, HB 487 (Mar. 7, 2013).

41. State of Georgia Final Composite Status Sheet, HB 487, May 9, 2013.

42. *Id.*

43. *Id.*

44. Sandra Parrish, *Senate Approves Bill to Help HOPE, Curb lllegal Gambling*, WSB RADIO, Mar. 14, 2013, *available at* http://www.wsbradio.com/news/news/local-govt-politics/Senate-approves-bill-to-help-HOPE-and-curb-illegal/nWr2P/.

45. HB 487 (AM 33 1327), 2013 Ga. Gen. Assem.

46. Senate Video, *supra* note 1, at 3 hr., 16 min., 11 sec. (remarks by Lt. Gov. Casey Cagle(R)).

47. HB 487 (SFA 2), 2013 Ga. Gen. Assem.

48. Senate Video, *supra* note 1, at 3 hr., 16 min., 11 sec. (remarks by Lt. Gov. Casey Cagle(R)).

five years experience as an executive in the lottery industry.[49] The third amendment was rejected by a vote of 16 to 36.[50]

The fourth amendment, offered by Senators Lester Jackson (D-2nd), Fort (D-39th), and Hardie Davis (D-22nd), provided for a competitive, sealed bid process administered by the Department of Administrative Services for any major procurement contracts entered into by the Lottery Corporation.[51] The fourth amendment was rejected by a vote of 18 to 25.[52]

Amendment five, offered by Senators Butch Miller (R-49th), Cecil Staton (R-18th), Jeff Mullis (R-53rd), and Ross Tolleson (R-20th), provided that all penalties listed in the bill would be in addition to any criminal penalties otherwise available at law.[53] Amendment five was adopted without objection.[54]

The sixth amendment, offered by Senators Jason Carter (D-42nd), Henson (D-41st), Davis (D-22nd), and Tommie Williams (R-19th), provided that local municipalities could, through local ordinance, prohibit the offering to the public of Class B coin operated amusement machines.[55] The sixth amendment was rejected by a vote of 17 to 23.[56]

The seventh amendment as amended, offered by Senators Williams (R-19th), Joshua McKoon (R-29th), Judson Hill (R-32nd), Bill Heath (R-31st), and Mike Crane (R-28th), which originally struck the bill in its entirety and prohibited the operation of all Class B machines in Georgia, was amended to prohibit Class B machines in counties and municipalities where they are banned.[57] The seventh amendment was rejected by a vote of 20 to 32.[58]

The eighth amendment, offered by Senator Davis (D-22nd), attempted to strike out the requirement that at least seven members of the Bona Fide Coin Operated Amusement Machine Operator

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49. HB 487 (AM 34 0602), 2013 Ga. Gen. Assem.
50. Georgia Senate Voting Record, HB 487 (Mar. 14, 2013).
51. HB 487 (AM 34 0599), 2013 Ga. Gen. Assem.
52. Senate Video, *supra* note 1, at 3 hr., 16 min., 11 sec. (remarks by Lt. Gov. Casey Cagle(R)).
53. HB 487 (AM 34 0598-EC), 2013 Ga. Gen. Assem.
54. Senate Video 1, *supra* note 1, at 3 hr., 16 min., 11 sec. (remarks by Lt. Gov. Casey Cagle (R)).
55. HB 487 (SFA 6), 2013 Ga. Gen. Assem.
56. Senate Video, *supra* note 1, at 3 hr., 16 min., 11 sec. (remarks by Lt. Gov. Casey Cagle (R)).
57. HB 487 (AM 36 0418), 2013 Ga. Gen. Assem.; HB 487 (SFA 7a), 2013 Ga. Gen. Assem.; HB 487 (SFA 7b), 2013 Ga. Gen. Assem.
58. Georgia Senate Voting Record, HB 487 (Mar. 14, 2013).

