

SUBJECT: Defining illegal gambling devices, legal amusement machines

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: *(After recommitted)*:
7 ayes — Place, Talton, Dunnam, Galloway, Hinojosa, Keel, Nixon

0 nays

2 absent — Farrar, A. Reyna

WITNESSES: *(On original version)*:
For — Weston Ware, Texas Baptist Christian Life Commission; Richard Blakenship, Texans Against Gambling

Against — Mike Douglas, Denis Smith, Vazric Grigorian, Ira E. Tobolososky, AMOT; James R. Moore Osburn Vending Company; Vancic Todaro, Amusement and Music Operators; Reginald M. Moultre, Family Entertainment Ad Hoc Group; Richard Alan Anderson, Family Entertainment Centers - Ad Hoc Group; 11 others representing themselves

On — Marshall Caskey and David M. Boatright, Department of Public Safety; August Boto, Texas District and County Attorneys Association; Mack Martinez

BACKGROUND : It is a defense to prosecution for gambling if a person plays for something of value other than money using an electronic, electromechanical or mechanical contrivance excluded from the definition of gambling device. Gambling devices are defined as electronic electromechanical or mechanical contrivance that, for a price, allow players an opportunity to obtain anything of value, with the award of the prize being made solely or partially by chance, even though accompanied by some skill. The definition includes gambling-device versions of bingo, keno, blackjack, lottery, roulette, video poker or other machines.

Gambling devices do not include devices adapted solely for bona fide amusement if players are rewarded exclusively with noncash merchandise prizes, toys or novelties or something redeemable for one of these items if

they have a wholesale value in a single play of the game of up to 10 times the cost of playing the game once or \$5, whichever is less.

DIGEST:

CSHB 104 would alter the Penal Code definitions of gambling device and add definitions for amusement machines, non-cash merchandise, device and eight-liners. It also would increase the penalties for the offenses of gambling promotion and possession of a gambling device and include operating a gambling device in the offense of gambling promotion.

CSHB 3305 would take effect September 1, 1997.

Gambling device. A gambling device would be defined as any device, other than an amusement machine, on which a game of skill, chance or a combination of skill or chance can be played for “consideration” and that gives players the chance to win anything of value based solely or partially on chance. This definition would apply whether or not the device was actually used to give a player an opportunity to obtain anything of value or whether the machine actually dispensed anything of value.

Thing of value. “Thing of value”, “anything of value” and “something of value” would be defined as anything that can be awarded to the player of a device other than an unrecorded and immediate right to continue playing without additional payment. The terms would include tickets or tokens that entitle someone to receive any other thing of value and to game credits or replay rights, if the device can accumulate or record and amend, cancel or remove them.

Amusement machine. An amusement machine would be defined as a device that is designed, constructed and maintained solely for bona fide amusement purposes and that awards players exclusively with prizes, toys, novelties, noncash merchandise or with tickets or tokens redeemable only for noncash merchandise on the premises where the machine is located. The prizes would have to have a maximum wholesale value from a single play of the machine of not more than 10 times the cost to play the machine or \$5, whichever was less.

Amusement machines would not include video or mechanical slot machines, eight-liners or any device that would: (1) allow a player to increase the

probability of winning by paying more than the minimum cost of a single play; (2) allow players to accumulate or carry over game credits or replay rights from a single play to the next single play *and* allow the game credit or replay right to be altered, removed, canceled or knocked off by something other than continuous play; or (3) alter a player's probability of winning based on the frequency or extent of the player's or another player's previous winnings.

CSHB 3350 would make it a defense to prosecution for gambling if playing an amusement machine for something of value other than money. The bill would delete the current defense for playing for something of value other than money using an electronic, electromechanical or mechanical contrivance excluded from the definition of gambling device.

Non-cash merchandise. Non-cash merchandise would not include money orders, traveler's check, an item of cash equivalence or gift certificates, except for certificates redeemable exclusively for merchandise on the machine's premises.

Eight-liner. Eight-liners would be defined as electronic devices capable of simulating the play of a mechanical slot machine or one-armed bandit, regardless of the number of lines of play, that gives players the opportunity to be awarded anything of value based solely or partially on chance.

Gambling promotion. CSHB 3350 would increase the penalty for gambling promotion from a Class A misdemeanor (maximum penalty of one year in jail and a \$4,000 fine) to a state jail felony (six months to two years in a state jail and an optional fine of up to \$10,000). The bill would add a requirement that this offense be committed with the intent to further gambling and would include as an offense operating or participating in the earnings of a gambling device.

Possession of a gambling device. CSHB 3350 would increase the penalty of possession of a gambling device, equipment or paraphernalia from a Class A misdemeanor to a state jail felony.

SUPPORTERS
SAY:

CSHB 3350 would close loopholes in current law that have allowed electronic gambling to proliferate under the cover of a law that was intended only to legalize amusement games that have no significant payoff. CSHB 3350 would provide definitions of legal and illegal machines, drawing a bright line between the two so that law enforcement authorities and prosecutors could combat illegal gambling machines and the public could continue to enjoy legal amusement games. Legitimate amusement places such as arcades or pizza parlors with children's games and true amusement machines, no matter where they are located, would not be affected as long as their machines fit the strict definitions of amusement machines in CSHB 3350.

CSHB 3350 would outlaw electronic machines that clearly are not true amusement machines. These prohibited machines — often found in truck stops, convenience stores, fraternal lodges, bars and other places — feature such activities as video poker or slot-machine-style games. With some of the machines, players deposit money and are given “credits” to bet in attempts to win more credits. Credits are sometimes then converted to tickets or tokens that can be traded for cash or gift certificates worth more than the Penal Code limit. Problems have arisen for law enforcement officers because of rapid changes in the technology used in these devices and because it can be difficult to determine if a machine is sometimes used to award prizes in excess of the legal limit.

