HB595

165715-4

By Representatives Faulkner, Gaston, Wingo and Clouse

RFD: Ways and Means General Fund

First Read: 30-APR-15
SYNOPSIS: Under existing law, each person, firm, corporation, association, or copartnership operating an amusement or entertainment machine business where the machine is operated by the use of coin, cash, token, or credit card is required to pay an annual privilege license tax based on the total sales of each machine.

This bill would levy an annual license fee on the privilege of owning and operating a bona fide coin, cash, token, or credit card amusement or entertainment machine for commercial use by the public, regardless of the total sales derived from such machines.

This bill would provide for the collection of the fee.

This bill would provide for a civil penalty for a violation.

A BILL TO BE ENTITLED
AN ACT

Relating to amusement or entertainment machines; to levy an annual license fee on the privilege of owning a bona fide coin, cash, token, or credit card amusement or entertainment machine for commercial use by the public, regardless of the total sales derived from the machines; to provide for the collection of the license tax; and to provide a civil penalty for a violation.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the "Amusement-Entertainment Machine Tax Act."

Section 2. The following words shall have the following meanings unless the context clearly indicates otherwise:

(1) APPLICANT or LICENSEE. An owner, as defined in this act, who is licensed to do business in this state, including an owner's officers, directors, shareholders, individuals, members of any association or other entity not specified, and, when applicable in context, the business entity itself.

(2) BONA FIDE COIN-OPERATED AMUSEMENT MACHINE. a. A machine of any kind or character used by the public to provide amusement or entertainment, whose operation requires the payment by the insertion of a coin, bill, other money, credit card, token, ticket, card, or similar object, whether or not it affords an award to a successful player, and which can be
legally shipped interstate according to federal law, including, but not limited to, the following:

1. Pinball machines.
2. Console machines.
3. Video games.
4. Crane machines.
5. Claw machines.
6. Pusher machines.
7. Bowling machines.
9. Foosball or table soccer machines.
10. Miniature racetrack, football, or golf machines.
11. Target or shooting gallery machines.
15. Skeeball machines.
17. Roll down machines.
18. Trivia machines.
22. Maze games.
23. Racing games.
24. Coin-operated pool tables or coin-operated billiard tables.
25. Any other similar amusement machine which can be legally operated in Alabama.

b. The term also means a machine of any kind or character used by the public to provide music whose operation requires the payment of or the insertion of a coin, bill, other money, credit card, token, ticket, card, or similar object such as jukeboxes or other similar types of music machines.

c. The term bona fide coin-operated amusement machine does not include the following:
   1. Coin-operated washing machines or dryers.
   2. Vending machines which for payment of money dispense products or services.
   3. Gas and electric meters.
   4. Pay telephones.
   5. Pay toilets.
   7. Coin-operated scales.
   9. Coin-operated parking meters.
  10. Coin-operated television sets which provide cable or network programming.
  11. Coin-operated massage beds.
  12. Machines which are not legally permitted to be operated in Alabama.

(3) COMMISSIONER. The Commissioner of the Alabama Department of Revenue.
(4) LOCATION LICENSE. The initial and annually renewed license which every location or premises owner or location operator shall purchase and display in the location where one or more bona fide coin-operated amusement machines are available for commercial use by the public for play in order to operate legally any machine in this state.

(5) LOCATION LICENSE FEE. The fee paid per machine on the premises of the location owner or location operator to obtain the location license.

(6) LOCATION OWNER or LOCATION OPERATOR. An owner or operator of a business or premises where one or more bona fide coin-operated amusement machines are available for commercial use and play by the public.

(7) MASTER LICENSE. The certificate that each owner of a bona fide coin-operated amusement machine is required to obtain.

(8) OWNER. A person, individual, firm, company, association, or other business entity owning any bona fide coin-operated amusement machine, except that owner does not include an individual who owns a bona fide coin-operated amusement machine solely for personal use and who does not make the machine available for play by others at a charge, either directly or indirectly.

(9) STICKER. The decal issued to each machine owner for each bona fide coin-operated amusement machine to show proof of payment of the fee.
Section 3. (a) The fee imposed by this act shall be the exclusive fee or tax levied on bona fide coin-operated amusement machines. A local government may not impose any tax, fee, or assessment of any kind on the machines. Nothing contained in this act shall affect the liability of a person for state or local sales tax that is imposed from the sale of the machine.

