

BILL ANALYSIS

C.S.H.B. 1457
By: Raymond
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that ambiguity exists regarding the legality of fantasy sports contests and contend that current state law does not adequately address such contests. C.S.H.B. 1457 seeks to resolve this ambiguity and establish provisions relating to the operation of fantasy sports contests.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1457 amends the Occupations Code to authorize a person to pay an entrance fee to participate in a fantasy sports contest, as defined by the bill, in which a prize is awarded to the competition winner and to establish that a person who pays such an entrance fee is not placing a bet for purposes of the application of an offense under Penal Code provisions relating to gambling. The bill authorizes a person to offer fantasy sports contests as a fantasy sports operator in Texas in accordance with the bill's provisions and any applicable federal law and to participate in the earnings of a business that offers fantasy sports contests. The bill prohibits a fantasy sports operator from awarding a prize based on the score, the point spread, or any performance of a single professional or amateur sports team or any combination of professional or amateur sports teams, solely on any single performance of an individual athlete in a single professional or amateur sports competition or other event, or on live pari-mutuel racing under the Texas Racing Act; from offering a fantasy sports contest to the public without disclosing before the contest all prizes or awards offered to winning contest participants; or from offering a fantasy sports contest based on the performance of athletes in a youth, high school, or collegiate sports competition or athletic event. The bill sets out specified consumer protection provisions for which a fantasy sports operator is required to implement commercially reasonable procedures.

C.S.H.B. 1457 authorizes the attorney general to institute an action for injunctive relief to restrain a violation by a person who appears to be in violation of or threatening to violate the bill's provisions and requires such an action to be filed in either a district court in Travis County or the county in which the violation occurred. The bill authorizes the attorney general to recover reasonable expenses incurred in obtaining injunctive relief and authorizes a court to include reasonable requirements to prevent further violations of the bill's provisions in an injunction issued in such an action.

C.S.H.B. 1457 amends the Penal Code to establish as a defense to prosecution for gambling that

the actor reasonably believed that the conduct was permitted under the bill's provisions and to establish as a defense to prosecution for other gambling-related offenses that the conduct was authorized under the bill's provisions.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1457 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subtitle B, Title 13, Occupations Code, is amended by adding Chapter 2053 to read as follows:

CHAPTER 2053. FANTASY SPORTS CONTESTS

Sec. 2053.001. DEFINITION. In this chapter, "fantasy sports contest" means a competition in which:

(1) a participant pays money or other consideration for the opportunity to assemble a fictional team composed of professional or amateur sports athletes selected by the participant to compete against other fictional teams assembled by other competition participants;

(2) the outcome of the competition is based on the actual statistical performance of the selected athletes in sports competitions, or in a season or series of sports competitions; and

(3) a prize is awarded to the competition winner.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle B, Title 13, Occupations Code, is amended by adding Chapter 2053 to read as follows:

CHAPTER 2053. FANTASY SPORTS CONTESTS

Sec. 2053.001. DEFINITIONS. In this chapter:

(1) "Fantasy sports contest" means a competition in which:

(A) a participant pays money or other consideration for the opportunity to assemble a fictional team composed of professional or amateur sports athletes selected by the participant to compete against other fictional teams assembled by other competition participants;

(B) the outcome of the competition reflects the relative knowledge and skill of the participants and is based on the actual statistical performance of the selected athletes in sports competitions, or in a season or series of sports competitions;

(C) a prize is awarded to the competition winner;

(D) the outcome of the competition or the redemption of the winnings is not displayed or represented in a manner that mimics a slot machine or other form of casino gaming, including a banked card game, poker, craps, roulette, keno, lotto, and bingo; and

(E) the competition is not presented using any depiction of a casino gaming graphic, theme, or title, including any depiction of a slot machine-style symbol, a banked card game, poker, craps, roulette, keno, lotto, and bingo.

(2) "Fantasy sports operator" means a person, including an entity, or a division of an entity, that offers fantasy sports contests

Sec. 2053.002. LEGISLATIVE FINDINGS.

Sec. 2053.003. PARTICIPATION IN FANTASY SPORTS CONTEST.

