

MEMORANDUM

TO: Georgia Association of Realtors
Deb Junkin
Chief Executive Officer

FROM: Seth G. Weissman, Esq.

DATE: October 8, 2010

RE: Raffles

This memorandum summarizes current Georgia law as it relates to the operation of raffles. The relevant statute is O.C.G.A. § 16-12-22.1 (the "Code Section"), a copy of which is attached to this memorandum.

A. WHAT IS A "RAFFLE" AND WHAT ORGANIZATIONS MAY OPERATE A RAFFLE?

A "Raffle" is defined as "any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win such prize. Such term shall also include door prizes which are awarded to persons attending meetings or activities provided that the cost of admission to such meetings or activities does not exceed the usual cost of similar activities where such prizes are not awarded."¹

Georgia law generally provides that only non-profit, tax-exempt organizations, which are properly licensed in accordance with the Code Section, shall be allowed to operate raffles. Being a tax-exempt organization is a federal designation made by the Internal Revenue Service. Organizations seeking to be tax-exempt must apply for and be approved by the IRS for this status. Upon being approved, the organization is given a 501(c) designation. Within the 501(c) category, there are a number of different sub-categories. The most common tax-exempt designation is 501(c)(3) which applies to charitable religious, scientific, literary and other institutions. So, for example, most churches and charitable groups are approved 501(c)(3) organizations. Trade organizations, such as GAR and Boards of REALTORS®, can apply for tax-exempt status under 501(c)(6) of the Internal Revenue Code. Political organizations, including political action committees, are not tax-exempt organizations and are subject to being taxed under IRS Section 527.

Being tax-exempt should not be confused with being non-profit. Whether a company is for profit or not for profit is a decision that a company itself makes when it is initially organized under the laws of the state in which it is organized. Being non-profit simply means that the primary purpose of the company is not to make money. Boards of REALTORS® are eligible to be both non-profit and tax-exempt organizations. However, political action committees can be non-profit but cannot be tax-exempt.

Prior to operating a raffle, a non-profit, tax-exempt organization must apply for and receive a license that is issued by the sheriff of the county in which the non-profit, tax-exempt organization is located.² The application process is discussed in greater detail below.

¹ See, O.C.G.A. § 16-12-22.1(b)(3).

² See, O.C.G.A. § 16-12-22.1(c).

The term “non-profit, tax-exempt organization,” as defined in O.C.G.A. § 16-12-22.1(b)(1), refers to any of the following organizations:

- churches, schools, civic organizations, or related support groups;
- non-profit organizations qualified under Section 501(c) of the Internal Revenue Code, as amended;³ or
- bona fide non-profit organizations approved by the sheriff.

The statutory definition of a “non-profit, tax-exempt organization” is a bit convoluted under state law because it includes both a traditional definition of tax-exempt non-profit groups but then also applies to “bona fide, non-profit organizations approved by the sheriff”. While the statute provides no further guidance as to what is meant by a “bona fide non-profit organization approved by the sheriff”, the initial assumption of most persons reading this code section is that being tax-exempt under federal law is not necessarily a pre-requisite to being able to conduct a raffle. The statutory definition alone might therefore suggest that an organization does not need to be both non-profit and tax-exempt. In reviewing the entire Code Section, however, there is conflicting language that makes it clear the legislative intent was to allow only non-profit, tax-exempt organizations to operate raffles. This is because the statute later provides that when submitting an application for a raffle license, an organization must provide a “determination letter from the Internal Revenue Service certifying that the applicant is an organization exempt under federal tax law”⁴ and a “statement affirming that the applicant is exempt under the income tax laws of this state under Code Section 48-7-25”.⁵ Obviously, the organization would need to be tax-exempt under federal law to be able to produce this documentation. The Code Section also provides that the sheriff shall, upon the request of any prosecuting attorney or such prosecuting attorney’s designee, certify the status of any organization as to that organization’s exemption from payment of state income taxes as a non-profit organization.⁶ If an applicant fails to provide fully the information required by the Code Section, the sheriff shall refuse to grant a raffle license to such applicant.⁷ (Emphasis added.) Therefore, even if an organization is a civic organization, or related support group, or a bona fide non-profit organization approved by the sheriff, such organization would, if the law is followed by the sheriff, have to provide evidence of its tax-exempt status as part of its application for a license to operate a raffle. Even if a license to conduct a raffle is granted, no person under 18 years of age is permitted to play any raffle unless they are accompanied by an adult.