(b) The supervision and collection of the fees imposed by this act are under the direction of the Alabama Department of Revenue. The commissioner may promulgate rules to effectuate the purposes of this act. All rules shall be promulgated in accordance with the Alabama Administrative Procedure Act.

(c) The fees imposed by this act shall be administered and collected on an annual basis for the privilege of owning or operating a bona fide coin-operated amusement machine used commercially for public play for tax years beginning on January 1, 2016.

Section 4. (a) There is levied an annual license fee on the privilege of owning bona fide coin-operated amusement machines for commercial use by the public. Prior to exercising the privilege each owner who offers others the opportunity to play for a charge, whether directly or indirectly, any bona fide coin-operated amusement machine shall pay to the commissioner the annual license fee as follows:

(1) Level one license. For five or fewer machines, the owner shall pay a master license fee of five hundred
dollars ($500). If the owner acquires a sixth or greater
number of machines during a calendar year which require a
certificate for lawful operation under this act so that the
total number of machines owned does not exceed 10 machines or
more, the owner shall pay an additional master license fee of
five hundred dollars ($500); however, if the number of
machines exceeds 10 but not more than 50, the additional
master license fee shall be one thousand five hundred dollars
($1,500).

(2) Level two license. For six or more machines but
not more than 51 machines, the owner shall pay a master
license fee of one thousand five hundred dollars ($1,500). If
the owner acquires more than 51 machines during a calendar
year which require a certificate for lawful operation under
this act, the owner shall pay an additional master license fee
of one thousand five hundred dollars ($1,500).

(3) Level three license. For 51, but not more than
100 machines, the owner shall pay a master license fee of
three thousand dollars ($3,000); however, if the owner
acquires more than 100 machines during the calendar year, the
owner shall pay an additional license fee of two thousand
dollars ($2,000).

(4) Level four license. For 100 or more machines,
the owner shall pay a master license fee of five thousand
dollars ($5,000).

(b) Upon payment of the annual master license fee,
certificate to the owner. Each master license certificate with
sufficient copier for display shall contain the name and
address of the owner.

(c) An owner may obtain a six-month master license
on or after July 1 of a tax year by paying a fee of two
hundred fifty dollars ($250) for a level one license, five
hundred dollars ($500) for a level two license, and one
thousand dollars ($1,000) for a level three license. The
license shall expire on December 31 of the tax year.

(d) A copy of an owner's master license certificate
shall be prominently displayed at each location where the
owner has a bona fide coin-operated amusement machine
available for commercial use and play by the public.

(e) A refund or credit of the master license tax
levied in this section may not be made to any owner who ceases
to own bona fide coin-operated amusement machines prior to the
end of any tax year.

(f) The commissioner may issue a duplicate original
master license certificate if an original master license
certificate has been lost, stolen, or destroyed. If an
original master license certificate is lost, stolen, or
destroyed, a sworn, written statement must be submitted
explaining the circumstances by which the master license was
lost, stolen, or destroyed, and a replacement fee of one
hundred dollars ($100) shall be paid before a duplicate
original master license certificate may be issued.
(g) A master license is effective for a single business entity.

(h) A master license is nontransferable.

(i) Application for renewal of a master license must be made to the commissioner by June 1 of each year. An owner who properly completes a renewal application, timely files the renewal application with the commissioner, and remits all fees with the renewal application may continue to offer bona fide coin-operated amusement machines for play by the public after December 31 if the renewal license and new stickers have not been issued; provided, however, that the owner shall display with the expired master license in each location where bona fide coin-operated amusement machines are offered for play by the public a copy of a receipt showing that the application for the renewal license was timely filed.

(j) An original application for a master license, an application for a six-month license, or a renewal application must be accompanied by the appropriate fees.

(k) The commissioner shall give written notice to an applicant or licensee of any denial of an application or renewal application or revocation of a master license.

(l) The commissioner may not renew a master license and shall suspend or revoke a master license if the commissioner finds that the applicant or licensee owes to the state any taxes, fees, delinquent taxes or fees, or penalties resulting from delinquent taxes, or that an owner has made a
machine available for commercial use and play by the public without a valid sticker attached.

(m) Acceptance and display of a location license issued under this act constitutes consent by the location owner or business operator of the business where a bona fide coin-operated amusement machine is available for commercial use and play by the public that the commissioner and the commissioner's agents may freely enter the business premises during normal business hours for the purpose of ensuring compliance with this act.