Advisory Board be Georgia operators with current master licenses representing the broadest spectrum of business characteristics.[59] The Senate rejected amendment eight by a vote of 16 to 25.[60]

Amendment nine, offered by Senators Mike Dugan (R-30th), Don Balfour (R-9th), Frank Ginn (R-47th), and Jason Carter (D-42nd), provided that each municipality and each county could prohibit any or all Class B machines from operating within its boundaries.[61] The Senate adopted amendment nine without objection.[62]

Amendment ten, offered by Senators Heath (R-31st), Dugan (R-30th), and Jason Carter (D-42nd), sought to remove the 10% maximum limit on the amount of net receipts the Lottery Corporation would receive from Class B machine operators.[63] The Senate rejected amendment ten by a vote of 12 to 27.[64]

The final amendment, floor amendment eleven, offered by Senators Valencia Seay (D-34th) and Jason Carter (D-42nd), attempted to decrease the amount of net receipts that the Class B machine operator could retain while increasing the maximum limit the Corporation could receive from 10% to 20% of net receipts.[65] The Senate rejected amendment eleven by a vote of 14 to 27.[66]

The Senate read the Committee substitute as amended for a third time on March 14, 2013 and adopted it by a vote of 35 to 16.[67] The Senate sent the substitute bill to the House of Representatives which rejected the bill on March 20, 2013.[68] On March 21, 2013 the Senate insisted on the changes it made and on March 22, 2013, the House of Representatives insisted on their changes.[69]

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59. HB 487 (SFA 8), 2013 Ga. Gen. Assem.
60. Senate Video, *supra* note 1, at 3 hr., 29 min., 59 sec. (remarks by Lt. Gov. Casey Cagle (R)).
61. HB 487 (SFA 9), 2013 Ga. Gen. Assem.
62. Senate Video 1, *supra* note 1, at 3 hr., 29 min., 59 sec. (remarks by Lt. Gov. Casey Cagle (R)).
63. HB 487 (SFA 10), 2013 Ga. Gen. Assem.
64. Senate Video, *supra* note 1, at 3 hr., 29 min., 59 sec. (remarks by Lt. Gov. Casey Cagle(R)).
65. HB 487 (SFA 11), 2013 Ga. Gen. Assem.
66. Senate Video, *supra* note 1, at 3 hr., 29 min., 59 sec. (remarks by Lt. Gov. Casey Cagle(R)).
67. Georgia Senate Voting Record, HB 487 (Mar. 14, 2013).
68. State of Georgia Final Composite Status Sheet, HB 487, May 9, 2013.
69. *Id.*

Consideration by Conference Committee

On March 22, 2013 the House of Representatives appointed Representatives Matt Ramsey (R-72nd), Christian Coomer (R-14th), and Al Williams (D-168th) to a Conference Committee on HB 487.[70] On March 25, 2013, the Senate appointed Senators Renee Unterman (R-45th), Butch Miller (R-49th), and Charlie Bethel (R-54th) to a Conference Committee on HB 487.[71] The Conference Committee removed a provision from the bill as passed by the Senate which required the State to prove that the owner of a Class B machine had actual knowledge that the machines were being used for racketeering purposes in order to be subject to forfeiture.[72] On March 28, 2013 the Conference Committee report was adopted by the House by a vote of 162 to 6 and the Senate adopted by a vote of 39 to 12.[73] On April 8, 2013 the House of Representatives sent the bill to Governor Nathan Deal, who signed the bill on April 10, 2013.[74]

The Act

The Act amends Titles 48 and 50 of the Official Code of Georgia Annotated with the purpose of transferring responsibility of provisions relating to coin operated amusement machines from the Department of Revenue to the Georgia Lottery Corporation, revising provisions relating to administration and enforcement of the Act, providing for licensing of operators of the amusement machines, creating an advisory board and an accounting terminal, and providing penalties for violations of the Act.[75] Every affected section of the Act reflects the transition in oversight over coin operated amusement machines from the Department of Revenue to the GLC and changing

70. *Id.*
71. *Id.*
72. *Compare* HB 487 (HB 487/SCSFA/2), § 2, p. 13, ln. 1006–07, 2013 Ga. Gen. Assem., *with* HB 487 (LC 34 3899-ECS), 2013 Ga. Gen. Assem.
73. Georgia House of Representatives Voting Record, HB 487 (Mar. 28, 2013); Georgia Senate Voting Record, HB 487 (Mar. 28, 2013).
74. *Id.*
75. O.C.G.A. § 48-8-3, § 48-13-9, §§ 48-17-1–17, §§ 50-27-70–89, 100–04 (2013).

the designation of a "business owner" to a "location owner or location operator."[76]

