

- SUBJECT:** Allowing exhibition of amusement redemption machines
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 6 ayes — Flores, Hamilton, Raymond, Driver, Eissler, Goolsby
0 nays
3 absent — Homer, D. Jones, Wise
- WITNESSES:** For — Brenda Heredia, Family Crisis Center; Fred Miccio, American Legion; Eddie Reyes, Vietnam Veterans of America, Dallas Chapter

Against — Tim Gallagher, Dallas County District Attorney’s Office; Bob Goldblatt and Weston Ware, Texans Against Gambling; Stu Madison, Johnson County Attorney’s Office; Barbara Skinner, City of Portland
- 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 a gambling device. A gambling device is an electronic, electromechanical, or mechanical contrivance that, for a price, allow players an opportunity to obtain anything of value, with the award of the prize made solely or partially by chance, 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 those 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.

Occupations Code, sec. 2001.101 establishes the types of organizations that can be licensed to conduct bingo. They include religious societies that have existed in Texas for at least eight years; certain nonprofit organizations that support medical research and treatment programs; nonprofit fraternal

organizations; nonprofit veterans organizations; and volunteer fire departments. Nonprofit organizations must have tax-exempt status under the U.S. Internal Revenue Code, sec. 501©).

Occupations Code, sec. 2153.152 requires a person owning, buying, selling, renting, or exhibiting certain types of coin-operated machines to obtain a license from the comptroller.

DIGEST:

CSHB 1407 would authorize the exhibition of amusement redemption machines, require the comptroller to license entities before they could exhibit the machines to players, and require the machines to be approved by a political subdivision in a local-option election. It would allow licenses to be obtained by organizations that were authorized to conduct charity bingo in Texas and by people who had no more than five machines on a premise. The bill would establish fees for the machines and licensees and would establish rules for holding local-option elections to approve or prohibit the machines. It also would establish a defense to prosecution for gambling offenses for amusement redemption machines.

The comptroller would have to adopt rules for exhibition, display, operation, promotion, and use of amusement redemption machines. The machines would have to be certified as coin-operated amusement redemption machines by the comptroller or by a private contracting service hired by the comptroller.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

Definitions. The bill would define an amusement redemption machine as a skill or pleasure coin-operated machine that by chance or a combination of skill and chance afforded the player an opportunity to receive a prize or a representation of value that was redeemable for a prize. The term would not include machines:

- that award the user a prize or prizes solely and directly from the machine, including claw, crane, or similar machines; or
- from which the opportunity to receive a prize, or a representation of value that was redeemable for a prize, varied depending on the user's

ability to throw, roll, flip, toss, hit, or drop a ball or other object into the machine or a part of the machine, including basketball, skeeball, golf, bowling, pusher, or similar machines.

CSHB 1407 would amend the Penal Code definition of gambling devices, effective September 1, 2005. A machine would *not* be considered a gambling device if:

- it rewarded the player with noncash merchandise prizes, toys, or novelties solely and directly from the machine, including claw, crane, or similar machines; or
- offered players the opportunity to receive noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, depending on the user's ability to throw, roll, flip, toss, hit, or drop a ball or other object into the machine or part of the machine, *and*
- the noncash merchandise prizes, toys, or novelties that could be awarded had a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game once or \$5, whichever was less.

CSHB 1407 would establish a defense to prosecution for gambling if the person reasonably believed that his or her conduct was authorized by this bill or by a license issued under the bill. It would establish a defense to prosecution for the offense of possessing a gambling device, equipment, or paraphernalia if a person owned or possessed the device or a component of a machine or a supply needed for a machine for the sole purpose of shipping it within Texas to a place where authorized amusement redemption machines could be exhibited legally under a license issued under the bill.

It would be a defense to prosecution for all gambling offenses that the conduct was authorized under CSHB 1407. The defense would not apply to conduct committed with a license authorized by the bill if the person obtained the license by false pretense, false statement, or a material omission made in a license application or other manner.