(n) The commissioner shall issue a sticker as proof of the payment of the master license machine fee. The machine owner shall securely affix a sticker to each machine available for commercial use and play by the public. Owners may transfer machines from location to location if all machines in commercial use available for play by the public have a sticker and the owner uses the stickers only for machines that the owner owns, and provided that the location owner has paid the location fee for the applicable number of machines.

Section 5. (a) Each location owner or location operator shall pay an annual location license fee of fifteen dollars ($15) for each bona fide coin-operated amusement machine offered to the public for play. The annual location license fee levied by this section shall be collected by the commissioner on an annual basis from January 1 to December 1 each year. Upon payment, the commissioner shall issue a location license certificate that shall state the number of
bona fide coin-operated amusement machines permitted for the
location without further description or identification of
specific machines. The commissioner may establish procedures
for location license fee collection and set due dates for
payment of the fees. 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 to the end of
any license period.

(b) The commissioner 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
if:

(1) The licensee or applicant has intentionally
violated a provision of this act or a regulation promulgated
under this act.

(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
commission.

(4) The licensee or applicant has engaged in unfair
methods of competition and unfair or deceptive acts or
practices.
An applicant, a 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.

Section 6. (a) A civil penalty of not more than fifty dollars ($50) shall be assessed by the commissioner for each machine that is available for commercial use and play by the public without a sticker or against the location owner when the machine is located in a business where the location license is not displayed.

(b) A civil penalty of one hundred dollars ($100) per machine shall be assessed by the commissioner against anyone who:

(1) Knowingly makes a bona fide coin-operated amusement machine available for commercial use and play by the public without a sticker affixed to the machine.

(2) Knowingly permits bona fide coin-operated amusement machines to be operated by the public on the premises of the business without display of the location license or without a sticker affixed to each machine.

(3) Intentionally removes a machine tax sticker from a bona fide coin-operated amusement machine.

(c) A bona fide coin-operated amusement machine available for commercial use and play by the public in a location that does not have a copy of the location owner or location operator license displayed or any bona fide
coin-operated amusement machine available for commercial use
and play by the public without a valid sticker affixed may be
confiscated as contraband. Prior to confiscation, the owner
shall have 30 days in which to remedy any noncompliance with
this act, including payment of any penalties.

Section 7. (a) The commissioner shall provide
written notice to the owner of a bona fide coin-operated
machine, and the location owner, or operator that the machine
is not in compliance with this act, and may issue a fine of
fifty dollars ($50) for each machine that is not in
compliance. The fine shall be paid in 30 days and, if the fine
is not paid and the machine is still not in compliance with
this section, the fine shall be increased to one hundred
dollars ($100) for each machine that is not in compliance.
After 60 days from the issuance of the initial notice, the
commissioner may confiscate each machine that is not in
compliance with this act.

(b)(1) A machine owner, licensee, or location
operator, or owner, may contest a civil penalty or
confiscation by filing, within 30 days from the date of the
assessment or the confiscation, a written request for an
opportunity to be heard, which shall clearly state the reasons
for the request, including any facts to demonstrate that a
violation has not occurred.

(2) If the commissioner or his or her designee
determines that the machine owner, licensee, or location
operator or owner, has stated adequate facts or legal grounds
to warrant a hearing, the commissioner or his or her designee
shall provide written notice of the hearing to show cause why
a civil penalty should not be assessed or that the machines
should not be confiscated, and shall mail written notice to
the machine owner, licensee, and location owner operator of
the date, time, and place of the hearing. The determination
shall be within the discretion of the commissioner or his or
her designee.

(3) A request for postponement of a hearing so
scheduled shall only be granted where the rights of a machine
owner, licensee, location owner, and operator would be
substantially prejudiced by the denial of the request. Only
the commissioner or his or her designee has discretion to
grant the request.

(4) Following a hearing or after a waiver of the
request for a hearing, the commissioner or his or her designee
may uphold or modify the civil penalty or confiscation. The
determination shall be within the sole discretion of the
commissioner or his or her designee.

(5) The commissioner or his or her designee may file
an action for the collection of civil penalties imposed
pursuant to this section in the county where the violation
occurred.

(c) All moneys received from the assessment of any
penalty pursuant to this section shall accrue to the State
General Fund.
Section 8. This act may not be construed to make legal an otherwise illegal device or to authorize or permit gambling on any device whatsoever.

Section 9. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.