Section 1-1 aims to "safeguard the fiscal soundness of the state, enhance public welfare, and support the need to educate Georgia's children through the HOPE scholarship program" by enacting "procedural enhancements" to help increase the amount of revenue the state receives from the operation of Class B coin operated amusement machines and prevent unauthorized payouts.[77]

This section re-designates Code section 48-17-1 as Code section 50-27-70 and, in addition, defines a variety of relevant terms including what constitutes a Class A and Class B "Bona Fide coin operated amusement machine."[78] This section also removes the definition of and language relating to a "business owner or business operator" and replaces it with definitions of "Distributor," "location owner or location operator," "Manufacturer," and "Person."[79] Next, the section clarifies the definition of "net receipts" by changing language located therein from "malfunction" to "bona fide malfunction."[80]

This section of the Act also re-designates Code section 48-17-2 as Code section 50-27-71 and requires that all location owners or operators pay the GLC for an annual master license and display that license to the public.[81] The Act adds to this Code section by allowing the GLC to "refuse to issue or renew" a license if the location owner or operator intentionally violates the Act, fails to provide information requested by the GLC, uses coercion or unfair practices, fails to meet tax or other state regulations, or otherwise acts in a way that would be contrary to the purpose of the Act.[82]

Code section 48-17-3 and Code section 48-17-2 are re-designated as Code section 50-27-72 and Code section 50-27-73, respectively.[83] Language in Code section 50-27-73 is changed to increase the fine for unauthorized use of machine permit stickers from $150 to $1,000,

76. *See, e.g.*, O.C.G.A. § 50-27-70 (2013).
77. O.C.G.A. § 50-27-70(a) (2013).
78. O.C.G.A. § 50-27-70(b)(2)(A) (2013).
79. O.C.G.A. § 50-27-70(b) (2013).
80. O.C.G.A. § 50-27-70(b)(11) (2013).
81. O.C.G.A. § 50-27-71(a) (2013).
82. O.C.G.A. § 50-27-71(a.2) (2013).
83. O.C.G.A. §§ 50-27-72, -73 (2013).

and the fine for improper use of a master license certificate from $1,000 to $25,000.[84] This Code section also states that while the GLC can renew current licenses, no new Class B master licenses shall be issued until one year after the implementation of the Class B accounting terminal.[85]

New Code section 50-27-74 is added to by providing that, subject to the approval of the Chief Executive Officer of the GLC, the Bona Fide Coin Operated Amusement Machine Operator Advisory Board "shall establish a procedure for hearings" and that this procedure will include a provision allowing the chief executive officer to appoint any individual or agency to "preside over the hearing and adjudicate the appeal."[86]

Code Section 50-27-75 remains largely unchanged from its previous version and requires the Corporation to "deliver to an applicant or licensee a written copy of . . . order[s]" that detrimentally affect an existing licensee or applicant.[87] The only changes made to this Code Section reflect the change in oversight from the Georgia Department of Revenue to the GLC.[88]

Code section 50-27-76 is amended by designating the Superior Court of Fulton County as the sole court responsible for hearing appeals made by affected persons against actions of the GLC or its Chief Executive Officer.[89]

Former Code section 48-17-9 is re-designated as Code section 50-27-78 and allows owners to pay for their permit fee in any manner designated by the Chief Executive Officer of the GLC.[90] In addition, this section bars the GLC from assessing any fee not explicitly authorized by the Act and provides that any fee received will be considered "proceeds derived from a lottery operator on or on behalf of the state and shall not be remitted to the general fund . . . ."[91] Re-designated Code section 50-27-79 and Code section 50-27-80,

84. *Compare* 1992 Ga. Laws 1521, § 3, at 1530, *with* O.C.G.A. § 50-27-73(b)(4) (2013).
85. O.C.G.A. § 50-27-73(e) (2013).
86. O.C.G.A. § 50-27-74(c) (2013).
87. O.C.G.A. § 50-27-75(a) (2013).
88. O.C.G.A. § 50-27-75 (2013).
89. O.C.G.A. § 50-27-76(a) (2013).
90. O.C.G.A. § 50-27-78(a) (2013).
91. O.C.G.A. § 50-27-78(g) (2013).

remain unchanged from their former Code sections except for minor changes to language, which reflect the change in oversight.[92]