Licenses. CSHB 1407 would authorize two types of entities to obtain a license from the comptroller to exhibit amusement redemption machines to users: "authorized organizations," entities eligible to conduct charity bingo in

Texas, and other people who had five or fewer machines. The licenses would have to be issued under the statutes requiring licenses for certain types of coin-operated machines.

A license application for amusement redemption machines would have to include the physical street address where machines were or would be located.

Licenses to authorized organizations. To exhibit a machine to a user, an authorized organization would have to hold a license issued by the comptroller and be in a political subdivision in which voters had authorized the machines, and the machine would have to be owned by the authorized organization or leased from a person authorized to lease it.

If an authorized organization that held a license to conduct charity bingo applied for a license for an amusement redemption machine, the comptroller would have to issue it, and the organization would be entitled to receive a license if it proved to the comptroller that its bingo license was in effect and paid the appropriate license and registration fees.

A license issued to an authorized organization would be good until 60 days after the date that the organization ceased to hold an active license to conduct bingo. However, these organizations could obtain a separate license before the expiration of the license they obtained under their bingo license.

The comptroller could not issue a license to an organization if an officer or director had been convicted of a felony, criminal fraud, gambling or gambling-related offense, or a crime of moral turpitude and it had been less than 10 years since the offender's sentence, parole, mandatory supervision, or probation had ended.

An authorized organization could not exhibit an amusement redemption machine to a person younger than 18 years old.

Licenses to people other than authorized organizations. The comptroller would have to issue a license that authorized a person, other than an organization with a charitable bingo license, to exhibit no more than five amusement redemption machines to players if the machines would be within a political subdivision of the state where voters had authorized their use. These

people could not exhibit more than five machines for play at one time on a premise. Machines designed to be operated simultaneously by more than one player would be counted as one machine multiplied by the number of possible simultaneous players. Premises would be defined as any facility located under a common roof or located over a common foundation and would include any area within 200 feet of the common roof or foundation.

However, two or more locations where machines were operated lawfully under separate ownership and control before January 1, 2003, would be considered separate premises, regardless of the distance of the locations from each other or whether they were under a common roof or over a common foundation. The comptroller would have to adopt rules establishing criteria to prove these requirements.

Registration, license fees, and tax on prizes. CSHB 1407 would establish a \$500 annual registration fee for each machine exhibited to players. In addition to the registration fee, the bill would establish an annual license fee of \$10,000 for each license holder. The comptroller would have to collect these fees and could collect a fee to cover the additional costs of licensing.

CSHB 1407 would impose a tax on each cash or cash-equivalent prize awarded from a play of a machine. The tax would be equal to 6.25 percent of the value of the prize. The tax would be collected by the operator of the machine on behalf of the comptroller.

Local-option election. The machines could be authorized in an area only after approval by voters in a political subdivision. Voters also could prohibit the machines. A county, justice precinct, or city would have to hold an election if it received a petition for an election that met the requirements established by CSHB 1407, but the subdivision also could hold an election on its own motion.

The bill would prescribe language that would have to appear substantially as worded in the bill on a petition for an election to approve or prohibit the machines. To be valid, a petition would have to be signed by a number of registered voters that exceeded 10 percent of the voters in the most recent general election for state and county officers, or the number of registered voters specified in the document governing the administration of the political

subdivision, whichever was less. People signing the petition would have to include the date they signed the petition, their voter registration number, their printed name, and their address. Signatures could not be counted if they were signed more than 90 days before the date the petition was submitted.

Within five days of receiving the petition, a political subdivision would have to submit the petition to the county clerk or city secretary to be verified. The clerk or secretary would have 30 days to verify whether the petition was valid. If a petition was determined to be valid, the city, county, or justice precinct would have to hold an election on the next uniform election day that was at least 45 days after the verification of the petition and would have to notify the comptroller that an election had been ordered. The bill would establish the language that would have to appear on ballots in the election to approve or prohibit the machines. The city, county, or justice precinct would have to notify the comptroller of the election results within 10 days of the election.

If approved by voters, machines would be authorized beginning on the 10th day after the results of the election were officially declared. If prohibited by voters, machines would be prohibited beginning the 10th day after the results were declared.