B. HOW ARE RAFFLE LICENSES OBTAINED?

As noted above, a non-profit, tax-exempt organization is prohibited from operating a raffle until a license is obtained from the sheriff of the county in which the non-profit, tax-exempt organization is located. In the event a non-profit, tax-exempt organization desires to conduct a raffle in more than one county, such organization is not required to obtain a license in each county in which such raffle is to be conducted; rather, the organization is only required to obtain such license from the sheriff of the county in which the state headquarters of such organization are located.⁸ Application forms for a license raffle are available at the sheriff’s office and fees associated with such an application are not to exceed \$100.00.⁹ Furthermore, no raffle license shall be issued to any non-profit, tax-exempt organization unless the organization has been in existence for twenty-four (24) months immediately prior to the issuance of the

³ The Code Section makes no distinction among the organizations that are tax-exempt under Section 501(c) of the Internal Revenue Code.

⁴ See, O.C.G.A. § 16-12-22.1(d)(2)(D).

⁵ See, O.C.G.A. § 16-12-22.1(d)(2)(E).

⁶ See, O.C.G.A. § 16-12-22.1(f).

⁷ See, O.C.G.A. § 16-12-22.1(d)(3).

⁸ See, O.C.G.A. § 16-12-22.1(c).

⁹ See, O.C.G.A. § 16-12-22.1(d)(1).

raffle license.¹⁰ The license will expire at 12:00 Midnight on December 31 following the granting of the license.¹¹ Renewal applications for each calendar year shall be filed with the sheriff prior to January 1 of each year and shall be on a form prescribed by the sheriff.¹²

Each application for a license and each application for renewal of a license shall contain the following information:¹³

- (A) The name and home address of the applicant and, if the applicant is a corporation, association, or other similar legal entity, the names and home addresses of each of the officers of the organization as well as the names and addresses of the directors, or other persons similarly situated, of the organization;
- (B) The names and home addresses of each of the persons who will be operating, advertising, or promoting the raffle;
- (C) The names and home addresses of any persons, organizations, or other legal entities that will act as surety for the applicant or to which the applicant is financially indebted or to which any financial obligation is owed by the applicant;
- (D) A determination letter from the Internal Revenue Service certifying that the applicant is an organization exempt under federal tax law;
- (E) A statement affirming that the applicant is exempt under the income tax laws of this state under Code Section 48-7-25;
- (F) The location at which the applicant will conduct the raffles and, if the premises on which the raffles are to be conducted is to be leased, a copy of the lease or rental agreement; and
- (G) A statement showing the convictions, if any, for criminal offenses other than minor traffic offenses of each of the persons listed in subparagraphs (A), (B), and (C) of this paragraph.

Once a raffle license is obtained, the raffle must be operated only on premises owned by the non-profit, tax-exempt organization operating the raffle, on property leased by the non-profit, tax-exempt organization and used regularly by that organization for purposes other than the operation of a raffle, or on property leased by the non-profit, tax-exempt organization operating the raffle from another non-profit, tax-exempt organization.¹⁴

The term "operation of a raffle" is not defined in the statute and there is no case law interpreting its meaning. The phrase could therefore be interpreted either liberally or narrowly to mean that: 1) the drawing of prizes for the raffle (which is the actual operation of the raffle) must be conducted at the premises of the non-profit, tax-exempt organization conducting the raffle; or 2) that the entire raffle including the sale of raffle tickets may only be operated at the premises of the non-profit, tax-exempt organization. In light of the practical realities of how most non-profit, tax-exempt organizations sell raffle tickets in numerous locations, we hope that a court, if ever called upon to interpret the law would opt for an interpretation where only the actual prize drawing must be conducted at the company's office. However, this issue is not completely clear under the statute.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See, O.C.G.A. § 16-12-22.1(d)(2).

¹⁴ See, O.C.G.A. § 16-12-22.1(h).

