

SUBJECT: Civil immunity for certain actions against lottery sales agents

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 7 ayes — Nixon, Rose, P. King, Madden, Martinez Fischer, Raymond, Talton
0 nays
2 absent — Strama, Woolley

WITNESSES: For — Chris Newton, Texas Petroleum Marketers & Convenience Store Association
Against — Jay Harvey, Texas Trial Lawyers Assn.

BACKGROUND: Government Code, ch. 466, authorizes the Texas Lottery Commission to license sales agents to sell lottery tickets.

DIGEST: HB 3410 would add sec. 466.161 to the Government Code to create civil immunity for lottery sales agents acting in good faith for an act or omission committed within the course and scope of the agent's license. It would neither waive immunity nor create a cause of action against the state or the Texas Lottery Commission.

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, 2005.

SUPPORTERS SAY: Sales agents have no control over the conduct and management of any lottery game. They cannot control the number of winners or the amount of an award. Because of this, sales agents should not be liable in suits relating to claims over the conduct or management of a lottery game. HB 3410 would ensure that sales agents were not held liable in such a suit. The bill would not protect a sales agent who did not act in good faith or who committed an act or omission outside of the scope of that person's license.

OPPONENTS
SAY:

The bill might provide civil immunity for a sales agent in a claim for personal injury or wrongful death if the agent were acting in good faith, such as in self defense and in the scope of the agent's license. Sales agents should not receive immunity for such actions.

NOTES:

The companion bill, SB 442 by Hinojosa, passed the Senate by 30-0 on April 21 and has been referred to the House Civil Practices Committee. SB 442 would not apply immunity to a cause of action for personal injury or wrongful death.