Code section 50-27-81 provides the Chief Executive Officer of the GLC with the power to act on behalf of the GLC for the purpose of ensuring proper administration of the Act and with the power to designate an "authorized representative" with any authority given to him or her under the Act, including the ability to impose fines.[93]

New Code section 5-27-82 provides penalties for violations of the Act and specifically states that any individual who knowingly makes a false statement on an application or in any report or record compiled or submitted to the GLC will be guilty of a felony and upon conviction will face one to five years in prison or a fine not to exceed $25,000 dollars, or both.[94] This Code section removes a provision in the former Code section 48-17-13, which made it a misdemeanor to knowingly use "a sticker for the purpose of engaging in unlawful gambling."[95] Code section 50-27-83 mirrors its former Code section 48-17-14, and provides that any debts or obligations owed to the state prior to the changes authorized by the Act will not be extinguished and that nothing should be construed so as to legalize anything that was previously illegal prior to the Act. [96]

Former Code section 48-17-15 was re-designated as Code section 50-27-84 and retains the 50% limit on the amount of gross retail receipts a location owner or operator can derive from Class B machines operated at a particular location.[97] This section also provides that all master license holders and location owners or operators whose location contains a Class B machine must provide a monthly report to the GLC, which outlines the gross retail receipts and the net receipts of all Class B machines.[98] Code section 50-27-85 remains largely unchanged and still provides for penalties for repeat violators of provisions under the Code. [99]

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92. *Compare* 1992 Ga. Laws 1521, § 3, at 1534, *with* O.C.G.A. § 50-27-79 (2013); *compare* 2010 Ga. Laws 468, § 3, at 1534, *with* O.C.G.A. § 50-27-80 (2013).
93. O.C.G.A. § 50-27-81(c) (2013).
94. O.C.G.A. § 50-27-82 (2013).
95. *Compare* 1992 Ga. Laws 1521, § 3, at 1536, *with* O.C.G.A. § 50-27-82 (2013).
96. O.C.G.A. § 50-27-83 (2013).
97. O.C.G.A. § 50-27-84(b)(1) (2013).
98. O.C.G.A. § 50-27-84(c) (2013).
99. *Compare* 2010 Ga. Laws 470, § 7, at 476, *with* O.C.G.A. § 50-27-85 (2013).

New Code section 50-27-86 remains largely unchanged in that is provides local authorities with the power to enact ordinances to regulate coin operated amusement machines.[100] However, the Act adds to the former Code section by specifying that local authorities have the power to enact an ordinance to prohibit the operation of more than six Class B machines at a single location and an ordinance, which allows an annual audit of the reports from a location.[101]

Section 1-1 of the Act also made large additions to the existing law relating to Class B bona fide coin operated amusement machines. The Act added Code section 50-27-87, which provides that anyone who wants to own, maintain, place, or lease a bona fide coin operated amusement machine must have a valid master license and adhere to certain provisions provided for in the Act or face penalty.[102] Newly added Code section 50-27-87.1 enumerates a list of practices that would be deemed unfair if undertaken by a master licensee, location owner, or location operator.[103] New Code section 50-27-88 and Code section 50-27-89, establish a "Bona Fide Coin Operated Amusement Machine Operator Advisory Board," which will oversee the license and permit application process and oversee the procurement and implementation of a Class B accounting terminal.[104]

The creation of a Class B accounting terminal was authorized by Code section 50-27-101.[105] This accounting terminal links all Class B machines through a communications network whereby they can be monitored "for the purpose of compliance with regard to their obligations to the state."[106]

Once the accounting terminal has been established and implemented, the Act provides that the Corporation will receive 5% of net receipts and the location owner and master license holder will both receive 47.5% of net receipts from the machines.[107] Each year,

100. *Compare* 2012 Ga. Laws 752, § 4, at 1139, *with* O.C.G.A. § 50-27-86 (2013).
101. O.C.G.A. § 50-27-86(1) (2013).
102. O.C.G.A. § 50-27-87(a) (2013).
103. O.C.G.A. § 50-27-87.1 (2013).
104. O.C.G.A. § 50-27-89 (2013); O.C.G.A. § 50-27-88(a) (2013).
105. O.C.G.A. § 50-27-101 (2013).
106. O.C.G.A. § 50-27-101(c) (2013).
107. O.C.G.A. § 50-27-102(a) (2013).