The statute also provides for a special limited license that the sheriff may issue to non-profit, tax-exempt organizations that will allow them to operate up to three raffles per calendar year. In such cases, the sheriff is required to waive the application and license fee and the requirement to file an annual report.

If the non-profit, tax-exempt organization conducts more than 3 raffles per year it would need to, among other things, file a report (prepared by a CPA) with the sheriff (on or before April 15th) disclosing all receipts and expenditures relating to the operation of the raffle in the previous year.

In addition, a licensee that conducts or operates a raffle must maintain certain records for at least 3 years from the date of the raffle. These include the following:

- (A) An itemized list of the gross receipts for each raffle;
- (B) An itemized list of all expenses other than prizes that are incurred in the conducting of the raffle as well as the name of each person to whom the expenses are paid and a receipt for all of the expenses;
- (C) A list of all prizes awarded during the raffle and the name and address of all persons who are winners of prizes of \$50.00 or more in value;
- (D) An itemized list of the recipients other than the licensee of the proceeds of the raffle, including the name and address of each recipient to whom such funds are distributed; and
- (E) A record of the number of persons who participate in any raffle conducted by the licensee.

In addition, the raffle itself must be conducted in accordance with certain rules including that the licensee:

- (A) Own all the equipment used to conduct a raffle or lease such equipment from an organization that is also licensed to conduct a raffle;
- (B) Display its raffle license conspicuously at the location where the raffle is conducted;
- (C) Conduct raffles only as specified in the licensee's application; and
- (D) Not conduct more than one raffle during any one calendar day.

C. CAN A NON-PROFIT, TAX-EXEMPT ORGANIZATION OPERATE A RAFFLE ON BEHALF OF AN ORGANIZATION THAT IS NOT A NON-PROFIT, TAX-EXEMPT ORGANIZATION?

The Code Section strictly prohibits such activity, and specifically provides that “[n]o non-profit, tax-exempt organization shall enter into any contract with any individual, firm, association, or corporation to have such individual, firm, association, or corporation operate raffles or concessions on behalf of the non-profit, tax-exempt organization.”¹⁵ Moreover, the Code Section also states that a “non-profit, tax-exempt organization shall not lend its name nor allow its identity to be used by any individual, firm, association, or corporation in the operating or advertising of a raffle in which said non-profit, tax-exempt organization is not directly and solely operating the raffle.”¹⁶

D. WHAT ARE THE PENALTIES FOR VIOLATIONS OF THE CODE SECTION?

The penalties for violation of the Code Section ranges from license revocation¹⁷ to more serious consequences such as:¹⁸

¹⁵ See, O.C.G.A. § 16-12-22.1(k)(3).

¹⁶ See, O.C.G.A. § 16-12-22.1(k)(4).

¹⁷ See, O.C.G.A. § 16-12-22.1(e)(1).

- (1) Any person who operates a raffle without a valid license issued by the sheriff as provided in this Code section commits the offense of commercial gambling as defined in Code Section 16-12-22 and, upon conviction thereof, shall be punished accordingly.
- (2) Any person who knowingly aids, abets, or otherwise assists in the operation of a raffle for which a license has not been obtained as provided in this Code section similarly commits the offense of commercial gambling.
- (3) Any person who violates any other provision of this Code section shall be guilty of a misdemeanor of a high and aggravated nature.
- (4) Any person who commits any such violation after having previously been convicted of any violations of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years or by a fine not to exceed \$10,000.00, or both.

E. IF THE SHERIFF MISTAKENLY ISSUES A LICENSE TO CONDUCT A RAFFLE TO A NON-PROFIT COMPANY THAT IS NOT TAX-EXEMPT, IS THE COMPANY AT RISK OF BEING PROSECUTED UNDER THE LAW?

While the answer to this question is unclear, the likelihood of prosecution would presumably be small particularly if the company is acting in good faith pursuant to a license issued by the local sheriff. However, out of an abundance of caution, my recommendation is that only non-profit, tax-exempt organizations apply for the permit.

