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CRIMES AND OFFENSES Offenses Against Public Health and Morals: Prohibit as Gambling Devices Certain Video Poker Games and Devices; Provide that Certificates or Evidence of Winning Other Games and Devices Must be Redeemable on Premises where Such Game or Device is Located; Define Crimes and Penalties; Provide Examples of Bona Fide Coin Operated Amusement Machines

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CRIMES AND OFFENSES

Offenses Against Public Health and Morals: Prohibit as Gambling Devices Certain Video Poker Games and Devices; Provide that Certificates or Evidence of Winning Other Games and Devices Must be Redeemable on Premises where Such Game or Device is Located; Define Crimes and Penalties; Provide Examples of Bona Fide Coin Operated Amusement Machines

CODE SECTIONS: O.C.G.A. §§ 16-12-20, -35, 48-17-1 (amended)

BILL NUMBER : SB 2EX2

ACT NUMBER: 2 EX 4

GEORGIA LAWS: 2001 Ga. Laws, Extraordinary Session 312

SUMMARY: The Act bans video gambling in Georgia by providing that video gambling machines are prohibited “gambling devices.” The Act also provides examples of bona fide coin-operated amusement machines. The Act also limits the types and amount of prizes that may be awarded for the play of bona fide coin operated amusement machines and mandates that such prizes be awarded on the premises where the device is located.

EFFECTIVE DATE: January 1, 2002.

History

In 2001, Senator Mike Beatty of the 47th District and several other key legislators spearheaded efforts to bring about a state ban on video poker after seeing its negative impact on their districts. Additionally, an August 2001 report jointly published by the Georgia Bureau of Investigation and the Georgia Department of Revenue titled “Video

Poker in Georgia Impact Study” provided those legislators critical information on the video poker industry in the state.¹

Senator Beatty, whose northeast Senate District included counties that the video poker industry significantly impacted because of their close proximity to the South Carolina border, has referred to video poker as “a scourge every bit as devastating as Sherman's March to the Sea.”²

The federal gambling statute, known as “The Johnson Act,” provides that video gambling machines are gambling devices, unless exempted by state law.³ Georgia allowed video poker machines under the label of “amusement machines” as provided by Georgia Code section 48-17-1 sometime prior to 1989.⁴ From 1991 to 1999, the Georgia General Assembly passed legislation that amended the state gambling statute, Georgia Code section 16-12-35, to effectively create a state exemption for video gambling machines.⁵

In 1991 Representative Sonny Watson introduced HB 281, which amended Georgia Code section 16-12-35 by making certain pay-outs legal on amusement machines that required players to use “some skill to operate,” and allowed players to win “non-cash prizes worth up to \$5 per play.”⁶ In 1992, the Georgia General Assembly passed HB 1256, also introduced by Representative Watson, which exempted “coin operated amusement devices” from state sales tax.⁷ HB 1256 also created a licensing system for the machines and provided that the names of all license holders constituted confidential tax

1. See Telephone Interview with Sen. Mike Beatty, Senate District No. 47 (Mar. 27, 2002) [hereinafter Beatty Interview]; Video Poker in Georgia Impact Study, Ga. Bureau of Investigation and Ga. Dep't of Revenue, Aug. 2001; [hereinafter GBI Report]. See also Jennifer Brett, 2002 *Georgia Legislature: Profile: Beatty Vows to Maintain Push Against Video Poker*, ATLANTA J. CONST., Jan. 16, 2002 [hereinafter Brett, Beatty Vows].

2. Brett, Beatty Vows, *supra* note 1; Beatty Interview, *supra* note 1.

3. 15 U.S.C. 1171-1178, Gaming Device Act of 1962; GBI Report, *supra* note 1, at 62.

4. GBI Report, *supra* note 1, at 62. In 1993, South Carolina issued numerous regulations on the video poker industry, and amended some of the regulation in 1995. *Id.* at 55, 58. From 1991 to 1999, the number of licensed video poker machines in South Carolina had increased to 36,000 from 11,512. *Id.*

5. GBI Report, *supra* note 1, at 62. The bills that amended O.C.G.A. § 16-12-56 include HB 281 in 1991, HB 1256 in 1992, HB 1294 in 1998 and HB 88 in 1999. *Id.* at 62.