the GLC's share will go up 1%, taken evenly from the location owner and master license holder, for a maximum of 10% of net receipts.[108]

New Code section 50-27-103 allows local governments to vote to remove Class B machines from their jurisdiction with sixty days notice to all master licensees and location owners and operators.[109] In addition, this section provides that after the accounting terminal is implemented, the Corporation will report any adverse findings to the master licensee, location owner and location operator.[110] Finally Section 1-1 states that all penalties provided for are in addition to any criminal penalties otherwise provided for by law.[111]

Section 2-1 of the Act amends Code section 16-12-35 to provide that a location owner or operator or their employee who allows redemption of prizes awarded by a Class B machine at a location other than the machine's location will "be guilty of a misdemeanor of a high and aggravated nature."[112] If the individual is convicted a second time for violating this provision, they will have committed a felony and, upon conviction, shall be punished by imprisonment of one to five years or a fine of up to $25,000, or both, and loss of their location's state licenses.[113] This section also prohibits a location from redeeming winnings from Class B machines for firearms, alcohol or tobacco, but allows redemption for lottery tickets. [114]

Analysis

Purported Effects

Supporters argue the effect of HB 487 will be the minimization of illegal gambling as a result of increased legal compliance.[115] By allowing the Georgia Lottery Corporation to enforce video gaming laws, instead of the under-staffed Georgia Department of Revenue,

108. O.C.G.A. § 50-27-102(b) (2013).
109. O.C.G.A. § 50-27-103(a) (2013).
110. O.C.G.A. § 50-27-103(b) (2013).
111. O.C.G.A. § 50-27-104 (2013).
112. O.C.G.A. § 16-12-35(i) (Supp. 2013).
113. O.C.G.A. § 16-12-35(g.1) (Supp. 2013).
114. O.C.G.A. § 16-12-35(h)–(i) (Supp. 2013).
115. Senate Video, *supra* note 1, at 1 hr., 25 min., 10 sec. (remarks by Sen. Butch Miller (R-49th)); *see* Telephone Interview with Rep. Matt Ramsey (R-72nd) (June 13, 2013) [hereinafter Ramsey Interview].

more video gaming operators will register their machines and follow the current law, which forbids operators from paying cash prizes to users.[116] The Lottery Corporation will maintain a centralized accounting terminal, and operators of gaming machines must report data to the Lottery Corporation about the game's users and their winnings in order to be a licensed operator.[117] Supporters argue the Act will increase the number of machines registered and the amount of machines that the State of Georgia regulates.[118] Senator Butch Miller (R-49th), who introduced the Act in the Senate, explained the ultimate goal is to pull in the rogue gaming operators and "make [it] cost prohibitive for them to operate."[119]

HB 487 may face two major challenges. First, how can lawmakers be so certain that the Lottery Corporation will be able to enforce laws that the Department of Revenue failed to enforce? Second, could the law trigger another constitutional challenge to the validity of gambling prohibition laws?

Will the Act Accomplish Supporters' Goals?

Supporters of HB 487 argue the independent Lottery Corporation is better equipped to enforce gaming laws than the Department of Revenue, a state agency.[120] Senator Miller (R-49th) urged his colleagues to vote for the Act because, "[t]he Department of Revenue has clearly stated that they do not have the manpower or the ability to manage the enforcement."[121] Senator Miller further informed his colleagues that, "the lottery corporation has taken [enforcement] responsibility and accept[s] it very willingly."[122] However, lawmakers still questioned the expertise and financial ability of the Lottery Corporation in carrying out their new regulation duties.[123] Senator Jason Carter (D-42nd) doubted whether the fees associated with receiving a gaming license would raise enough capital to

116. Ramsey Interview, *supra* note 115.
117. Senate Video, *supra* note 1, at 1 hr., 25 min., 10 sec. (remarks by Sen. Butch Miller (R-49th)).
118. Montano, *supra* note 2.
119. Senate Video, *supra* note 1, at 1 hr., 29 min., 23 sec. (remarks by Sen. Butch Miller (R-49th)).
120. Montano, *supra* note 2.
121. Senate Video, *supra* note 1, at 1 hr., 27 min., 25 sec. (remarks by Sen. Butch Miller (R-49th)).
122. *Id.*
123. *Id.* at 1 hr., 27 min., 36 sec. (remarks by Sen. Jason Carter (D-42nd)).