F. SHOULD A REALTOR® POLITICAL ACTION COMMITTEE APPLY FOR A PERMIT TO CONDUCT A RAFFLE?

While the sheriffs in different counties may enforce the law differently, my recommendation is that RPAC not apply for a raffle permit in light of the statutory pre-requisite that the entity applying for a raffle permit provide the sheriff with information proving that entity's tax-exempt status with the IRS.

G. HOW DO OTHER ORGANIZATIONS AVOID COMPLYING WITH THE LAW?

The reality is that most law enforcement agencies treat the strict enforcement of the law regulating raffles as low priorities provided that they are being conducted by non-profit organizations in a low-key manner. However, this does not mean there is no risk of criminal sanction. Boards of REALTORS® are organizations that are highly visible in the communities in which they are located. They could easily be a target of an enforcement effort and should, therefore, set an example of good corporate citizenship by strictly following the law.

H. ARE THERE CASES INTERPRETING WHAT CONSTITUTES ILLEGAL GAMBLING IF A TAX-EXEMPT, NON-PROFIT ORGANIZATION HAS NOT FIRST OBTAINED THE REQUIRED PERMIT?

There have been very few cases interpreting the meaning of this code section. However, in *Monte Carlo Parties, Ltd. v. Webb*, 322 S.E. 2d 246 (Ga. 1984) the Supreme Court reviewed several scenarios involving what are popularly known as casino nights declaring some of them to be illegal gambling and some of them not to be.

The first scenario involves a casino night where no guest is required to part with anything of value to participate in the casino night and no one risks losing anything of value by participating. The Supreme Court found that this approach did not violate state law.

¹⁸ See, O.C.G.A. § 16-12-22.1(m).

Under the second approach, guests paid a convention committee or an organization a fee to cover entertainment, food, beverage and expenses of operating the casino night party. At the end of the night, chips or play money may be used to purchase prizes. The prizes are purchased, not donated, under this format. The better prizes cost more money. The Supreme Court found that format violated the gambling law because the guests ultimately paid for the chips, there was an element of chance and prizes were awarded.

Under the third scenario, guests were required to make a donation (in this case to the High Museum) in order to receive any play money. The donations were intended to exceed the amount spent on the party. The excess was to be kept by the museum. The Supreme Court found that this approach also constituted illegal gambling. This was because the required donation was viewed as consideration, there was an element of chance and prizes were awarded based on the chance.

In *Boyd v. Piggly Wiggly Southern*, 155 S.E. 2d 630 (1967) the Georgia Court of Appeals found that a grocery store engaged in an illegal gambling enterprise when it developed a sales promotion where a person going through a supermarket check out lane would be given a ticket bearing the name of a horse, a film of horse races already run were periodically shown and the winners received a prize. Even though no purchase was necessary, the Court concluded that the effect of the sales promotion was that a class of buyers paid money for the opportunity to participate in the scheme.

CONCLUSION

Georgia law limits both who may conduct a raffle and the terms and conditions under which they may be conducted.

O.C.G.A. § 16-12-22.1

GEORGIA CODE
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*** Current through the 2010 Regular Session ***

TITLE 16. CRIMES AND OFFENSES
CHAPTER 12. OFFENSES AGAINST PUBLIC HEALTH AND MORALS
ARTICLE 2. GAMBLING AND RELATED OFFENSES
PART 1. GAMBLING

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O.C.G.A. § 16-12-22.1 (2010)

§ 16-12-22.1. Raffles operated by nonprofit, tax-exempt organizations

(a) It is the intention of the General Assembly that only nonprofit, tax-exempt churches, schools, civic organizations, or related support groups; nonprofit organizations qualified under Section 501(c) of the Internal Revenue Code, as amended; or bona fide nonprofit organizations approved by the sheriff, which are properly licensed pursuant to this Code section shall be allowed to operate raffles.

(b) As used in this Code section, the term:

(1) "Nonprofit, tax-exempt organization" means churches, schools, civic organizations, or related support groups; nonprofit organizations qualified under Section 501(c) of the Internal Revenue Code, as amended; or bona fide nonprofit organizations approved by the sheriff.

(2) "Operate," "operated," or "operating" means the direction, supervision, management, operation, control, or guidance of activity.

(3) "Raffle" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win such prize. Such term shall also include door prizes which are awarded to persons attending meetings or activities provided that the cost of admission to such meetings or activities does not exceed the usual cost of similar activities where such prizes are not awarded.