6. O.C.G.A. § 16-12-35 (1999); GBI Report, *supra* note 1, at 62; Don Schanche Jr., *Addiction to Video Poker Grows in Georgia*, THE MACON TELEGRAPH, May 13, 2001 [hereinafter Schanche, *Addiction to Video Poker*].

7. See HB 1256, 1992 Ga. Gen. Assem.; GBI Report, *supra* note 1, at 62; Schanche, *Addiction to Video Poker*, *supra* note 6.

information not disclosable to the public.⁸ In 1998, Representatives Powell and Hudson introduced HB 1294, which amended Georgia Code section 16-12-35 to “broadly” define the “skill” required to play a machine that awarded such non-cash, \$5 prizes.⁹

In 1999, the Georgia General Assembly passed HB 88, again introduced by Representatives Powell and Hudson, which amended Georgia Code section 16-12-35 to allow a player of the machines to accumulate points from consecutive plays and to redeem such points and any “replays” for non-cash prizes, thereby circumventing the previous \$5 per play award.¹⁰ The GBI Report indicates that this law effectively allowed payouts “greatly exceed[ing] the amount of \$5 allowed by current law” by allowing video machine operators to simply reward the player with numerous \$5 tickets.¹¹

Also in 1999, Representatives Jameison, Royal, Skipper, Shanahan, Dix and Wiles introduced HB 459, which amended Article 1 of Chapter 13 of Title 48 of the Official Code of Georgia, by prohibiting local governments from charging regulatory fees to video poker parlors.¹² Prior to this amendment, local governments had the authority to charge regulatory fees to the video poker industry.¹³ According to Arch Adams, “[w]hereas the video poker industry did have to pay the costs of their own regulation [prior to the passage of HB 459], now the taxpayer must pay this expense.”¹⁴

Additionally, Senators Polak and Hecht introduced and the Georgia General Assembly passed SB 193, which amended Code sections 48-17-1 and 48-17-15 by requiring that businesses with video poker machines derive at least fifty percent of their annual

8. See HB 1256, 1992 Ga. Gen. Assem.; GBI Report, *supra* note 1, at 62; Schanche, *Addiction to Video Poker*, *supra* note 6.

9. HB 1294, 1998 Ga. Gen. Assembly; O.C.G.A. § 16-12-35 (1999); O.C.G.A. § 48-17-1 (2002); GBI Report, *supra* note 1, at 62; Schanche, *Addiction to Video Poker*, *supra* note 6. See also Arch Adams, *StopVideoPoker.org.home, Laws & Ordinances, HB 1294/1998*, viewed on June 7, 2002 (“HB 1294 legalized the most profitable game in the video gambling industry’s arsenal - the ‘Cherry Master’ electronic slot machine. South Carolina’s video gambling industry relied on this machine for the bulk of their profits, but up until 1998 slot machines were absolutely illegal in Georgia.”).

10. HB 88, 1999 Ga. Gen. Assembly; O.C.G.A. § 16-12-35 (1999); GBI Report, *supra* note 1, at 62.

11. GBI Report, *supra* note 1, at 20. According to the GBI Report, if a machine offers typical odds of 200 to one, the resulting payout awarded could be 128 \$5 tickets, for the total amount of \$640.00. *Id.* at 20.

12. HB 459, 1999 Ga. Gen. Assem..

13. O.C.G.A. §§ 48-17-1, 48-17-15 prior to amendment by HB 459, Ga. Gen. Assem., 1999; Arch Adams, *StopVideoPoker.org, Laws & Ordinances, HB 459/1999*, at <http://www.stopvideopoker.com>.

14. Arch Adams, *StopVideoPoker.org, Laws & Ordinances, HB 459/1999*, at <http://www.stopvideopoker.org>.

income from the operation of the machines.¹⁵ SB 193 also provided that an operator who repeatedly violated the fifty percent income limitation would lose its master license.¹⁶

After July 2000, the number of video poker machines in Georgia increased dramatically when South Carolina finally banned them after a thirty-year struggle to regulate the video poker industry.¹⁷ At the same time, the GBI has reported that complaints regarding the video poker industry to law enforcement officials began “involving ‘Las Vegas’ types of businesses in counties bordering South Carolina.”¹⁸

Consequently, in the past ten years, Georgia became a hospitable climate in which the video poker industry could flourish due to the passage of legislation that supported the industry's long-term interests in the state, including the various House and Senate bills discussed above.¹⁹