CSHB 1407 would establish rules in case local-option elections held by two political subdivisions with the same territory had conflicting results. City elections would prevail over elections in a justice precinct or county, and elections in a justice precinct would prevail over county elections. If two or more elections were held in the same justice precinct, the most recent election would prevail.

If a city had held an election relating to the machines, territories annexed to the city would assume the status of the city. Territories detached from the city would assume the status they would have had if they had never been part of the city. Detached territories added to other cities that had held elections would assume the status of the new city. Adding territory to or detaching it from justice precincts would not affect the status of the added or detached territory.

**SUPPORTERS
SAY:**

CSHB 1407 would narrow the scope of gambling in Texas by requiring that amusement redemption machines be operated only by charities and small-time

operators and by requiring local-option elections to approve use of the machines in any area. This 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 1407 would provide the clarification that law enforcement officers have been requesting so that they can combat illegal gambling, while allowing Texans to enjoy legitimate amusement machines.

Definitions. CSHB 1407 would define amusement redemption machines so as to ensure that machines authorized by the bill would be purely amusement machines, not gambling machines. An amusement redemption machine would have to be a skill or pleasure machine that used chance or a combination of skill and chance to let the player win a prize or a certificate for a prize.

Amusement redemption machines would have to adhere to the Texas Supreme Court's recent ruling prohibiting cash payouts or gift certificates. Thus, the machines could not award players with cash but would have to award players exclusively with trinkets, such as fuzzy animals or Kewpie dolls, or with items that could be redeemed for noncash merchandise that met the current limit of being worth no more than 10 times the cost of the game or \$5, whichever was less. In other words, a legal amusement machine could not provide a big payoff. True gambling machines that gave large cash payouts clearly would be outlawed by CSHB 1407, as well as by the Supreme Court ruling and the Penal Code.

Also, the machines would have to be certified by the comptroller. This would allow law enforcement authorities to combat illegal gambling machines and the public to know what kind of amusement games they could enjoy legally.

The changes to the definition of gambling device in the Penal Code would eliminate the current "fuzzy animal" exemption that has been the subject of so much debate. These changes, which would take effect September 1, 2005, would leave in the code descriptions of just two types of machines that would not be considered gambling devices: machines that reward the players directly with trinkets and those that award prizes based on the player's ability to throw, roll, drop, or move a physical object such as skeeball or basketball. The prizes awarded from both types of machines would be subject to the current Penal Code limit.

The bill would clarify definitions in the code to ensure that legitimate amusement places such as arcades or pizza parlors with children's games could continue to operate.

Licenses. CSHB 1407 would restrict the use of amusement redemption machines to charities and other small-time operators who obtained a license from the comptroller. This would ensure that only appropriate entities — not large casino-style houses — could operate the machines.

To receive a license to offer the machines, a charity would have to be eligible to receive a license to conduct charity bingo. For example, the group could be a veterans or religious organization that was a nonprofit organization under the Internal Revenue Code. This would ensure that only legitimate charities could receive licenses under the bill.

CSHB 1407 would help these charities with their charitable endeavors, thereby benefitting many Texans. This could lessen the burden on state and local governments, which is especially important in these times of tighter state budgets. It would be inappropriate to dictate how a charity must spend its money from the machines, since charity spending is regulated in other ways.

The bill also would allow other people to apply for licenses but would limit their number of machines to five to ensure that the machines were exhibited only in conjunction with another business, such as in “mom-and-pop” convenience stores. This would allow these entities to realize the economic benefits of the machines while giving players locations to enjoy this type of entertainment.

CSHB 1407 would prohibit the machines from being exhibited by charities to people younger than 18 to ensure that impressionable youths are not exposed to entertainment that some might deem inappropriate. However, it would be inappropriate for the state to eliminate these machines, which provide entertainment for many Texans. Although some people may have problems limiting their play of the machines, the state does not prohibit alcohol or other items that may cause problems for some consumers.

Registration, license fees, and tax on prizes. CSHB 1407 would help the state as well as charities. The license and registration fees and prize tax

established by the bill would raise revenue for the state. The bill would set appropriate license and registration fees, since higher fees would hurt the charities and small-time operators.