Sec. 2053.004. OPERATION OF FANTASY SPORTS CONTEST. (a) A person may operate fantasy sports contests in this state in accordance with this chapter and any applicable federal law and may participate in the earnings of a business that offers fantasy sports contests.

(b) A fantasy sports contest operator may award prizes to contest participants only based on the relative knowledge and skill of the contest participants and based predominantly on accumulated statistical results of the performance of the athletes participating in multiple professional or amateur sports competitions or in a season or series of sports competitions.

(c) Notwithstanding Subsection (b), a fantasy sports contest operator may not award a prize based:

- (1) on the score, the point spread, or any performance of a single professional or amateur sports team or any combination of professional or amateur sports teams;
- (2) solely on any single performance of an individual athlete in a single professional or amateur sports competition or other event;
- or
- (3) on live pari-mutuel racing under the Texas Racing Act.

Sec. 2053.005. CONSUMER PROTECTION. A fantasy sports contest operator shall implement procedures for fantasy sports contests that:

- (1) prevent an employee of the operator, and any relative living in the same household as the employee, from competing in a fantasy sports contest in which a cash prize is awarded;

to the public.

Sec. 2053.002. LEGISLATIVE FINDINGS.

Sec. 2053.003. PARTICIPATION IN FANTASY SPORTS CONTEST.

Sec. 2053.004. OPERATION OF FANTASY SPORTS CONTEST. (a) A person may offer fantasy sports contests as a fantasy sports operator in this state in accordance with this chapter and any applicable federal law and may participate in the earnings of a business that offers fantasy sports contests.

(b) A fantasy sports operator may not:

- (1) award a prize based:
 - (A) on the score, the point spread, or any performance of a single professional or amateur sports team or any combination of professional or amateur sports teams;
 - (B) solely on any single performance of an individual athlete in a single professional or amateur sports competition or other event;
- or

(C) on live pari-mutuel racing under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes);

(2) offer a fantasy sports contest to the public without disclosing before the contest all prizes or awards offered to winning participants of the contest; or

(3) offer a fantasy sports contest based on the performance of athletes in a youth, high school, or collegiate sports competition or athletic event.

Sec. 2053.005. CONSUMER PROTECTION. A fantasy sports operator shall implement commercially reasonable procedures for fantasy sports contests that:

- (1) prevent an employee of the operator, and any relative living in the same household as the employee, from competing in a fantasy sports contest in which a cash prize is awarded;

(2) prohibit the operator from being a participant in a fantasy sports contest that the operator offers;
(3) prevent an employee or agent of the operator from sharing with third parties confidential information that could affect fantasy sports contest play until the information has been made publicly available;
(4) verify that fantasy sports contest participants are 18 years of age or older; and
(5) restrict an individual who is a player, a game official, or another participant in a professional or amateur sports competition from participating in a fantasy sports contest that is determined, wholly or partly, on the performance of that individual, the individual's professional or amateur team, or the accumulated statistical results of the sport or competition in which the individual is a player, game official, or other participant.

Sec. 2053.006. INJUNCTIVE RELIEF.

SECTION 2. Section 47.02(c), Penal Code, is amended.

SECTION 3. Section 47.09(a), Penal Code, is amended.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

(2) prohibit the operator from being a participant in a fantasy sports contest that the operator offers;
(3) prevent an employee or agent of the operator from sharing with third parties confidential information that could affect fantasy sports contest play until the information has been made publicly available;
(4) verify that fantasy sports contest participants are 18 years of age or older;
(5) restrict an individual who is a player, a game official, or another participant in a professional or amateur sports competition from participating in a fantasy sports contest that is determined, wholly or partly, on the performance of that individual, the individual's professional or amateur team, or the accumulated statistical results of the sport or competition in which the individual is a player, game official, or other participant; and
(6) prevent the commingling of fantasy contest player funds with operational funds unless the operator maintains a reserve that:
(A) exceeds the amount of contest player funds on deposit with the operator;
(B) is not used by the operator for operational activities; and
(C) is in the form of cash, cash equivalents, payment processor reserves, payment processor receivables, irrevocable letters of credit, bonds, or any combination of those items.

Sec. 2053.006. INJUNCTIVE RELIEF.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.