CSHB 3350 would clearly define legal and illegal amusement machines. Legal amusement machines could not award players with cash or anything of value but would have to award players exclusively with trinkets, such as fuzzy animals or Kewpie dolls, or something that could be redeemed for non-cash merchandise, worth no more than 10 times the cost of the game or \$5, whichever is less. In other words, there could be no big payoff from a legal amusement machine.

The bill would specifically outlaw games with features currently found on gambling machines such as those that (1) allow players to increase their odds of winning by paying more than the minimum cost of a game; (2) allow players to accumulate credits and then allow them to be removed or “knocked off” by some type of switch; and (3) alter the odds of winning based on the frequency of play.

It would remain legal for amusement machines, such as pinball games, to award players free games as long as the games were an unrecorded and immediate right to continue playing without paying more and were not credits or replay rights that could be accumulated or recorded and then amended, canceled or removed.

The bill would outlaw the accumulation of “credits” that represent big payoffs and have been used to skirt current law. Criteria used to identify gambling devices would include: (1) could a person play a game of skill, chance or a combination of the two; (2) for a price; and (3) for anything of value — without regard to whether the device was actually used to give a player an opportunity to obtain anything of value or whether the machine dispenses anything of value — such as a credit.

True gambling machines, such as video and mechanical slot machines and eight-liners, would be explicitly prohibited. Eight-liners are like slot machines and have eight lines on which a player can win (three across, three down and two diagonal). These illegal machines have proliferated across the state, including in bingo halls, prompting a 1996 ruling by Lottery Commission that it considers them to be gambling devices. CSHB 3350 would clearly define these machines based on their capabilities and features, so machines would not be outlawed just because of their name.

The bill would outlaw the current practice of awarding large gift certificates for merchandise that can be purchased somewhere else such as a discount store and would allow only gift certificates that could be redeemed for merchandise on the premises of the machine. This is key to the idea of an amusement machine — the trinket is won when the game is played. This would not discriminate against anyone but would be another safeguard to ensure that gift certificates are not used to skirt the law violating the limit on prizes.

The bill would not outlaw possessing antique gambling machines that are purely ornamental because illegal gambling devices must allow games to be played and would have to be able to afford a player an opportunity to obtain something of value.

The new penalties that would be established by CSHB 3350 would appropriately designate violations of gambling laws as state jail felonies, which are generally serious but non-violent offenses. The bill would make it clear what is legal and illegal so violators would have no excuse for breaking the law. Including gambling device in the definition of gambling promotion is necessary to ensure that the offense covers persons who may have gambling devices but not a “gambling place.” Persons with no intent to do wrong would be protected because a person would have to have the intent to further gambling to commit the offense of gambling promotion.

OPPONENTS
SAY:

CSHB 3350 is unnecessary. Current law outlawing gambling devices and defining legal amusement machines is adequate to control gambling. If illegal games are proliferating, enforcement and prosecution should be stepped up instead of changing the law. CSHB 3350 would outlaw many harmless, purely amusement machines that currently are legal and should remain so.

The criteria used to decide whether a machine is legal or not should focus on whether a single play of the game awards players with noncash merchandise with a wholesale value of not more than 10 times the cost to play the game once or \$5, whichever is less. This criteria is simple and easy to understand for machine proprietors, law enforcement officers and prosecutors. It is unwise to define illegal machines based on their inner workings or technical aspects. This would make it difficult to determine if a machine is legal or not, complicating the jobs of law enforcement officers and prosecutors.

In addition, the definition of “thing of value” would be so broad that it could outlaw pinball and other machines that allow game credits to be racked up by playing the game. CSHB 3350 would include as a “thing of value” game credits or replay rights awarded by a game machine if it can record and amend, cancel or remove replay rights. Because free games like the kind won in a pinball game are not listed among the “noncash merchandise,” they could be considered a “thing of value” that would make the games illegal.

CSHB 3350 also would unfairly discriminate against certain types of machines by declaring them illegal based solely on their *name*. The bill specifies that the term amusement machine does not include a “video or mechanical slot machine, eight-liner . . .” This would mean that machines

with these names would be illegal, even if they met all the other criteria for legal machines. This would be unjust discrimination based only on the name of a machine, not on what it does.

The bill would unfairly allow only one type of gift certificates — those redeemable exclusively for merchandise on the premises where amusement machines are located — to be considered “noncash merchandise.” This would discriminate against small establishments such as fraternal lodges that may not carry any merchandise or a full range of merchandise. This could discourage players from playing the games at places with no or small merchandise selections. It would be overly restrictive to focus on *where* a gift certificate is redeemed.

The new definition of gambling device could be interpreted to outlaw merely possessing antique gambling machines because it defines gambling devices “without regard to whether the device is actually used to afford a player an opportunity to obtain any thing of value or whether a thing of value is actually dispensed by the device.

Raising the penalties for gambling promotion and possession of a gambling device from a Class A misdemeanor to a state jail felony would be inappropriately harsh. Felony penalties should be reserved for more serious offenses. The bill also would expand gambling promotion too broadly so that it would include operating or participating in the earnings of a gambling device.

NOTES:

The original version of the bill would have deleted from current law language that excludes from the definition of gambling device certain devices made and adapted solely for bona fide amusement purposes if they meet specified criteria.

HB 3350 was recommitted on a point of order on May 5. The version of CSHB 3350 reported after being recommitted is identical to the previous committee substitute.