(4) "Sheriff" means the sheriff of the county in which the nonprofit tax-exempt organization is located.

(c) Any other law to the contrary notwithstanding, no nonprofit, tax-exempt organization shall be permitted to operate a raffle until the sheriff issues a license to the organization authorizing it to do so. The license described in this subsection is in addition to and not in lieu of any other licenses which may be required by this state or any political subdivision thereof, and no raffle shall be operated until such time as all requisite licenses have been obtained. In the event a nonprofit, tax-exempt organization desires to conduct a raffle in more than one county, such organization shall not be required to obtain a license under this Code section in each county in which such raffle is to be conducted and shall only be required to obtain such license from the sheriff of the county in which the state headquarters of such organization are located.

(d)(1) Any nonprofit, tax-exempt organization desiring to obtain a license to operate raffles shall make application to the sheriff on forms prescribed by the sheriff. The sheriff may require the payment of an annual fee not to exceed \$100.00. No license shall be issued to any nonprofit, tax-exempt organization unless the organization has been in existence for 24 months immediately prior to the issuance of the license. The license will expire at 12:00 Midnight on December 31 following the granting of the license. Renewal applications for each calendar year shall be filed with the sheriff prior to January 1 of each year and shall be on a form prescribed by the sheriff.

(2) Each application for a license and each application for renewal of a license shall contain the following information:

(A) The name and home address of the applicant and, if the applicant is a corporation, association, or other similar legal entity, the names and home addresses of each of the officers of the organization as well as the names and addresses of the directors, or other persons similarly situated, of the organization;

(B) The names and home addresses of each of the persons who will be operating, advertising, or promoting the raffle;

(C) The names and home addresses of any persons, organizations, or other legal entities that will act as surety for the applicant or to which the applicant is financially indebted or to which any financial obligation is owed by the applicant;

(D) A determination letter from the Internal Revenue Service certifying that the applicant is an organization exempt under federal tax law;

(E) A statement affirming that the applicant is exempt under the income tax laws of this state under Code Section 48-7-25;

(F) The location at which the applicant will conduct the raffles and, if the premises on which the raffles are to be conducted is to be leased, a copy of the lease or rental agreement; and

(G) A statement showing the convictions, if any, for criminal offenses other than minor traffic offenses of each of the persons listed in subparagraphs (A), (B), and (C) of this paragraph.

(3) The sheriff shall refuse to grant a raffle license to any applicant who fails to provide fully the information required by this Code section.

(4) When a nonprofit, tax-exempt organization which operates or intends to operate raffles for residents and patients of a retirement home, nursing home, or hospital operated by that organization at which gross receipts are or will be limited to \$100.00 or less during each raffle and pays or will pay prizes having a value of \$100.00 or less during each raffle, then, notwithstanding any other provision of this Code section or any rule or regulation promulgated by the sheriff pursuant to the provisions of subsection (l) of this Code section, neither the applicant nor any of the persons whose names and addresses are required under subparagraphs (A) and (B) of paragraph (2) of this subsection shall be required to submit or provide fingerprints or photographs as a condition of being granted a license.

(e)(1) The sheriff shall have the specific authority to suspend or revoke any license for any violation of this Code section. Any licensee accused of violating any provision of this Code section shall be entitled, unless waived, to a hearing on the matter of the alleged violation conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(2) By making application for a license under this Code section, every applicant consents that the sheriff, as well as any of his agents, together with any prosecuting attorney, as well as any of his agents, may come upon the premises of any licensee or upon any premises on which any licensee is conducting a raffle for the purpose of examining the accounts and records of the licensee to determine if a violation of this Code section has occurred.

(f) The sheriff shall, upon the request of any prosecuting attorney or such prosecuting attorney's designee, certify the status of any organization as to that organization's exemption from payment of state income taxes as a nonprofit organization. The sheriff shall also upon request issue a certificate indicating whether any particular organization holds a currently valid license to operate a raffle. Such certificates properly executed shall be admissible in evidence in any prosecution, and Code Section 48-7-60, relative to the disclosure of income tax information, shall not apply to the furnishing of such certificate.