support the Lottery Corporation's new enforcement mechanism: the electronic accounting terminal.[124] Senator Jason Carter (D-42nd) also questioned if the Act properly targeted the problem it purports to solve: "Am I correct that the big problem with these quote rogue operators . . . is that they . . . pay out in cash? How is the Lottery Corporation going to police that activity?"[125]

Senator Miller's (R-49th) and other supporters' answers to these questions all relate back to the same premise: the new regulatory regime will increase information coming in, and this information will facilitate policing of rogue operators.[126] Senator Miller explained that, "The Lottery Corporation will know how many people played the game. They will know how many people won, how many people lost. Right now we have no record of that."[127] Commentators also noted the GLC may have an enforcement incentive that the Department of Revenue did not have.[128] The GLC has a "vested interest in eliminating illegal gambling because current law says the state lottery is the only gaming method that can offer cash payouts."[129] Thus, the GLC will attempt to increase lottery ticket sales by cracking down on cash payouts from the gaming machines. It will be the illegal users' only place to turn.

Representative Matt Ramsey (R-72nd), who introduced the Act in the House of Representatives, acknowledged that the General Assembly could not turn to other states' models of gaming enforcement to evaluate whether the GLC will succeed in its goals.[130] Transferring oversight to the GLC is a "Georgia invention," so only time will tell HB 487's impact on reducing illegal cash payouts from gaming machine operators.[131]

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124. *Id.* at 1 hr., 29 min., 4 sec.
125. *Id.* at 1 hr., 29 min., 50 sec., 1 hr., 30 min., 7 sec.
126. *Id.* at 1 hr., 30 min., 8 sec. (remarks by Sen. Butch Miller (R-49th)).
127. Senate Video, *supra* note 1, at 1 hr., 30 min., 8 sec. (remarks by Sen. Butch Miller (R-49th)).
128. Montano, *supra* note 2.
129. *Id.*
130. *See* Ramsey Interview, *supra* note 115.
131. *Id.*

Could the Law Trigger a Constitutional Challenge?

The legislature foresees a possible constitutional challenge by illegal gaming operators who have argued in the past that gaming prohibitions are a regulatory taking and violate the State Constitution.[132] Supportive lawmakers are not concerned about the Act's constitutionality, however, because they argue the Georgia Supreme Court has ready resolved this issue.[133]

In *State v. Old South Amusements, Inc.*, owners of video gaming machines challenged the Video Poker Act—which outlawed video poker machines—as a violation of the takings clause of the State Constitution.[134] The owners argued their machines were "worthless" as a result of the prohibition and the law "virtually destroy[ed] their businesses."[135] The Court began its takings analysis by noting that video gaming machines "have been permitted to operate in this state only by the grace of the legislature," and the machines have always been "the subject of frequent and intensive regulation in this state."[136] The Court then compared the gaming prohibition with a nineteenth-century municipal ordinance prohibiting the keeping of liquor.[137] The Court extensively cited its precedent upholding the ordinance: "[T]he impaired value of this property is a remote consequence of the law, and . . . to reduce its value indirectly and incidentally by the casual effects of a law passed for a wholly different object, is not to damage it, within any legal or constitutional sense of the term."[138]

Rooting its decision in precedent, the Court announced the constitutionality of the video poker prohibition and exclaimed, "the new law does not take business property for a public use; it merely requires an already regulated business to adjust its property to the new law."[139] The *Old South Amusements* decision gives lawmakers and Representative Ramsey (R-72nd) confidence in any challenges

132. *Id.*
133. *Id.*
134. State v. Old S. Amusements, Inc., 275 Ga. 274, 275, 564 S.E.2d 710, 711 (2002).
135. *Id.*
136. *Id.* at 279, 564 S.E.2d at 714.
137. *Id.*
138. *Id.* at 280, 564 S.E.2d at 714 (internal citation omitted).
139. *Id.* at. 280, 564 S.E.2d at 715.

the Act may face.[140] As Representative Ramsey explained, operating video gaming machines is a "privilege and not a right and does not implicate personal property rights."[141]

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140. *See* Ramsey Interview, *supra* note 115.
141. *Id.*