Local option-election. CSHB 1407 would respect the will of voters by allowing local control of whether an area had amusement redemption machines. This would help with enforcing the law, because law enforcement officers would know where the machines could be placed legally. The bill would establish rules and criteria for the elections to ensure that they were held in a similar and fair manner in all jurisdictions.

OPPONENTS
SAY:

CSHB 1407, rather than clarifying the law on amusement machines, would complicate the law further. It would continue to allow the proliferation of “eight-liner” machines, which should be considered illegal gambling machines. If an outright ban on the machines cannot be instituted, the law should be made more clear so that only purely amusement machines are allowed.

Definitions. The definition of amusement redemption machine in CSHB 1407 would make it difficult to determine whether a machine was legal, which, in turn, would make it difficult to prosecute cases of illegal gambling. The bill would define amusement redemption machines as skill or pleasure machines that operate by chance or a combination of skill and chance. This definition would continue to allow eight-liner machines, which are essentially slot machines that operate on chance. For a machine to be a nongambling amusement machine, it should have to operate solely on skill with no element of chance involved.

CSHB 1407 could continue to allow players of the machines to receive large prizes, promoting the culture of gambling. Although the Texas Supreme Court has held that cash and gift certificates are prohibited and current law would continue to limit prizes to no more than 10 times the amount charged to play the device or \$5, whichever was less, game owners and operators could continue the practice of letting players combine prizes. For example, a player may be awarded one ticket that could be redeemed for a trinket that meets the prize limit, or the player could combine multiple tickets to receive a big-dollar item like a television.

Licenses. CSHB 1407 would do nothing to stop the proliferation of machines because it would allow anyone to apply for a license to have five or fewer machines. This could mean that machines would be available in every convenience store, truck stop, or other establishment.

CSHB 1407 should ensure that charities give a fair portion of proceeds from the machines to their charitable endeavors. The statutes governing charitable bingo require that the charities distribute a certain percentage of net proceeds, and the requirements should be similar for amusement machines operated by charities. This could help ensure that owners of the machines do not receive a windfall while the charities receive very little and that charities spend their funds appropriately.

Registration and license fees. The registration and license fees imposed by CSHB 1407 would be too low. It is not uncommon for a machine to have a weekly gross, after prizes, of \$110,000. In view of this, a yearly license fee of \$10,000 is too low.

Local-option election. Allowing local-option elections to determine where the machines would be located would make it difficult for law enforcement to combat illegal gambling. It would be especially difficult if a small justice precinct had approved the machines while the larger county had not held an election either to approve or prohibit the machines. Allowing people in one jurisdiction to have a defense to prosecution for gambling while that defense would not be available in another jurisdiction could raise issues of equal protection under the law.

OTHER
OPPONENTS
SAY:

CSHB 1407 is unnecessary. Current law outlawing gambling devices and defining legal amusement machines is adequate to control gambling. If illegal games are proliferating, the state should step up enforcement and prosecution instead of changing the law.

It would be unfair and inappropriate to limit the machines to charities and small-time operators. If the machines are for amusement, there is no reason why other entities should be limited to five machines. It also is unclear whether the bill would prohibit persons other than charities from exhibiting a machine to someone younger than 18.

The comptroller is an inappropriate entity to regulate these machines. The comptroller's main duties deal with tax collection, rather than licensing and regulation.

NOTES:

The committee substitute made many changes to the original bill, including requiring the comptroller to certify the machines; allowing licenses for people with fewer than five machines; raising the cost of the annual registration fee from \$350 to \$500; changing the license fee from \$10,000 per 100 machines to a flat \$10,000; imposing the tax on prizes; and amending the Penal Code definitions of gambling device.

According to the bill's fiscal note, the comptroller cannot estimate the number of amusement redemption machines that the bill's parameters would include, but "there would be a positive revenue gain from the tax and fees imposed." If there were 40,000 machines and all localities were to approve their exhibition, the bill could generate \$35 million of general revenue per year.