In 2001, legislators introduced a number of bills to curb the industry's growth. Senators Beatty, Cheeks, Cagle, and Mullis introduced SB 18, which would have amended Georgia Code section 16-12-35 to classify video poker machines as illegal gambling devices.²⁰ Augusta District Attorney Danny Craig assisted with this offer. However, SB 18 stalled in the Senate Committee on Veterans and Consumer Affairs.²¹ Likewise, Senator Beatty also introduced SB 19, which would have amended Code section 16-12-35 to subject video poker machines to local legislation. It also stalled in the Senate Committee on Veterans and Consumer Affairs.²²

15. SB 193, 1999 Ga. Gen. Assem.; Arch Adams, StopVideoPoker.org, Laws & Ordinances, SB 193/1999, at <http://www.stopvideopoker.org> on July 6, 2002.

16. *Id.*

17. GBI Report, *supra* note 1, at 1-2; Beatty Interview, *supra* note 1. According to the GBI Report, at the time of South Carolina's ban, “over 33,000 machines were located in that state.” GBI Report, *supra* note 1, at 2. The GBI Report aptly forecasted that “[b]ased on the history of the video poker machines in South Carolina and that fight that ultimately banned these machines, it can be expected that the same issues will arise in Georgia.” *Id.* at 59.

18. GBI Report, *supra* note 1, at 63.

19. See Telephone Interview with Arch Adams, Co-Chair and Spokesman of the Stop Video Poker Committee (March 24, 2002) [hereinafter Adams Interview]; Arch Adams, *Outlaw Video Poker During Special Session*, ATLANTA J. CONST., July 6, 2001 [hereinafter Adams, Outlaw Video Poker].

20. See SB 18, 2001 Ga. Gen. Assem.; Adams Interview, *supra* note 19; Adams, Outlaw Video Poker, *supra* note 3.

21. State of Georgia Final Composite Status Sheet, SB 2EX2, Apr. 12, 2002.

22. SB 19, 2001 Ga. Gen. Assem.

Senators Michael Polack, Van Streat and Nadine Thomas introduced SB 204 in the 2001 session, which would have imposed harsher penalties on video gambling machine operators who made illegal cash payouts.²³ Senator Beatty and others introduced amendments in an effort to add more restrictive, definitive language providing that video poker machines that give players illegal cash-payouts would fall under the definition of illegal gambling devices.²⁴ However, Representative David Lucas's midnight filibuster in the House prevented SB 204 from passing.²⁵ During his filibuster, Representative Lucas contended "[i]t's time to for us to stand up . . . for the business owner."²⁶

Governor Barnes, who has referred to video poker machines as a "cancer" spreading throughout the state, decided to allow the issue to be introduced as SB 2EX2 during the 2001 Georgia General Assembly Special Session.²⁷ As a result, SB 2EX2 was passed, as substituted by the House and Senate, and with two floor amendments, on September 6, 2002.²⁸

After passage, several video poker machine owners and renters brought two separate lawsuits in the Fulton County Superior Court to challenge the ban on grounds "including . . . taking of property without compensation and . . . privacy"²⁹ However, Judge John J. Goger, without reaching the above-mentioned issues, found the video poker law to be "arbitrary, overbroad, and overinclusive, thus violating the Equal Protection Clause' of the Georgia Constitution" and due process.³⁰ According to Judge Goger, "[e]xposing innocent conduct to criminal prosecution because of the difficulty and expense associated with defining the illegal conduct is a dangerous precedent for crime and punishment."³¹ In disagreement, Governor Barnes commented that "[i]f [the opinion] were extended to its logical basis,

23. See Adams, *Outlaw Video Poker*, *supra* note 19.

24. State of Georgia Final Composite Status Sheet, SB 2EX2, Apr. 12, 2002.

25. *See id.*

26. *See id.*

27. See Keith Parson, *Video Poker Ban Unconstitutional Judge's Ruling Allows Halls to Stay Open; State to Appeal*, THE MACON TELEGRAPH, Jan. 15, 2002.