(g) Notwithstanding the other provisions of this Code section, the sheriff, upon receiving written evidence of the bona fide nonprofit, tax-exempt status of the applicant organization, shall be authorized to issue a special limited license to a nonprofit, tax-exempt organization which will allow it to operate up to three raffles during a calendar year. In such cases, the sheriff shall waive the application and license fee provided for in

subsection (d) of this Code section and the annual report provided for in subsection (j) of this Code section.

(h) Raffles shall be operated only on premises owned by the nonprofit, tax-exempt organization operating the raffle, on property leased by the nonprofit, tax-exempt organization and used regularly by that organization for purposes other than the operation of a raffle, or on property leased by the nonprofit, tax-exempt organization operating the raffle from another nonprofit, tax-exempt organization.

(i) No person under the age of 18 years shall be permitted to play any raffle conducted pursuant to any license issued under this Code section unless accompanied by an adult.

(j) On or before April 15 of each year, every nonprofit, tax-exempt organization engaged in operating raffles shall file with the sheriff a report disclosing all receipts and expenditures relating to the operation of raffles in the previous year. The report shall be in addition to all other reports required by law. The report shall be prepared and signed by a certified public accountant competent to prepare such a report and shall be deemed a public record subject to public inspection.

(k)(1) A licensee that conducts or operates a raffle shall maintain the following records for at least three years from the date on which the raffle is conducted:

(A) An itemized list of the gross receipts for each raffle;

(B) An itemized list of all expenses other than prizes that are incurred in the conducting of the raffle as well as the name of each person to whom the expenses are paid and a receipt for all of the expenses;

(C) A list of all prizes awarded during the raffle and the name and address of all persons who are winners of prizes of \$50.00 or more in value;

(D) An itemized list of the recipients other than the licensee of the proceeds of the raffle, including the name and address of each recipient to whom such funds are distributed; and

(E) A record of the number of persons who participate in any raffle conducted by the licensee.

(2) A licensee shall:

(A) Own all the equipment used to conduct a raffle or lease such equipment from an organization that is also licensed to conduct a raffle;

(B) Display its raffle license conspicuously at the location where the raffle is conducted;

(C) Conduct raffles only as specified in the licensee's application; and

(D) Not conduct more than one raffle during any one calendar day.

(3) No nonprofit, tax-exempt organization shall enter into any contract with any individual, firm, association, or corporation to have such individual, firm, association, or corporation operate raffles or concessions on behalf of the nonprofit, tax-exempt organization.

(4) A nonprofit, tax-exempt organization shall not lend its name nor allow its identity to be used by any individual, firm, association, or corporation in the operating or advertising of a raffle in which said nonprofit, tax-exempt organization is not directly and solely operating the raffle.

(5) No person shall pay consulting fees to any person for any services performed in relation to the operation or conduct of a raffle.

(6) A person who is a member of more than one nonprofit, tax-exempt organization shall be permitted to participate in the raffle operations of only two organizations of which such person is a member; provided, however, that such person shall not receive more than \$30.00 per day for assisting in the conduct of raffles regardless of whether such person assists both organizations in the same day.

(l) The sheriff is authorized to promulgate rules and regulations which the sheriff deems necessary for the

proper administration and enforcement of this Code section which are not in conflict with any provision of this Code section.

(m) Any person who operates a raffle without a valid license issued by the sheriff as provided in this Code section commits the offense of commercial gambling as defined in Code Section 16-12-22 and, upon conviction thereof, shall be punished accordingly. Any person who knowingly aids, abets, or otherwise assists in the operation of a raffle for which a license has not been obtained as provided in this Code section similarly commits the offense of commercial gambling. Any person who violates any other provision of this Code section shall be guilty of a misdemeanor of a high and aggravated nature. Any person who commits any such violation after having previously been convicted of any violations of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years or by a fine not to exceed \$10,000.00, or both.

HISTORY: Code 1981, § 16-12-22.1, enacted by Ga. L. 1995, p. 832, § 2; Ga. L. 1996, p. 794, §§ 1, 2; Ga. L. 2005, p. 1030, § 14/SB 55; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2008, p. 898, § 1/HB 1151.



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