28. State of Georgia Final Composite Status Sheet, SB 2EX2, Apr. 12, 2002.

29. Trisha Renaud, *Judge Says Video Poker Law Threat to Liberty*, FULTON COUNTY DAILY REP., Jan. 15, 2002.

30. *Id.*

31. Rhonda Cook, *Reversal Lets Video Poker Roll Judge Strikes Down State's Ban on Games*, ATLANTA J. CONST., Jan. 15, 2002.

you couldn't ban the possession of burglary tools. You'd have to actually catch someone committing the crime. You couldn't ban grenade launchers. I think the decision is wrong, and we're going to appeal.”³²

The state did appeal, and on May 28, 2002, the Georgia Supreme Court, in a unanimous decision, upheld the ban.³³ The court condemned “the evil of video poker gambling” and found that “[p]ersons of common intelligence” are able to determine which machines are banned.³⁴

SB 2EX2

Introduction

Senators Steve Thompson, Terrell Starr, Charles Walker, Connie Stokes, and Charlie Tanksley of the 33rd, 44th, 22nd, 43rd, and 32nd Districts, respectively, sponsored SB 2EX2.³⁵ Senator Thompson introduced the bill on the Senate floor on August 22, 2001.³⁶ The Senate assigned the bill to its Finance and Public Utilities Committee, which favorably reported the bill, as substituted.³⁷ The Senate adopted the Committee substitute and passed the bill on August 28, 2001.³⁸

The House assigned SB 2EX2 to its Rules Committee, which enacted its own substitute and favorably reported the bill on September 4, 2001.³⁹ The bill returned to the Senate on September 6, 2001.⁴⁰ The Senate agreed to the House substitute on September 7, 2001.⁴¹ The General Assembly forwarded the bill to Governor Roy Barnes, who signed SB 2EX2 on September 15, 2001.⁴²

32. *Id.*

33. Kristen Wyatt, *Court Upholds Georgia Ban on Video Poker*, THE STATE, (Columbia, SC) May 29, 2002.

34. *Video Poker KO'd*, AUGUSTA CHRON., May 30, 2002.

35. See SB 2EX2, as introduced, 2001 Ga. Gen. Assem. Special Session.

36. State of Georgia Final Composite Status Sheet, SB 2EX2, Apr. 12, 2002.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. State of Georgia Final Composite Status Sheet, SB 2EX2, Apr. 12, 2002.

Consideration by the Senate Finance and Public Utilities Committee

After introduction, the Senate assigned the bill to its Finance and Public Utilities Committee.⁴³ As introduced, the bill would have amended Code section 16-12-20 by expanding the definition of “gambling device” to include video poker machines, including any slot machine or simulation thereof, any matchup or lineup game machine operated by a slot for which consideration is provided or play, regardless of whether such machine requires the player to use skill stops to play the game, and any video game machine for which consideration is given to play including poker, blackjack, and keno, among others.⁴⁴

Additionally, as introduced, the bill replaced Code section 16-12-35 which now provided that such changes are not applicable to the lottery or other similar legal games.⁴⁵ Also, the new section provided a definition for the term “some skill” in order to differentiate bona fide coin operated amusement machines from illegal video gambling devices.⁴⁶ As introduced, the bill also added language providing that the award of any “gift certificates, tokens, vouchers, tickets, or other evidence of winnings” must be made on the premises where the game or device is located.⁴⁷ As introduced, the bill amended Code section 48-17-1 by striking subdivision (2)(A)(xxxi), which allowed for the licensing and taxation of “matchup or lineup games” requiring the player to “use skill stops,” and inserting in its place a new subdivision reserving the section for further amendment.⁴⁸

The Committee substitute changed the effective date of the Act to January 1, 2002.⁴⁹

43. State of Georgia Final Composite Status Sheet, SB 2EX2, Apr. 12, 2002.

44. SB 2EX2, as introduced, 2001 Ga. Gen. Assem. Special Session.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. Compare SB 2EX2, as introduced, 2001 Ga. Gen. Assem. Special Session, with SB 476 (SCS), 2001 Ga. Gen. Assem. Special Session.

Consideration by the Senate

The Senate adopted the Committee substitute and passed SB 2EX2, with floor amendments, on August 28, 2001.⁵⁰ Senator Thompson introduced the first floor amendment, which amended the definition of “gambling device.” The amendment further narrowed the description of a “matchup or lineup game machine or device” to one “in which two or more numerals, symbols, letters, or icons, align in a winning combination on one or more lines vertically, horizontally, diagonally, or otherwise without the assistance of the player”⁵¹ Senator Crofts of the 17th District introduced the second floor amendment, which added a new subsection (i) to Code section 16-12-35 and prohibited certain prizes to be awarded for the play of games and devices listed under subsection (c) and (d). These prohibited prizes included “firearms, alcohol, tobacco, or any lottery ticket or other item enabling participating in any lottery.”⁵² The floor amendments made any violation of such prohibition a misdemeanor.⁵³

Consideration by the House Committee on Rules

After introduction, the House assigned the bill to its Rules Committee.⁵⁴ The Rules Committee favorably reported SB 2EX2, as substituted, on September 6, 2001.⁵⁵ The House Committee made minor changes to the language describing matchup or lineups games and video game machines and devices.⁵⁶ The Committee substitute additionally amended Code section 48-17-1 by striking matchup or lineup games from the definition of bona fide coin operated amusement machines.⁵⁷ The Committee substitute also provided some limitations on the effective date of the Act, allowing

50. See State of Georgia Final Composite Status Sheet, SB 2EX2, Apr. 12, 2002.

51. Compare SB 2EX2, as introduced, 2001 Ga. Gen. Assem. Special Session, with SB 476 (SCSFA), 2001 Ga. Gen. Assem. Special Session.

52. *Id.*

53. *Id.*

54. See State of Georgia Final Composite Status Sheet, SB 2EX2, Apr. 12, 2002.

55. *Id.*

56. Compare SB 2EX2 (SCSFA), 2001 Ga. Gen. Assem. Special Session, with SB 2EX2 (HCS), 2001 Ga. Gen. Assem. Special Session.

57. *Id.*

possession of contraband video poker machines from January 1, 2002 to June 30, 2002 as long as the machines are not being used, are not located in a place open to the public, and are in transit to a secured storage facility.⁵⁸

Consideration by the House

The House adopted the Committee substitute and passed SB 2EX2, with a floor amendment, on September 6, 2002.⁵⁹ The House floor amendment added language providing that the Act is not intended to interfere with permissible gambling devices on ships within Georgia jurisdiction.⁶⁰

The Act

The Act amends Code section 16-12-20 by changing the definition of “gambling device” to prohibit video poker machines of various types.⁶¹ The Act also amends Code section 16-12-35 to provide examples of prohibited video poker gambling devices so they are not confused with bona fide amusement devices. Only bona fide amusement devices that require “some skill may entitle a player to earn replays . . . at no additional cost.”⁶² The Act also stipulates the rewards bona fide amusement machines may disburse to players, including free replays and “merchandise limited to noncash merchandise, prizes, toys, gift certificates, or novelties, each of which has a wholesale value of not more than \$5.00 received for a single play of the frame or device.”⁶³ The Act further provides that legal awards must be redeemable at the premises on which the bona fide amusement machine is located.⁶⁴ Additionally, the Act provides that any awards given for play of bona fide amusement machines shall not include or be redeemable or exchangeable for “any firearms, alcohol, tobacco, or any lottery ticket or other item enabling

58. *Id.*

59. State of Georgia Final Composite Status Sheet, SB 2EX2, Apr. 12, 2002.

60. Compare SB 2EX2 (SCSFA), 2001 Ga. Gen. Assem. Special Session, with SB 2EX2 (HCSFA), 2001 Ga. Gen. Assem. Special Session.

61. O.C.G.A. § 16-12-20 (Supp. 2002).

62. *Id.*

63. *Id.*

64. *Id.*

participation in the lottery” and that any person owning or possessing a machine that provides prohibited awards is guilty of a misdemeanor.⁶⁵

The Act also amends Code section 48-17-1 by striking video gambling machines from a description of examples of bona fide coin operated amusement machines. It stipulates that such bona fide coin operated amusement machines generally include those whose operation depends in whole or in part upon the skill of the player.⁶⁶

The Act also provides that it shall not prohibit the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia.⁶⁷

Cheralynn M. Gregoire

65. *Id.*

66. Compare 1992 Ga. Laws 1521, § 3, at 1523 (formerly found at O.C.G.A. § 48-17-1 (2001), with O.C.G.A. § 48-17-1 (2002).

67. See 2001 Ga. Laws, Extraordinary Session 312, § 4, at 317.